



AGENDA AND NOTICE OF THE MEETING OF THE
SAN GABRIEL VALLEY REGIONAL HOUSING TRUST FUND BOARD OF
DIRECTORS

WEDNESDAY, FEBRUARY 3, 2021 – 10:30 A.M.

Teleconference Meeting

Livestream Available at: sgvrht.org

SGVRHT Officers

Chair

Jed Leano

Vice-Chair

Becky Shevlin

Jurisdictional

Representatives

Northeast Representative

Gary Boyer, Glendora

Northwest Representative

Becky Shevlin, Monrovia

Central Representative

Vacant

Southeast Representative

Patty Cortez, Covina

At-Large Representatives

Adele Andrade-Stadler,

Alhambra

Margaret Finlay, Duarte

Jed Leano, Claremont

Housing/Homeless

Experts

Vacant (Delegate)

Carol Averell (Alternate)

Benita DeFrank (Delegate)

Alma Martinez (Alternate)

Members

Alhambra

Arcadia

Azusa

Baldwin Park

Claremont

Covina

Diamond Bar

Duarte

El Monte

Glendora

Irwindale

La Cañada Flintridge

La Verne

Monrovia

Montebello

Pasadena

Pomona

San Gabriel

South El Monte

South Pasadena

West Covina

Thank you for participating in today's meeting. The Board of Directors encourages public participation and invites you to share your views on agenda items.

MEETINGS: The Board of Directors agenda packet is available at the San Gabriel Valley Regional Housing Trust (SGVRHT) Office, 1000 South Fremont Avenue, Suite 10210, Alhambra, CA, and on the website, www.sgvrt.org. Copies are available via email upon request (bacevedo@sgvrht.org). Documents distributed to a majority of the Board after the posting will be available for review in the SGVCOG office and on the SGVRHT website. Your attendance at this public meeting may result in the recording of your voice.

PUBLIC PARTICIPATION: Your participation is welcomed and invited at all Board of Directors meetings. Time is reserved at each regular meeting for those who wish to address the Board. SGVRHT requests that persons addressing the meeting refrain from making personal, slanderous, profane or disruptive remarks.

TO ADDRESS THE GOVERNING BOARD: At a regular meeting, the public may comment on any matter within the jurisdiction of the Board of Directors during the public comment period and may also comment on any agenda item at the time it is discussed. At a special meeting, the public may only comment on items that are on the agenda. Members of the public wishing to speak are asked to complete a comment card or simply rise to be recognized when the Chair asks for public comments to speak. We ask that members of the public state their name for the record and keep their remarks brief. There is a three-minute limit on all public comments. Proxies are not permitted, and individuals may not cede their comment time to other members of the public. **The Board of Directors may not discuss or vote on items not on the agenda.**

AGENDA ITEMS: The Agenda contains the regular order of business of the Board of Directors. Items on the Agenda have generally been reviewed and investigated by the staff in advance of the meeting so that the Board of Directors can be fully informed about a matter before making its decision.

CONSENT CALENDAR: Items listed on the Consent Calendar are considered to be routine and will be acted upon by one motion. There will be no separate discussion on these items unless a Board member or citizen so requests. In this event, the item will be removed from the Consent Calendar and considered after the Consent Calendar. If you would like an item on the Consent Calendar discussed, simply tell Staff or a member of the Board of Directors.



In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the SGVCOG office at (626) 457-1800. Notification 48 hours prior to the meeting will enable the SGVCOG to make reasonable arrangement to ensure accessibility to this meeting.



MEETING MODIFICATIONS DUE TO THE STATE AND LOCAL STATE OF EMERGENCY RESULTING FROM THE THREAT OF COVID-19: On March 17, 2020, Governor Gavin Newsom issued Executive Order N-29-20 authorizing a local legislative body to hold public meetings via teleconferencing and allows for members of the public to observe and address the meeting telephonically or electronically to promote social distancing due to the state and local State of Emergency resulting from the threat of the Novel Coronavirus (COVID-19).

To follow the new Order issued by the Governor and ensure the safety of Board Members and staff for the purpose of limiting the risk of COVID-19, in-person public participation at the San Gabriel Valley Regional Housing Trust Fund Board of Directors meeting scheduled for August 5, 2020 at 10 AM will not be allowed. Members of the public may view the meeting live on the SGVCOG's website. To access the meeting video, please see the link on the front page of the agenda.

Submission of Public Comments: For those wishing to make public comments on agenda and non-agenda items you may submit comments via email or by phone.

- Email: Please submit via email your public comment to Brielle Acevedo at bacevedo@sgvrht.org at least 1 hour prior to the scheduled meeting time. Please indicate in the Subject Line of the email "FOR PUBLIC COMMENT." Emailed public comments will be part of the recorded meeting minutes but will not be read aloud. A copy of all public comments will be forwarded to the Committee.
- Phone: Please email your name and phone number to Brielle Acevedo at bacevedo@sgvrht.org at least 1 hour prior to the scheduled meeting time for the specific agenda item you wish to provide public comment on. Please indicate in the Subject Line of the email "FOR PUBLIC COMMENT." You will be called on the phone number provided at the appropriate time, either during general public comment or specific agenda item. Wait to be called upon by staff, and then you may provide verbal comments for up to 3 minutes.

Any member of the public requiring a reasonable accommodation to participate in this meeting should contact Brielle Acevedo at least 48 hours prior to the meeting at (626) 209-9238 or at bacevedo@sgvrht.org.

PRELIMINARY BUSINESS

5 MINUTES

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Public Comment (*If necessary, the President may place reasonable time limits on all comments*)
5. Changes to Agenda Order: Identify emergency items arising after agenda posting and requiring action prior to next regular meeting

CONSENT CALENDAR

5 MINUTES

6. Board of Directors Minutes – December 2, 2020 Meeting- Page 1
Recommended Action: Adopt Board of Directors minutes for the December 2, 2020 meeting
7. Board of Directors Minutes- December 21, 2020 Meeting- Page 3
Recommended Action: Adopt Board of Directors meeting notes for the December 21, 2020 meeting
8. San Gabriel Valley Project Pipeline- Page 5
Recommended Action: Adopt Resolution 21-01 updating the SGVRHT project pipeline
9. Chair and Vice Chair Appointments- Page 9
Recommended Action: Appoint Jed Leano as Chair and Becky Shevlin as Vice Chair
10. Uniform Multifamily Regulations for HCD funded projects- Page 10
Recommended Action: Adopt Resolution 21-02 Uniform Multifamily Regulations

ACTION ITEMS

10 MINUTES

11. SGVRHT Loan Documents and Signature Authority- Page 47
Recommended Action: Authorize Executive Director to finalize and execute loan documents for SGVRHT funded projects
12. Non-congregate Emergency Shelter Pilot Program Budget and Parameters- to be distributed separately
Recommended Actions: 1) Adopt Resolution 21-03 adopting a not-to-exceed pilot project budget; 2) Authorize Executive Director to execute contracts with selected non-congregate shelter and related vendor(s)

PRESENTATIONS

20 MINUTES

13. Strategic plan, funding strategy, and housing needs assessment presentation by BAE Urban Economics, Sadlon and Associates, and the Future Organization- Page 171

DISCUSSION ITEMS

UPDATE ITEMS

5 MINUTES

GENERAL COUNSEL'S REPORT

5 MINUTES

EXECUTIVE DIRECTOR'S REPORT

5 MINUTES

CHAIR'S REPORT

5 MINUTES

ADJOURN

SGVRHT Board of Directors Unapproved Minutes

Date: December 2, 2020
Time: 10:30 AM
Location: Zoom Virtual Meeting

PRELIMINARY BUSINESS

1. Call to Order
Chair Leano called the meeting to order at 10:30 AM.
2. Pledge of Allegiance
The Board of Directors recited the Pledge of Allegiance.
3. Roll Call

A quorum was in attendance.

Members Present

Adele Andrade-Stadler, City of Alhambra
Margaret Finlay, City of Duarte
Patty Cortez, City of Covina
Margaret Finlay, City of Duarte
Jed Leano, Housing/Homeless Expert
Benita DeFrank, Housing/ Homeless Expert
Becky Shevlin, City of Monrovia
Gary Boyer, City of Glendora

Members Absent

Staff

M. Creter, Executive Director, SGVRHT
C. Sims, SGVCOG
J. Eggart, General Counsel, SGVRHT
B. Acevedo, SGVRHT

4. Public Comment
There was no public comment.
5. Changes to Agenda Order
There were no changes to the agenda order.

CONSENT CALENDAR

6. Board of Directors Minutes – August 5, 2020 Meeting
Recommended Action: Adopt Board of Directors minutes for the August 5, 2020 meeting
7. Board of Directors Meeting Notes- November 4, 2020 Meeting
Recommended Action: Adopt Board of Directors meeting notes for the November 4, 2020 meeting
8. San Gabriel Valley Project Pipeline
Recommended Action: Adopt Resolution 20-19 updating the SGVRHT project pipeline
9. Conflict of Interest Code
Recommended Action: Adopt Resolution 20-20 Conflict of Interest Code

- 10.** Commitment Letter to West Mission Apartments for \$675,000
Recommended Action: Authorize the Executive Director to execute a commitment letter with Jamboree Housing for West Mission Apartments

There was a motion to approve Items 6, 7, 8, 9, and 10 on the consent calendar (M/S: Shevlin/Finlay).

[Motion Passed]

AYES:	Andrade-Stadler, Cortez, DeFrank, Finlay, Leano, Shevlin
NOES:	
ABSTAIN:	
ABSENT:	Boyer

PRESENTATIONS

ACTION ITEMS

- 11.** Permanent Local Housing Allocation (PLHA) Funds and SGVRHT Administrative Fees
Recommended Action: Adopt Resolution 20-21 allowing use of PLHA funds for a portion of SGVRHT annual administrative and affiliate fees

There was a motion to approve Resolution 20-21 allowing use of PLHA funds for a portion of SGVRHT annual administrative and affiliate fees. (M/S: Cortez/Andrade-Stadler).

[Motion Passed]

AYES:	Andrade-Stadler, Boyer, Cortez, DeFrank, Finlay, Leano, Shevlin
NOES:	
ABSTAIN:	
ABSENT:	

UPDATE ITEMS

There were no update items.

GENERAL COUNSEL'S REPORT

There was no General Counsel Report

EXECUTIVE DIRECTOR'S REPORT

There was no Executive Director Report

ADJOURN

Chair Leano adjourned the meeting at 10:50 AM.

SGVRHT Board of Directors Unapproved Minutes

Date: December 21, 2020
Time: 1 PM
Location: Zoom Virtual Meeting

PRELIMINARY BUSINESS

- 1. Call to Order
Chair Leano called the meeting to order at 1 PM.

- 2. Roll Call

A quorum was in attendance.

Members Present

Adele Andrade-Stadler, City of Alhambra
Gary Boyer, City of Glendora
Patty Cortez, City of Covina
Margaret Finlay, City of Duarte
Jed Leano, Housing/Homeless Expert
Benita DeFrank, Housing/ Homeless Expert
Becky Shevlin, City of Monrovia

Members Absent

Margaret Finlay, City of Duarte

Staff

M. Creter, Executive Director, SGVRHT
C. Sims, SGVCOG
J. Eggart, General Counsel, SGVRHT
B. Acevedo, SGVRHT

- 3. Public Comment
There was no public comment.
- 4. Changes to Agenda Order
There were no changes to the agenda order.

ACTION ITEMS

- 5. Loan Guidelines
Recommended Action: Adopt Resolution 20-22 approving the SGVRHT loan guidelines.

There was a motion to approve Resolution 20-22 approving the SGVRHT loan guidelines. (M/S: Andrade-Stadler/Benita DeFrank).

[Motion Passed]

AYES:	Andrade-Stadler, Boyer, Cortez, DeFrank, Leano
NOES:	
ABSTAIN:	
ABSENT:	Shevlin, Finlay

- 6. Underwriting Standards and Procedures

Recommended Action: Adopt Resolution 20-23 approving underwriting standards and procedures.

There was a motion to approve Resolution 20-21 approving underwriting standards and procedures. (M/S: Andrade-Stadler/Shevlin).

[Motion Passed]

AYES:	Andrade-Stadler, Boyer, Cortez, DeFrank, Leano, Shevlin
NOES:	
ABSTAIN:	
ABSENT:	Finlay

ADJOURN

Chair Leano adjourned the meeting at 1:06 PM.

REPORT

DATE: February 3, 2021

TO: Board of Directors

FROM: Marisa Creter, Executive Director

RE: **SAN GABRIEL VALLEY PROJECT PIPELINE UPDATE**

RECOMMENDED ACTION

Adopt Resolution 21-01 approving the updated San Gabriel Valley Project Pipeline

BACKGROUND

At its June 3, 2020, meeting the SGVRHT Board of Directors Authorized approved an initial project pipeline. At that time, staff acknowledged that the project pipeline was an evolving document that would continue to be updated as new projects were presented to the SGVRHT.

At its June 16, 2020, meeting, the Board of Directors authorized staff to release an initial project application that would formalize the process by which the Board could receive and consider projects. This initial project application process was also intended to identify projects that could be included in the SGVRHT's application to the State's Local Housing Trust Fund (LHTF) Grant Program. The initial project application was posted on the SGVRHT website (www.sgvrht.org) and was distributed to cities in June 2020. The pipeline was updated at the December 2, 2020 meeting with the applications received.

DISCUSSION

The SGVRHT has received an application and staff recommends that the project be added to the San Gabriel Valley Project Pipeline. The Harrison Avenue Project is located in Claremont and will provide 21 units of affordable housing.

The project pipeline will continue to be updated as additional applications are received. The project pipeline allows the SGVRHT to establish an initial list of projects to be used in funding applications and demonstrates the need for affordable housing in the San Gabriel Valley to support fundraising and marketing efforts.

Prepared by: *Brielle Acevedo*
Brielle Acevedo
Principal Management Analyst

Approved by: *Marisa Creter*
Marisa Creter
Executive Director

ATTACHMENTS

Attachment A – Resolution 21-01 San Gabriel Valley Project Pipeline

RESOLUTION NO. 21-01

**RESOLUTION OF THE SAN GABRIEL VALLEY REGIONAL HOUSING TRUST
(SGVRHT) ADOPTING SAN GABRIEL VALLEY PROJECT PIPELINE**

WHEREAS, on June 3, 2020, the San Gabriel Valley Regional Housing Trust (SGVRHT) Board adopted an initial San Gabriel Valley Project Pipeline; and

WHEREAS, the Board directed staff to solicit additional projects from cities for the San Gabriel Valley Project Pipeline; and

WHEREAS, an additional project has since submitted an application for funding to the SGVRHT; and

WHEREAS, the additional project has been added to the San Gabriel Valley Project Pipeline;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the SGVRHT adopts the San Gabriel Valley Project Pipeline, attached hereto and incorporated herein as Exhibit A.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of SGVRHT held, on the 3rd day of February, 2021.

San Gabriel Valley Regional Housing Trust

Jed Leano, Chair

Exhibit A

San Gabriel Valley Project Pipeline		
City	Project Description	Funding Gap/Request
Alhambra	50 units of low and extremely low-income housing	\$3,000,000
Arcadia	9 units of affordable housing	\$1,800,000
Baldwin Park	Metro Central Place: 55 units of affordable housing	\$1,500,000
Baldwin Park	Maine and Pacific: 90 units of affordable housing, including units for homeless veterans	\$16,000,000
Baldwin Park	14404-14412 Ramona: 13 units of affordable housing and additional units of workforce housing	\$6,000,000
Claremont	15 units of affordable housing for low-income and homeless seniors	\$500,000
Claremont	Harrison Avenue Project- 21 units of affordable housing	\$2,380,000
Duarte	60-70 units of affordable housing adjacent to the Duarte Gold Line station	\$7,000,000
El Monte	Up to 100 units of transitional housing units for homeless families	\$37,000,000
Pomona	56 units of affordable housing, including housing for families, homeless veterans, and homeless households. Shovel-ready project.	\$1,375,000
Pomona	125 units of affordable housing for low and very low-income families	\$2,000,000
South El Monte	Rehabilitation project to provide transitional housing units for homeless families	\$4,000,000
South El Monte	140 units of affordable housing for low-income seniors	\$1,300,000
South Pasadena	Purchase and rehabilitation of excess Caltrans properties to preserve for affordable housing	\$14,000,000

REPORT

DATE: February 3, 2021

TO: Board of Directors

FROM: Marisa Creter, Executive Director

RE: **CHAIR AND VICE CHAIR APPOINTMENTS**

RECOMMENDED ACTION

Appoint Jed Leano as Chair and Becky Shevlin as Vice Chair.

BACKGROUND

The San Gabriel Valley Regional Housing Trust (SGVRHT) Board of Directors is required to select a Chair and Vice Chair amongst its members at the first calendar meeting each year per the adopted Bylaws and legislation that formed the SGVRHT.

APPOINTMENTS

In January, staff called for nominations for the Chair and Vice Chair positions on the SGVRHT Board of Directors. Only one nomination for was received for each position as follows:

- Chair: Jed Leano (Claremont) – At-Large Representative
- Vice Chair: Becky Shevlin (Monrovia)- Northwest District Representative

Given that only one nomination was received for each position, staff is recommending that both nominees be appointed.

Prepared by: *Brielle Acevedo*
Brielle Acevedo
Principal Management Analyst

Approved by: *Marisa Creter*
Marisa Creter
Executive Director

REPORT

DATE: February 3, 2021

TO: Board of Directors

FROM: Marisa Creter, Executive Director

RE: **UNIFORM MULTIFAMILY REGULATIONS**


RECOMMENDED ACTION

Adopt Resolution 21-03 adopting Uniform Multifamily Regulations for LHTF funded projects.

BACKGROUND

The SGVRHT submitted an application to the State Department of Housing and Community Development (HCD) for the Local Housing Trust Fund (LHTF) grant program in August 2020. As part of the application the Board approved SGVRHT underwriting standards and procedures. HCD has requested an update to the SGVRHT's underwriting standards and procedures to align with HCD's requirements for project feasibility or adoption of the Uniform Multifamily Regulations (UMRs).

Staff recommends adopting the UMRs as the SGVRHT's loan guidelines and underwriting standards for LHTF funded projects. All LHTF funded projects will need to comply with HCD requirements and this is the best way to ensure that all provisions are included in the SGVRHT's underwriting standards and procedures.

Prepared by: 
Brielle Acevedo
Principal Management Analyst

Approved by: 
Marisa Creter
Executive Director

ATTACHMENTS

Attachment A – Resolution 21-03 Uniform Multifamily Regulations

RESOLUTION NO. 21-02

**RESOLUTION OF THE SAN GABRIEL VALLEY REGIONAL HOUSING TRUST
(TRUST) ADOPTING UNIFORM MULTIFAMILY REGULATIONS**

WHEREAS, the Board of Directors approved submittal of an application to the State Department of Housing and Community Development (HCD) for the Local Housing Trust Fund (LHTF) program; and

WHEREAS, the HCD has requested the SGVRHT to adopt the Uniform Multifamily Regulations for LHTF funded projects.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors adopts the Uniform Multifamily Regulations for LHTF funded projects, attached hereto and incorporated herein as Exhibit A.

PASSED AND ADOPTED by the Board of Directors of the San Gabriel Valley Regional Housing Trust, in the County of Los Angeles, State of California, on the 3rd day of February, 2021.

San Gabriel Valley Regional Housing Trust

Jed Leano, Chair

California Code of Regulations
Title 25, Division 1
Chapter 7
Subchapter 19
Commencing with Section 8300
Effective date: November 15, 2017

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Section 8300. Purpose and Scope.

- (a) These regulations provide uniform standards and program rules for multifamily rental housing developments assisted by the Department of Housing and Community Development.
- (b) When expressly incorporated by reference, some or all of the provisions of this Chapter shall apply to: the Joe Serna, Jr. Farmworker Housing Grant (JSJFWHG) Program (Chapter 7, subchapter 3, commencing with Section 7200); the Multifamily Housing Program (MHP) (Chapter 7, subchapter 4, commencing with Section 7300); and the HOME Investment Partnerships (HOME) Program (Chapter 7, subchapter 17, commencing with Section 8200). These regulations interpret and make specific the following statutes applicable to these programs: Health and Safety Code Division 31, Part 3.2, Chapter 2 (commencing with Section 50517.5), Chapter 6.7 (commencing with Section 50675), and Chapter 16 (commencing with Section 50896).
- (c) The 2017 adoptions and amendments to subchapter 19 shall be effective on November 15, 2017 and shall apply prospectively to all standard agreements between the Department and Sponsors that are executed or amended on or after the foregoing effective date and are governed by the authorities set forth in subsection (b). These agreements are subject to the standard contract format referenced in the California State Contracting Manual.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(2), 50675.1(d), 50675.11 and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5, 50675, 50896, 50896.1 and 50896.3, Health and Safety Code; and 24 CFR part 92.

Section 8301. Definitions.

The following definitions govern this subchapter.

- (a) "Assisted Unit" means a Unit that is subject to the Program's rent and/or occupancy restrictions as a result of the financial assistance provided by the Program, as specified in the Regulatory Agreement.
- (b) "CalHFA" means the California Housing Finance Agency.
- (c) "Commercial Space" means any nonresidential space located in or on the property of a Rental Housing Development that is, or is

proposed to be, rented or leased by the owner of the Project, the income from which shall be included in Operating Income.

- (d) "CPI" means the Consumer Price Index for All Urban Consumers, West Region, All Items, as published by the Bureau of Labor Statistics, United States Department of Labor.
- (e) "Debt Service Coverage Ratio" means the ratio of (1) Operating Income less the sum of Operating Expenses and required reserves to (2) debt service payments, excluding voluntary prepayments and non-mandatory debt service. In calculating Debt Service Coverage Ratio, the Department may include all Operating Income, and may exclude Operating Income that cannot be reasonably underwritten by lenders making amortized loans or that is approved by the Department to be deposited into a reserve account to defray projected operating deficits.
- (f) "Department" means the Department of Housing and Community Development.
- (g) "Developer Fee" means the same as the definition of that term in California Code of Regulations, Title 4, Section 10302.
- (h) "Distributions" means the amount of cash or other benefits received from the operation of a Rental Housing Development and available to be distributed pursuant to Section 8314 to the Sponsor or any party having a beneficial interest in the Sponsor or the Project, after payment of all due and outstanding obligations incurred in connection with the Rental Housing Development. Distributions do not include payments for: deferred Developer Fee up to the limit set forth in Section 8312, approved partnership and asset management fees, mandatory debt service, approved reserve accounts established to prevent tenant displacement resulting from the termination of rent subsidies, operations, maintenance, payments to approved reserve accounts, land lease payments to parties that do not have a beneficial interest in the Sponsor entity, or payments for property management or other services as set forth in the Regulatory Agreement for the Rental Housing Development. Distributions include releases to the Sponsor or any other party of reserve funds, where the use of these funds have not been approved by the Department for Project costs.
- (i) "Eligible Households" for MHP means "eligible household" as defined in Section 7301, for HOME this term means the same as "low income families" as defined in 24 CFR 92.2, and for JSJFWHG

this term means the same as “agricultural household” as defined in Section 7202.

- (j) “Native American Lands” means real property located within the geographic boundary of the State of California that meets both the following criteria: it is trust land for which the United States holds title to the tract or interest in trust for the benefit of one or more Indian tribes or individual Indians, or is restricted Indian land for which one or more tribes or individual Indians holds fee title to the tract or interest but can alienate or encumber it only with the approval of the United States; and the land may be leased for housing development and residential purposes under federal law.
- (k) "Operating Expenses" means the amount approved by the Department that is necessary to pay for the recurring expenses of the Project, such as utilities, maintenance, management, taxes, licenses, and Supportive Services Costs, but not including debt service or required reserve account deposits.
- (l) "Operating Income" means all income generated in connection with operation of the Rental Housing Development including rental income for Assisted Units and non-Assisted Units, rental income for Commercial Space or commercial use, laundry and equipment rental fees, rental subsidy payments, and interest on any accounts, other than approved reserve accounts, related to the Rental Housing Development. "Operating Income" does not include security and equipment deposits, payments to the Sponsor for Supportive Services not included in the Department-approved operating budget, cash contributed by the Sponsor, or tax benefits received by the Sponsor.
- (m) "Program" means the Department funding program or programs providing assistance to the Project.
- (n) "Project" means a Rental Housing Development, and includes the development, the construction or rehabilitation, and the operation thereof, and the financing structure and all agreements and documentation approved in connection therewith.
- (o) “Regulatory Agreement” means the written agreement between the Department and the Sponsor that will be recorded as a lien on the Rental Housing Development to control the use and maintenance of the Project, including restricting the rent and occupancy of the Assisted Units.

- (p) "Rental Housing Development" means a structure or set of structures which collectively contains 5 or more Units (except that HOME projects may contain fewer than 5 Units.). "Rental Housing Development" does not include any "health facility" as defined by Section 1250 of the Health and Safety Code or any "alcoholism or drug abuse recovery or treatment facility" as defined by Section 11834.02 of the Health and Safety Code.
- (q) "Restricted Unit" means any Assisted Unit and any Unit that is subject to Rent and occupancy restrictions that are comparable to those applicable to Assisted Units. Restricted Units include Units subject to a TCAC regulatory agreement, and all Units subject to similar long-term, low-income or occupancy restrictions imposed by other public agencies.
- (r) "Rural Area" means the same as defined in Section 50199.21 of the Health and Safety Code.
- (s) "Sponsor" means the legal entity or combination of legal entities with continuing control of the Rental Housing Development. Where the borrowing entity is or will be organized as a limited partnership, Sponsor includes the general partner or general partners who have effective control over the operation of the partnership, or, if the general partner is controlled by another entity, the controlling entity. Sponsor does not include the seller of the property to be developed as the Project, unless the seller will retain control of the Project for the period of time necessary to ensure Project feasibility as determined by the Department.
- (t) "Supportive Services" means social, health, educational, income support and employment services and benefits, coordination of community building and educational activities, individualized needs assessment, and individualized assistance with obtaining services and benefits.
- (u) "Supportive Services Costs" means the costs of providing tenants service coordination, case management, and direct resident and Supportive Services. It includes:
 - (1) the cost of providing tenants with information on and referral to social, health, educational, income support and employment services and benefits, coordination of community building and educational activities, individualized needs assessment, and individualized assistance with obtaining services and benefits;

- (2) salaries, benefits, contracted services, telecommunication expenses, travel costs, supplies, office expenses, staff training, maintenance of on-site equipment used in services programs, such as computer labs, incidental costs related to resident events, and other similar costs approved by the Department.
- (v) "TCAC" means the California Tax Credit Allocation Committee.
- (w) "Transitional Housing" means a Rental Housing Development operating under programmatic constraints that require the termination of assistance after a specified time or event, in no case less than 6 months after initial occupancy, and the re-renting of the Assisted Unit to another eligible participant.
- (x) "Unit" means a residential Unit that is used as a primary residence by its occupants, including efficiency Units, residential hotel units, and units used as Transitional Housing.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5, 50675, 50675.1(c), 50675.2 and 50896.1(a), Health and Safety Code; and 24 CFR part 92.

Section 8302. Restrictions on Demolition.

- (a) Proposed projects involving new construction and requiring the demolition of existing residential Units are eligible only if the number of bedrooms in the new Project is at least equal to the total number of bedrooms in the demolished structures. The new Units may exist on separate parcels provided all parcels are part of the same Rental Housing Development meeting the requirements of Section 8303(b).
- (b) The Department may approve exceptions to subsection (a) where it determines that such exceptions will substantially improve the livability of the remaining units, or serve some other compelling public policy objective. For example, it may approve a reduction in the number of single room occupancy (SRO) units where necessary to add private cooking and bathing facilities, or a reduction in the number of bedrooms in public housing necessary to meet federal requirements.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(a)(1), 50517.5(d)(3), 50675.4, 50675.7 and 50896.1(a), Health and Safety Code; and 24 CFR Section 92.353(a).

Section 8303. Site Control Requirements and Scattered Site Projects.

- (a) At the time of application, a Sponsor must have site control of the of the proposed Project property, in the name of the Sponsor or an entity controlled by the Sponsor, by one of the following means:
 - (1) fee title, which, for tribal trust land, may be evidenced by a title status report or an attorney's opinion regarding chain of title and current title status;
 - (2) a leasehold interest on the Project property with provisions that enable the lessee to make improvements on and encumber the property provided that the terms and conditions of any proposed lease shall permit, prior to loan closing, compliance with all Program requirements, including compliance with Section 8316;
 - (3) an enforceable option to purchase or lease which shall extend through the anticipated date of the Program award as specified in the Notice of Funding Availability (NOFA);
 - (4) a disposition and development agreement with a public agency;
 - (5) an agreement with a public agency that gives the Sponsor exclusive rights to negotiate with that agency for acquisition of the site, provided that the major terms of the acquisition have been agreed to by both parties; or
 - (6) a land sales contract, or other enforceable agreement for the acquisition of the property.

- (b) If the Project has multiple contiguous or non-contiguous sites, the configuration of those sites must satisfy all provisions of the statutes governing the applicable Department funding program or programs, and meet the following additional requirements:
 - (1) all of the developments on the various sites must have a single owner and property manager at the time of the closing of the Department loan, with the exception of any non-residential condominium units;
 - (2) the debt and associated security instruments of all lenders senior to the Department must be the same for all sites, and multiple senior lenders shall not be allowed;

- (3) there must be a single annual report, schedule of rental income, and annual audit of project operations covering all sites;
- (4) the Department must be secured against all sites, with lien priority relative to local public agency lenders and use of cash flow available for residual receipt loan payments determined in accordance with Section 8314(a)(2)(A) and (B) of these regulations (with each lender's share of residual receipts proportionate to their share of total Department and local government assistance for the entire multi-site project); and
- (5) the Department must be named on applicable insurance policies subject to the Department's approval covering all sites, including but not limited to title insurance policies and other policies with coverage for hazard and liability insurance for the Rental Housing Development, including flood insurance, if applicable. The Department shall be named as a loss payee or an additional insured on all such policies. Such policies also shall provide for notice to the Department in the event of any lapse of coverage and in the event of any claim thereunder. Insurance must be obtained and maintained for the term of the Department's program loan.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(d)(4)(A), 50675.6, 50675.7(c)(3) and 50896.1(a), Health and Safety Code; 42 U.S.C. Section 5304(b); and 24 CFR Section 92.35(a).

Section 8304. Unit Standards.

- (a) Restricted Units shall not differ substantially in size or amenity level from non-Restricted Units with the same number of bedrooms, and Units shall not differ in size or amenity level on the basis of income-level restrictions. Restricted Units shall not be segregated from non-Restricted Units, and Units shall not be segregated from each other on the basis of income-level restrictions. Within these limits, Sponsors may change the designation of a particular Unit from Assisted to non-Assisted or from one income-restriction to another over time. For Projects involving rehabilitation or conversion, the Department may permit certain Units to be designated as exclusively market-rate Units where necessary for fiscal integrity and where all other Program requirements are satisfied.

- (b) For the full loan term, the number, size, type, and amenity level of Assisted Units shall not be fewer than the number nor different from the size, type and amenity level described in the Regulatory Agreement.
- (c) For projects assisted by MHP, the number of Assisted Units shall equal the number of Restricted Units to the extent allowed by the requirements of Article XXXIV of the California Constitution.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(c), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code.
Reference: Sections 50517.5(d)(4)(A), 50517.5(d)(5), 50517.5(e)(2), 50675.1(c), 50675.2(b), 50675.7, 50675.8 and 50896.1(a), Health and Safety Code; and 24 CFR Sections 92.252(e) and 92.504(c).

Section 8305. Tenant Selection.

- (a) Sponsors shall select only Eligible Households as tenants of vacant Assisted Units, using procedures approved by the Department that include:
 - (1) reasonable criteria for selection or rejection of tenant applications which shall not discriminate in violation of any federal, state or local law governing discrimination, or any other arbitrary factor;
 - (2) prohibition of local residency requirements;
 - (3) prohibition of local residency preferences, except where there is evidence satisfactory to the Department that the preference as applied will comply with fair housing law and:
 - (A) where accompanied by an equal preference for employment in the local area and applied to areas not smaller than municipal jurisdictions or recognized communities within unincorporated areas, or
 - (B) where a local ordinance grants a preference to neighborhood residents who have been or are about to be displaced;
 - (4) tenant selection procedures that include the following components, and that are available to prospective tenants upon request:
 - (A) selection of tenants based on order of application, lottery or other reasonable method approved by the

Department, including priority status under a local coordinated entry (also known as centralized or coordinated assessment, or coordinated access) system established pursuant to federal regulations governing the Continuum of Care program, 24 Code of Federal Regulations, Part 578 (June 6, 2017) hereby incorporated by reference;

- (B) does not encourage or require applicants to wait in a physical line;
 - (C) notification to tenant applicants of eligibility for residency and, based on turnover history for Units in the Rental Housing Development, the approximate date when a Unit may be available;
 - (D) notification of tenant applicants who are found ineligible to occupy an Assisted Unit of their ineligibility and the reason for the ineligibility, and of their right to appeal this determination;
 - (E) maintenance of a waiting list of applicant households eligible to occupy Assisted Units and Units designated for various tenant income levels, which shall be made available to prospective tenants upon request;
 - (F) targeting specific Special Needs Populations (“Special Needs Populations” has the same meaning as defined in Section 7301(s)) in accordance with the Regulatory Agreement and applicable laws; and
 - (G) affirmative fair housing marketing procedures as specified in the Affirmative Fair Housing Marketing Plan Compliance Regulations of the United States Department of Housing and Urban Development, 24 CFR part 200.620 (a)-(c), or similar affirmative fair marketing housing plan as approved by the Department.
- (b) Sponsors shall rent vacant units to households with no less than the number of people specified in the following schedule:

<i>Unit Size</i>	<i>Minimum Number of Persons in Household</i>
SRO	1
0-BR	1
1-BR	1
2-BR	2
3-BR	4
4-BR	6
5-BR	8

Exceptions:

- (1) Live-in aids may be allocated a separate bedroom.
- (2) A separate bedroom may be allocated as a reasonable accommodation for individuals with disabilities who have a need for such an accommodation.
- (3) For units covered under Housing Choice Vouchers or project-based Section 8 rental assistance contracts, Sponsors may defer to the local housing authority's determination of appropriate unit occupancy.

A Sponsor may assign tenant households to Units of sizes other than those indicated as appropriate in the table and exceptions listed above if the Sponsor reasonably determines that special circumstances warrant such an assignment and the reasons are documented in the tenant's file. The Sponsor's determination is subject to approval by the Department. Through the Project's tenant selection or management plan, a Sponsor may receive advance Department approval of additional categorical exceptions.

- (c) The Department may approve exceptions to the requirements of this section for Projects located on Native American Lands, based on the unique legal requirements applicable to Native American Lands.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code.
Reference: Sections 50517.5(a)(1), 50517.5(d)(3), 50517.5(d)(5), 50517.5(e)(2), 50675.1(c), 50675.8(a)(1) and 50896.1(a), Health and Safety Code; and 24 CFR Sections 92.303, 92.350 and 92.351.

Section 8306. Tenant Recertification.

- (a) The Sponsor shall annually recertify household size and income for Assisted Units.
- (b) If at the time of recertification, a tenant's household size has changed and no longer meets the occupancy standards pursuant to the previous section, the Sponsor may require the tenant household to move to the next available appropriately sized Unit.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(c), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code.
Reference: Sections 50517.5(a)(1), 50517.5(d)(3), 50517.5(d)(5), 50517.5(e)(2), 50675.1(c), 50675.8(a)(1) and 50896.1(a), Health and Safety Code, and 24 CFR Sections 92.303, 92.350 and 92.351.

Section 8307. Rental Agreement and Grievance Procedure.

- (a) All rental or occupancy agreements for Assisted Units are subject to Department approval and shall include:
 - (1) provisions requiring good cause for termination of tenancy. One or more of the following constitutes "good cause":
 - (A) failure by the tenant to maintain applicable eligibility requirements under the Program or other eligibility requirements as approved by the Department;
 - (B) material noncompliance by the tenant with the lease, including one or more substantial violations of the lease or habitual minor violations of the lease which:
 - 1. adversely affect the health and safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related Project facilities;
 - 2. substantially interfere with the management, maintenance, or operation of the Rental Housing Development; or
 - 3. result from the failure or refusal to pay, in a timely fashion, Rent or other permitted charges when due. Failure or refusal to pay in a timely fashion is a minor violation if payment is made during the 3-day notice period;

- (C) material failure by the tenant to carry out obligations under federal, state or local law;
 - (D) subletting by the tenant of all or any portion of the Assisted Unit;
 - (E) any other action or conduct of the tenant constituting significant problems which can be reasonably resolved only by eviction of the tenant, provided that the Sponsor has previously notified the tenant that the conduct or action in question would be considered cause for eviction. Examples of action or conduct in this category include the refusal of a tenant, after written notice, to accept reasonable rules or any reasonable changes in the lease or the refusal to recertify income or household size; or
 - (F) for Transitional Housing, the end of the maximum term prescribed for tenant occupancy by the Program operated in a particular Transitional Housing Project.
- (2) a provision requiring that the facts constituting the grounds for any eviction be set forth in the notice provided to the tenant pursuant to state law;
 - (3) notice of grievance procedures for hearing complaints of tenants and appeal of management action; and
 - (4) a requirement that the tenant annually recertify household income and size.
- (b) The Sponsor shall adopt an appeal and grievance procedure to resolve grievances filed by tenants and appeals of actions taken by Sponsors with respect to tenants' occupancy in the Rental Housing Development, and prospective tenants' applications for occupancy. The Sponsor's appeal and grievance procedure shall be subject to Department approval and, at a minimum, shall include the following:
 - (1) a requirement for delivery to each tenant and applicant of a written copy of the appeal and grievance procedure;

- (2) procedures for informal dispute resolution;
 - (3) a right to a hearing before an impartial body, which shall consist of one or more persons with the power to render a final decision on the appeal or grievance; and
 - (4) procedures for the conduct of an appeal or grievance hearing and the appointment of an impartial hearing body.
- (c) Neither utilization of, nor participation in any of the appeal and grievance procedures shall constitute a waiver of or affect the rights of the tenant, prospective tenant, or Sponsor to a trial de novo or judicial review in any judicial proceeding which may thereafter be brought in the matter.
 - (d) This section shall not be construed to pre-empt or supersede requirements established by local government which further limit good cause for eviction.
 - (e) For Projects located on Native American Lands, the Department may approve exemptions to the requirements of this section, based on the unique legal requirements applicable to Native American Lands.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(d)(3), 50517.5(d)(5), 50517.5(e)(2), 50675.8(a)(1), 50675.8(a)(2) and 50896.1(a), Health and Safety Code; and 24 CFR Sections 92.253 and 92.303.

Section 8308. Operating Reserves.

The Sponsor shall establish an operating reserve for the purpose of defraying operating shortfalls resulting from Department-approved Operating Expenses exceeding Operating Income beyond the rent-up period.

- a) Withdrawals from the operating reserve shall require prior written approval of the Department. Should the Department fail to take action on a request for an eligible withdrawal from the operating reserve within 30 days from documented receipt of the request, that request shall be deemed approved.
- b) The initial deposit to the operating reserve shall be funded from development funding sources in an amount determined by the Department, which shall be not less than the total of the following: 4 months of projected Operating Expenses (excluding the cost of on-site Supportive Services coordination), 4 months of required

replacement reserve deposits, and 4 months of non-contingent debt service. For projects with tax credits, the requirement shall be 3 months of these items. In setting the initial funding requirement, the Department shall consider factors including, but not limited to the projected level of Project cash flow, the adequacy of the operating budget, Project location, local market characteristics, the number of sites, and Project design.

- c) Sponsor shall fully replace any withdrawals from the Operating Reserve, up to the minimum initial deposit amount specified in subsection (b) above, as may be modified in accordance with subsection (d) or (e) below, using available cash flow prior to use of any cash flow to pay deferred Developer Fee, partnership management or similar fees, or Distributions.
- d) In the absence of some extraordinary occurrences, such as litigation affecting the project or construction defects, and upon occurrence of both of the following events, the Department shall reduce the required minimum balance: (i) operation at a debt service coverage ratio of 1.15 or greater for 5 years; and (ii) operation at an Operating Expense coverage ratio of 1.08, where Operating Expense ratio is defined to equal effective gross income, less required replacement reserve deposits and non-contingent debt service, divided by total Operating Expenses, not including the approved cost of Supportive Services coordination.
- e) The Department may agree with other financing sources to allocate authority regarding amounts deposited into or withdrawn from the Operating Reserve, where the Department determines that such arrangement would not jeopardize the fiscal integrity of the Project and the minimum reserve requirements would be maintained. For Projects subject to direct federal loan or grant programs, including the Native American Housing Assistance and Self Determination Act programs, or receiving a permanent loan from CalHFA, the Department may also defer to the operating reserve requirements of these agencies during the time such projects are regulated by a federal agency or CalHFA, and not require deposits in the amounts specified in subsection (b).
- f) Where all Project development funding sources are legally precluded from using their funds to capitalize the operating reserve as required by subsection (b), the Sponsor may fund this account out of Operating Income, provided that cash flow is sufficient to reasonably ensure that the required balance can be accumulated within six years of initial occupancy.

- g) In no event shall this reserve balance be used to fund limited partner exit costs, except for amounts in excess of the reserve balance required by the Department.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5, 50675.5(b)(8) and 50896.1(a), Health and Safety Code.

Section 8309. Replacement Reserves.

The Sponsor shall establish a replacement reserve to repair or replace failed or damaged capital items and to cover extraordinary maintenance expenses, as approved by the Department. Extraordinary maintenance expenses are expenses for infrequent major repairs and replacements of building components too costly to be absorbed by the Project's annual operating budget. In no event shall this reserve be used to fund limited partner exit costs.

- (a) Withdrawals from the replacement reserve shall require prior written approval of the Department. Should the Department fail to take action on a request for an eligible withdrawal from the replacement reserve within 30 days of documented receipt of the request, that request shall be deemed approved.
- (b) The replacement reserve shall be funded from Operating Income, development sources or a combination of Operating Income and development sources.
 - (1) For new construction or conversion Projects, the initial amount of annual deposits to the replacement reserve account shall be equal to at least the lesser of 0.6% of estimated construction costs associated with structures in the Project, excluding construction contingency and general contractor profit, overhead and general requirements, or \$500 per unit. However, the Department may approve a different amount based on the results of a third-party reserve analysis, which it may require, or other reliable indicators of the need for replacement reserve funds over the initial 20 years of operation, or, in the case of transactions involving restructuring of existing Department loans, 20 years of operations after the restructuring.
 - (2) For rehabilitation Projects, the initial amount of annual deposits to the replacement reserve account shall be determined by the Department based on the results of a third-party physical needs assessment or other reliable indicators of the need for replacement reserve funds over

the initial 20 years of operation. In its initial underwriting, in the absence of an approved physical needs assessment or other reliable indicators of the need for replacement reserve funds, the Department may assume that the initial amount of annual deposits shall be \$500 per unit.

- (3) The Department may periodically adjust the amount of required deposits to the replacement reserve for a particular Project based on the results of reserve analysis or other reliable indicators of the need for replacement reserve funds over time.
- (4) The Department may agree with other financing sources to allocate authority regarding amounts deposited into or withdrawn from the replacement reserve, where the Department determines that such arrangement would not jeopardize the fiscal integrity of the Project and the minimum reserve requirements would be maintained. For Projects subject to direct federal loan or grant programs, including Native American Housing Assistance and Self Determination Act programs, or receiving a permanent loan from CalHFA, the Department may also defer to the replacement reserve requirements of these agencies during the time such projects are regulated by a federal agency or CalHFA.
- (5) If the Department requires a reserve analysis because the Department determines the reserve is inadequate due to annual replacement costs exceeding or being reasonably likely to exceed the amounts deposited to the reserve, or due to a request by the Sponsor to adjust the required reserve amount, the analysis must result in a due diligence report that examines the current physical conditions at property(ies), specifies repairs or replacements needed immediately, and budgets for the long-term capital repair and replacement needs during the life of an asset, such as the results of using the Capital Needs Assessment eTool, developed by the U.S. Department of Housing and Urban Development.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code.
Reference: Sections 50517.5(d)(1), 50675.5(b)(8) and 50896.1(a), Health and Safety Code.

Section 8310. Underwriting Standards.

In analyzing Project feasibility, the Department shall, at a minimum, utilize the following assumptions and criteria:

- (a) Residential vacancy rates shall be assumed to be 5%, unless a different figure is required by another funding source (including TCAC) or supported by compelling market evidence.
- (b) Vacancy rates for Commercial Space shall be assumed to be 50%, except the Department may use the vacancy loss assumption of the Project's senior lender or equity investor under either of the following circumstances:
 - (1) where the commercial income is guaranteed by the Sponsor through a long-term master lease and the amount of the Sponsor's annual master lease payment is both:
 - (A) less than one percent of the Sponsor's cash and cash equivalent current assets; and
 - (B) less than or equal to the projected commercial income, as evidenced by a market study or appraisal commissioned by the first lien lender or equity investor, and reflected in the final pro forma approved by the first lien lender or equity investor; or
 - (2) where the Commercial Space has been leased to a national or regional firm widely recognized by the general public, and the term of the lease extends at least five years past the projected date of construction completion.
- (c) Total Operating Expenses (not including property taxes or the approved costs of on-site service coordination) shall not be less than those specifically listed in California Code of Regulations, Title 4, Section 10327 as minimum Operating Expenses (without the reduction allowed by those regulations for bond-financed projects). The Department may project higher Operating Expenses where warranted by the experience of comparable properties and particular building characteristics, such as the nature of the tenant population or the level of rehabilitation. Prior to loan closing, the Department may approve total Operating Expenses that are less than those specified in Section 10327, *supra*, only if the Project has

an extraordinary design feature, such as its own electrical generation system, which results in a quantifiable operating cost savings as documented by a qualified third party.

- (d) All Operating Expenses, including property management fees, shall be within the normal market range, as periodically determined by the Department in surveys or based on costs observed in its portfolio.
- (e) The first year Debt Service Coverage Ratio shall not be:
 - (1) less than 1.10:1 or
 - (2) greater than 1.20:1, except where a higher first-year ratio is necessary to:
 - (A) project first-year cash flow after debt service and required reserve deposits equal to or less than 12 percent of operating expenses;
 - (B) meet the requirements of subsection (i);
 - (C) meet CalHFA's standard underwriting requirements or those of a direct federal lending program; or
 - (D) project a positive cash flow over 20 years, using the assumptions specified in subsection (i).

In applying the requirements of subsections (e)(1) and (e)(2), the annual MHP Program loan payment of 0.42% will be considered debt service.

The Department may modify the application of these requirements on a case-by-case basis for Projects receiving operating or rental subsidies structured to allow for breakeven operation, or for operation at a level of cash flow that differs from that resulting from application of these requirements in order to meet the cash flow obligations in this subsection.

- (f) Balloon payments are not allowed on senior debt, except where the Department's affordability covenant or regulatory agreement (collectively "Use Restriction") is recorded in a position that is senior to the debt with a balloon payment. Any such Use Restriction may include provisions that, upon foreclosure of the debt instrument securing such debt, allow the Use Restriction to be amended to delete any portion of the Use Restriction that is not

necessary to ensure the continued restriction of the project to the same affordability level for all occupants, rents or amounts charged pursuant thereto, reporting requirements not related to tenant occupancy and affordability, and level of operations and maintenance (collectively, the "Affordability Provisions"). The Sponsor may also include an executory provision in the original Use Restriction that immediately limits the effect of the Use Restriction to only those set forth in the Affordability Provisions. Furthermore, in the event project-based rental assistance is terminated, the Affordability Provisions may include a provision allowing rents to increase to the minimum extent required for fiscal integrity, as defined in Section 7301(g), but not in any event shall rents exceed 30% of 50% of area median income, as such area median income is determined by the U. S. Department of Housing and Urban Development, adjusted by bedroom count by TCAC pursuant to 26 U.S. Code Section 42(g)(2)(C) with the annually published TCAC Income Limits and Maximum Rents posted on the TCAC website.

- (g) Balloon payments are allowed on junior debt during the term of the Program loan only where the Department determines that the balloon payment will not jeopardize project feasibility.
- (h) Variable interest rate debt shall be underwritten at the ceiling interest rate, unless the Department determines that using a lower interest rate assumption will not jeopardize project feasibility.
- (i) The Project must demonstrate a positive cash flow for 15 years, using income and expenses increase rate assumptions specified in California Code of Regulations, Title 4, Section 10327. If projected Project income includes rental assistance or operating subsidy payments under a renewable contract, the Department may assume that this contract will be renewed, where the renewal of the rental assistance or operating subsidy is likely.
- (j) Where the Department is providing construction-period financing, the minimum budgeted construction contingency shall be 5 percent of construction costs for new construction projects and 10 percent of construction costs for rehabilitation and conversion projects.
- (k) Local public agency loans shall not have required payments exceeding 0.5% per year of the original principal loan amount.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(d)(2), 50517.5(e)(2), 50675.7(b)(3) and 50896.1(a), Health and Safety Code; and 24 CFR Section 92.252.

Section 8311. Limits on Development Costs.

- (a) Project development costs must be reasonable, as measured by the ratio of the project's total eligible basis to its total adjusted threshold basis limits, calculated at the time of application for Department funds. Both total eligible basis and total adjusted basis limits shall be computed in accordance with TCAC regulations and procedures set forth in Title 4, California Code of Regulations, Sections 10325 - 10327, except as follows:
 - (1) There shall not be an adjustment of threshold basis limits based on units that will be income and rent restricted at or below certain area median income levels, such as that in Title 4, California Code of Regulations, Section 10327(c)(5)(C) as in effect as of September 2016.
 - (2) Costs shall be deemed reasonable under this section if the ratio calculated pursuant to the above subsection (a) is less than 160 percent.
- (b) If the ratio calculated above in subsection (a) exceeds 170 percent, calculated based on actual development costs following completion of construction, the Sponsor shall incur up to 20 negative points which may, in the Department's discretion, be assessed, and which negative points shall reduce the Sponsor's score by the same amount for future applications to any of the Department's Notice of Funding Availability for any of the Department's programs, and may continue to be repeatedly assessed for any and all successive NOFAs for a period of up to three years following the date on which the Department determined that the cost exceeded the 170 percent limit.
- (c) Builder overhead, profit and general requirements shall be limited in accordance with California Code of Regulations, Title 4, Section 10327.
- (d) Property acquisition prices shall not exceed appraised value, except where the increment above appraised value is fully covered by junior public agency financing that carries no mandatory debt service.

- (e) Proposed Project sites shall not require site development work that is significantly more costly than that typical for other similar projects in the local market area, unless either:
 - (1) the proposed site acquisition cost together with the site development costs are less than the cost of a typical site together with typical site development costs in the Project's market area; or
 - (2) there are no other sites available in the market area with a lower combined cost.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(a)(1), 50517.5(c)(2), 50517.5(e)(2), 50675(a), 50675.4(b)(2), 50675.4(c)(1), 50675.5 and 50896.1(a), Health and Safety Code.

Section 8312. Developer Fee.

- (a) For Projects not utilizing low income housing tax credits, Developer Fee shall not exceed the amount calculated in accordance with subsections (1), (2) or (3) below. The per unit amounts will be adjusted in thousand dollar increments in accordance with changes in the CPI when, following the year 2016, the CPI has indicated the next full thousand dollar increment has been reached.
 - (1) For new construction Projects and Projects where the contract for the rehabilitation work equals or exceeds \$35,000 per Unit:
 - (A) For the first 30 Units, \$26,000 per Unit.
 - (B) For each Unit in excess of 30, \$10,500 per Unit.
 - (2) For other Projects involving acquisition and rehabilitation where the contract amount for the rehabilitation work, excluding contractor profit and overhead, equals or exceeds \$10,500 per Unit and is less than \$35,000 per Unit:
 - (A) For the first 30 Units, \$12,000 per Unit.
 - (B) For each Unit in excess of 30, \$5,500 per Unit.
 - (3) For all other Projects, \$2,000 per Unit.
- (b) For Projects utilizing 9% competitive low income housing tax credits, Developer Fee payments shall not exceed the amount that

may be included in project costs pursuant to California Code of Regulations, Title 4, Section 10327.

- (c) For Projects utilizing 4% percent tax credits, Developer Fee payments shall not exceed the lesser of \$3,500,000 or the sum of:
 - (1) the amount that could be included in project costs pursuant to Title 4, California Code of Regulations, Section 10327 if the project was receiving 9% competitive credits; plus
 - (2) any remaining deferred Developer Fee (payable exclusively from operating income) that is allowed in eligible basis under Title 4, California Code of Regulations, Section 10327 of the TCAC regulations.

(Subsection (c) limits Developer Fee paid from development funding sources.)

- (d) The dollar value of any capital contribution of funds or real property made by the Sponsor or an affiliate, as approved by the Department, for Project development costs shall increase the Developer Fee limit by the dollar value of the capital contribution.
- (e) The limits set forth in this section shall apply to each Project pursuant to the terms of a program standard agreement, as memorialized in Department loan or grant documents entered into pursuant thereto (the "Original Award"). For any future work performed for the benefit of the Project, to the extent such work was not captured, set forth, or otherwise contemplated in any of the legal documents memorializing terms related to the Original Award, the fees for such new developer work benefiting the Project shall be recalculated in accordance with this section, treating that new work as if it were a separate project.
- (f) For projects where less than 25 percent of total units are counted in the determination of maximum Department loan or grant amounts, the Department may defer to the limits on Developer Fees applicable to other public agency project funding sources, to the extent it deems necessary to attract sufficient applications to utilize available Department funding.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code.
Reference: Sections 50517.5(a)(1), 50517.5(c)(2), 50517.5(e)(2), 50675.5(b)(5), 50675.8(a)(5) and 50896.1(a), Health and Safety Code.

Section 8313. Program Compatibility.

- (a) Where the requirements of federal funding for a Project (including low income housing tax credits and direct federal loans but excluding federal loan guarantees) would cause a violation of the requirements to these regulations, the Department may modify these requirements as minimally necessary to ensure program compatibility.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50406(n), 50675.1(d), 50675.9, 50517.5(a)(1), 50517.5(a)(3), 50896.1(a) and 50896.3(b), Health and Safety Code.

Section 8313.1 Funding Source Surpluses.

- (a) If, upon completion of construction, permanent development funding sources exceed actual total development costs the following requirements apply to the resulting funding surplus:
 - (1) If there are local public agency lenders providing construction-period financing, and the Department is providing only permanent financing, the local lenders may reduce their loans by an amount not exceeding the contingency shown in the loan documents approved by the Department at construction loan closing.
 - (2) In other cases, or to the extent that the surplus exceeds the budgeted contingency, the Department loan amount shall be reduced by an amount not less than the surplus multiplied by the ratio of the Department's loan amount to total local government assistance, as defined in 8315(c)(3).
 - (3) As an alternative to (1) or (2), the Department may approve use of surplus funds to reduce tenant rents or for other direct tenant benefits.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(a)(1), 50517.5(c)(2), 50517.5(e)(2), 50675.5(b)(5), and 50896.1(a), Health and Safety Code.

Section 8313.2 Special Purpose Entity(ies).

- (a) The Department may permit the ultimate borrower or recipient of Department funds to be a special purpose entity formed and controlled by the Sponsor if and only if the Sponsor can demonstrate to the satisfaction of the Department all the following criteria:
 - (1) The Sponsor will remain as equally liable to the Department as the special purpose entity with respect to the specific performance of the obligations of the loan or grant documents. The Sponsor may be as equally liable to the Department as the special purpose entity with respect to the financial obligations of the loan or grant documents;
 - (2) The Sponsor shall not intentionally or in effect limit or abrogate its legal liability to the Department by utilizing the special purpose entity; and
 - (3) There shall be no more than two corporate entities between the Sponsor and the special purpose entity in the corporate control and organizational structure(s). For the purposes of this subsection, "corporate entity" may include a corporation, limited liability company, business trust, limited partnership, or general partnership. For the purposes of determining "control," the Sponsor must provide, at the very minimum, evidence satisfactory to the Department that the Sponsor (or Sponsors) through direct control of the corporate entities between the Sponsor and the special purpose entity, performs the substantial management duties on behalf of the special purpose entity that involves:
 - (A) renting, maintaining and repairing the low-income housing property (or if these duties are delegated to an agent, hiring and overseeing the agent's duties);
 - (B) acquiring, holding, assigning or disposing of property or any interest in property;
 - (C) borrowing money on behalf of the special purpose entity, encumbering the special purpose entity's assets, placing title in the name of a nominee to obtain financing, preparing items in whole or in part, in connection to refinancing, increasing, modifying or extending any obligation; and

- (D) determining the amount and timing of distributions to partners and establishing and maintaining all required reserves.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(a)(1), 50517.5(c)(2), 50517.5(e)(2), 50675.2(g) and 50896.1(a), Health and Safety Code.

Section 8314. Use of Operating Cash Flow.

- (a) Operating income remaining after payment of approved current and prior year operating expenses, reserve deposits and mandatory debt service shall be applied in the following priority order:
 - (1) First, towards payment of any:
 - (A) Approved deferred Developer Fee, pursuant to Section 8312;
 - (B) Asset management, partnership management and similar fees, including fees paid to investors, in an amount not to exceed the sum of:
 - 1. An amount for the current year, equal to \$30,000 for 2016 and increased at the rate of 3.5% for each subsequent year, plus
 - 2. Unpaid asset management, partnership management, and similar fees accrued for a period not to exceed three project fiscal years following the year during which they are earned, up to the difference between the limit for the year and the amount paid for that year; and
 - (C) Supportive Services Costs that these regulations would allow to be paid as operating costs, but that other funding sources do not.
 - (2) Second, 50 percent to the Sponsor as Distributions and 50 percent to the Department as payments on the Program loan.
 - (A) If the terms of other public agencies' financing also require payments from remaining cash flow, the Department may agree to share what would otherwise be its 50 percent share of available cash flow with the

public agencies in amounts proportional to the agencies' respective assistance amounts (total local government assistance, as defined in Section 8315, and total Department loans and grants).

- (B) To be consistent with the terms of other public agency loans or leases, the Department may agree to set the percentage payable to the Sponsor at an amount less than 50 percent.
 - (C) For projects with income from project-based Section 8 or similar project-based rental assistance that is not underwritten by other Project lenders, the Department may reduce the Sponsor's share to an amount equivalent to the amount they would receive if one of the other lender's loan amount was based on an income stream that included the income from the rental assistance.
- (b) A Sponsor may not accumulate Distributions from year to year. A Sponsor may deposit all or a portion of permitted Distributions into a Project account for distribution in subsequent years. These future Distributions shall not reduce the otherwise permitted Distribution in those subsequent years.
 - (c) The limits on payments for Developer Fee pursuant to subsection (a)(1)(A) and for asset management, partnership management, and similar fees pursuant to subsection (a)(1)(B) shall not apply to payments of those fees made from Distributions.
 - (d) Payment of Distributions, deferred Developer Fee, asset management fees, partnership management fees and similar fees shall be permitted only after the Sponsor submits a complete annual report and operating budget, and the Department determines that the report and budget demonstrate compliance with all Program requirements for the applicable year. Circumstances under which no Distributions, deferred Developer Fee, asset management fees, or partnership management fees, and similar fees shall be paid include:
 - (1) when written notice of default has been issued by any entity with an equitable or beneficial interest in the Project;
 - (2) when the Department determines that the Sponsor has failed to comply with the Department's written notice of any reasonable requirement for proper maintenance or operation

of the Rental Housing Development or use of Project income;

- (3) if all currently required debt service, including mandatory payments on the Program loan, and Operating Expenses have not been paid;
 - (4) if the replacement reserve account, operating reserve account, or any other reserve accounts are not fully funded pursuant to Sections 8308 and 8309 and the Regulatory Agreement.
- (e) For 2017, the following limits shall apply to total Supportive Services Costs paid as Operating Expenses. These limits shall be increased each year after 2017 at the rate of 2.5 percent per year:
- (1) \$4,080 per unit per year for supportive housing restricted to individuals or families experiencing chronic homelessness, as defined consistent with Health and Safety Code Section 50675.14;
 - (2) \$3,060 per unit per year
 - (A) for supportive housing that is not restricted to individuals or families experiencing chronic homelessness as defined pursuant to Health and Safety Code Section 50675.14; and
 - (B) for units restricted to occupancy by Special Needs Populations under any Department programs (“Special Needs Population” has the same meaning as defined in Section 7301(s));
 - (3) \$1,051 per unit per year for other units where the Sponsor, their affiliate, or a service provider under contract to provide Supportive Services at the Project has both:
 - (A) qualified staff devoted exclusively to oversight and quality control of resident services in affordable housing, including the Project; and
 - (B) a system to track and report on tenant outcomes, such as changes in employment status and income;

- (4) \$250 per unit per year for other units, where the Sponsor, their affiliate, or a service provider under contract does not satisfy the requirements set forth in subsection (e)(3).
- (f) The following limits shall apply to Supportive Services Costs paid as Operating Expenses:
 - (1) The cost of staff supervision shall not exceed 10% of the cost of on-site staff salaries.
 - (2) Administrative overhead expenses, including accounting and human relations, shall not exceed 15% of the total Supportive Services Costs paid as Operating Expenses.
- (g) Sponsors paying Supportive Services Costs as Operating Expenses shall maintain onsite and available for Department inspection records of group activities (including calendars and sign-in sheets) and individualized services and referrals. The Department may also require annual reporting on these and related matters.
- (h) For supportive housing, as defined pursuant to Health and Safety Code Section 50675.14, and upon approval by the Department, Sponsors may establish a reserve to cover unexpected shortfalls in revenues to pay for resident services coordination and case management costs. This reserve may be funded through project cash flow available after funding Operating Expenses and other required reserves, or through development sources. The maximum balance shall not exceed three times the per-unit, per-year limits specified in subsection (e).

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code.
 Reference: Sections 50517.5(a)(1), 50517.5(c)(2), 50517.5(e)(2), 50675.8(a)(5), and 50896.1(a), Health and Safety Code.

Section 8315. Subordination Policy.

- (a) The Department may execute and cause to be recorded a subordination agreement subordinating the Department's lien so long as the subordination does not increase the Department's risk beyond that contemplated in the Program loan or grant commitment, as may be amended from time to time, and so long as the subordination would further the interest of the Program. However, and except for Projects assisted by the U.S. Department of Housing and Urban Development under the Section 811 or Section 202 programs, the Department shall not enter into a

subordination agreement or other agreement that contains any of the following:

- (1) Any limitation of, or condition on, the Department's exercise of its remedies including, but not limited to issuing a notice of default based on a breach under the Department's loan documents, including a default based solely on a breach of the senior lienholder's documents.
 - (2) An agreement that the senior lienholder's acceptance of a deed in lieu of foreclosure would result in the senior lienholder taking title to the Rental Housing Development free and clear of the Department's lien(s).
 - (3) An agreement permitting any modification or supplement of the senior lienholder's lien without the prior written consent of the Department except an agreement that permits a senior lienholder to make advances to: (i) cure a default under a lien with a higher priority than the Department's lien; (ii) pay delinquent taxes on the security property; (iii) pay delinquent hazard or liability insurance premiums for the security property; or (iv) to protect the health and safety of the tenants.
 - (4) An agreement that would require the Department to undertake additional obligations to any party.
- (b) The Department's lien(s) shall not be subordinated to the liens of a local governmental entity unless either:
- (1) the total local governmental assistance to the Project is more than twice the amount of the Department's total assistance to the Project (including both loans and grants); or
 - (2) the total local governmental assistance to the Project is more than the Department's total assistance to the Project (including both loans and grants) and the local government entity manages a portfolio of their own loans that includes over 10,000 rental units with rent and occupancy restrictions.
- (c) As used in this section:

- (1) "Department's lien" means a deed of trust, regulatory agreement, or other agreement securing payment or performance under an award of Program funds that has been recorded in the office of the recorder of the county in which the Rental Housing Development is located.
 - (2) "Lien of a local government entity" means a recorded deed of trust, regulatory agreement, reversion, or other recorded agreement securing payment or performance, or a covenant running with the land that affects the maintenance, use, operation, or occupancy of the Rental Housing Development. Except that covenants in favor of a community redevelopment agency or successor agency regarding the use, maintenance, operation, or transferability of a Rental Housing Development including rent limitations or income restrictions on tenants, or prohibiting discrimination, shall not constitute liens subject to the requirements of this section.
 - (3) "Total local government assistance" means the sum of the original principal amounts of loans and grants made by the local government entity plus other direct project costs paid for by the local governmental entity and approved by the Department including, but not limited to, costs of site preparation, demolition, environmental remediation, and land acquisition. The value of assistance in the form of land write-downs or donations shall be limited to the cost paid by the public agency to acquire the land, less any sales proceeds paid to the agency; or in the case of a leasehold, the cost paid by the public agency less the present value of projected lease payments.
- (d) The Department's lien(s) shall not be subordinated to the liens of a lender affiliated with an entity that has an ownership interest in the Project unless a covenant, regulatory agreement, or similar instrument is recorded senior to the lender's documents that includes the provisions specified in Section 8310(f).

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11 and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(d)(4)(D), 50675(e), 50675.1(b), 50675.6(d), 50896, 50896.1 and 50896.3, Health and Safety Code.

Section 8316. Leasehold Security.

- (a) In any Project where the Sponsor proposes to control the Project land through a long-term ground lease, either:
 - (1) the Regulatory Agreement and other Program documents shall be recorded against both the Sponsor's interest in the Project and the fee interest in the land, and the lease shall have a term remaining at the time of recordation at least equal to the term of the Program loan or grant; or
 - (2) if the Regulatory agreement and other Program documents are not recorded against the Project's fee interest, the ground lease shall be subject to the Department's approval, must not be subject to any other mortgages, regulatory agreements, use restrictions, or equivalent instruments on the fee interest, and shall contain, or be amended to contain, provisions which:
 - (A) establish a remaining term of at least ninety (90) years from the date the Department documents are recorded, provided that the Department may accept a lesser term, not less than 65 years, when the lessor is a public agency;
 - (B) ensure the validity of the lien of the Program loan and/or grant documents on the lease;
 - (C) ensure that the lease permits the Project to satisfy all Program requirements and permit the Department to enforce the provisions of the Program loan and/or grant without restriction;
 - (D) expressly consent to the lessee's assignment of the lease to the Department without further consent of the lessor, and permit the Department, after acquisition of the leasehold property, to transfer or assign the lease to a third party without consent of the lessor.
 - (E) provide that the lessor does not have the right to terminate the lease or accelerate the rent upon lessee's breach without first giving the lessee and the Department reasonable notice and opportunity to cure within a reasonable period;

- (F) provide that no termination, modification or amendment to any terms of the lease shall be effective without the written consent of the Department, and any attempt to take such actions would be void without the Department's consent;
 - (G) require that, in the event of destruction of any improvements on the land, neither the lessor nor the lessee shall terminate the lease if and so long as the lessee or Department pursues reconstruction of the improvements with reasonable diligence;
 - (H) provide that the Department shall not have any liability for the performance of any of the obligations of lessee under the lease until the Department has acquired the leasehold interest, and then only in accordance with the terms of the lease and only with respect to obligations that accrue during the Department's ownership of the leasehold interest;
 - (I) provide that neither the lessor nor the lessee, in the event of bankruptcy by either, will take the benefit of any provisions in the United States Bankruptcy Code that would cause the termination of the lease or otherwise render it unenforceable in accordance with its terms;
 - (J) provide that the leasehold interest will not merge into the fee in the event that the lessee acquires the reversionary interest in the Project; and
 - (K) provide that acquisition of the leasehold property by the Department will not result in a termination of the leasehold; and upon such event, obligate the lessor to enter into a new lease having a term at least as long as the term remaining on the lease prior to acquisition by the Department and on substantially the same terms and conditions.
- (b) If any other regulatory agreement, use restriction, or equivalent instrument is recorded against the fee, the Department's Regulatory Agreement or covenant must also be recorded against the fee. This subsection shall not apply if the total local governmental assistance to the Project is more than the Department's total assistance to the Project (including both loans and grants) and the local government entity manages a portfolio of

their own loans that includes over 10,000 rental units with rent and occupancy restrictions. For the purposes of this subsection, the phrase “regulatory agreement, use restriction, or equivalent instrument” shall not be interpreted to include any instrument that does not relate in any way to affordability, or any affordability restriction that is not required as a condition of public financing.

- (c) Where the lessee and lessor are related or affiliated parties, the Program loan and/or grant documents shall be recorded against both the Sponsor’s interest in the Project and the fee interest in the land.
- (d) To the extent consistent with the statutes and regulations governing the Program, the Department may modify or waive the requirements of subparagraph (a)(2) where the lessor is a public agency that demonstrates that it is prohibited by law from meeting the requirements, or where the Project will be located on Native American Lands and there is a legal prohibition on meeting these requirements, and the Department determines that there remains adequate security for the Program loan.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11 and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(d)(4)(A), 50675.7, 50896.1 and 50896.3, Health and Safety Code.

Section 8317. Restructuring Transaction Fees.

- (a) To cover the Department’s costs of processing any specific Restructuring Transaction as defined in this section, the Department shall charge as authorized by subsections (f) and (n) of Section 50406 of the Health and Safety Code fees to cover the administrative costs incurred for the Department’s staff to negotiate and prepare the legal documents necessary to accomplish the subject Restructuring Transaction.
- (b) For the purposes of this section, the term “Restructuring Transaction” means one or more of the following:
 - (1) extension of the Department’s loan term (or terms, if there are multiple Department loans),
 - (2) change of ownership (excluding transfer of ownership between two entities controlled by the same parent entity),
 - (3) a new subordination of the Department’s loan or loans to a senior loan or loans, and/or investment of tax credit equity.

Other transactions, such as those limited to the placement of new junior public agency debt without required payments and assignments of limited partner interests, do not constitute a Restructuring Transaction.

- (c) The fees charged by this section shall be calculated on a case-by-case basis, and shall be based on the number of work hours necessary for Department staff, at the respective rate for each staff's classification, to negotiate and prepare final executable versions of all legal documents necessary to accomplish the subject Restructuring Transaction.
- (d) Notwithstanding subsection (c), the Department shall not be authorized under this section to charge an amount exceeding the amount that the Department charges for the same or similar restructuring activities that the Department performs under other programs administered by the Department in its Related Restructuring Programs, as defined by this section.
- (e) For the purposes of this section, the term "Related Restructuring Programs" shall include but not be limited to the restructuring activities authorized by Section 50560(a) of the Health and Safety Code, and shall include any fees set forth by the Department pursuant to the guidelines (published on the Department's website) adopted and authorized pursuant thereto under Health and Safety Code Section 50560.
- (f) The legal documents necessary to accomplish the subject Restructuring Transaction shall be subject to the provisions set forth in this subchapter.

Note: Authority cited: Section 50406, Health and Safety Code. Reference: Section 50406, Health and Safety Code.

Section 8318. Federal Loan Extensions.

- (a) The term of any existing federal program loan or regulatory agreement enforced by the Department may be extended, if allowed by the subject federal statute. Such extensions shall not be for a period of less than 10 years nor more than 55 years.

Note: Authority cited: Sections 50406(n) and 50896.3(b), Health and Safety Code. Reference: 24 CFR part 92.

REPORT

DATE: February 3, 2021
TO: Board of Directors
FROM: Marisa Creter, Executive Director
RE: **LOAN DOCUMENTS AND SIGNATURE AUTHORITY**

RECCOMENDED ACTION

Authorize the Executive Director to finalize and execute loan documents for SGVRHT funded projects.

BACKGROUND


The San Gabriel Valley Regional Housing Trust (SGVRHT) awarded funds to three projects as part of its Local Housing Trust Fund (LHTF) application. Due to delays in the announcement of awards, one project found alternative funding more quickly. The remaining projects in Claremont and Pomona are intending to proceed with SGVRHT funding and will need to execute loan documents to memorialize the funding amount and requirements.

SGVRHT executed a contract with Harris & Associates to complete the LHTF application and to prepare project documents. Harris & Associates completed the following loan documents for approval by the Board of Directors:

- Loan Agreement
- Promissory Note
- Regulatory Agreement
- Deed of Trust
- Assignment of Contracts

The loan documents are in substantially final draft form and staff requests that the Board authorize the Executive Director to finalize and execute the documents. In the event of any substantive changes, the documents will be brought to the Board for approval.

Prepared by: 
Brielle Acevedo
Principal Management Analyst

Approved by: 
Marisa Creter
Executive Director

ATTACHMENTS

Attachment A – Loan Documents

AFFORDABLE HOUSING LOAN AGREEMENT

by and between

THE SAN GABRIEL VALLEY REGIONAL HOUSING TRUST

and

[BORROWER]

A California Limited Liability Company

[Project Name]
Loan Agreement

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AFFORDABLE HOUSING LOAN AGREEMENT

This AFFORDABLE HOUSING LOAN AGREEMENT (“Agreement”), entered into on this ____ day of _____ 2021, by and between the San Gabriel Valley Regional Housing Trust, a joint powers authority formed by statute of the State of California (“Lender,” “Housing Trust” or “SGVRHT”), and _____, a California limited liability company (“Borrower” or “Developer”), is made with reference to the following:

RECITALS

A. The Housing Trust has established a Trust Fund to provide financing for Eligible Projects for the planning and construction of extremely low, very low, and low-income projects, as well as homeless housing projects. The Housing Trust administers the Trust Fund pursuant to Loan Guidelines adopted by the Housing Trust on February 3, 2021 and as amended from time to time (“Loan Guidelines”).

B. The Borrower desires to (i) acquire the Property (or has already acquired the Property); (ii) construct the units; (iii) assure the long term availability of the ____ (number of units) rent- and income-restricted residences of the Property (“Restricted Units”) exclusively to “Qualified Households” at “Affordable Rent” (as those terms are defined herein); (iv) maintain the Restricted Units in accordance with all provisions applicable to the use of the Loan funds and the State of California Department of Housing and Community Development Local Housing Trust Fund Program (“LHTF” or “LHTF Program”); and (v) assure the proper maintenance, management, and operation of the Property and the Restricted Units in accordance with the terms and conditions of this Agreement.

C. Borrower has applied to the Lender for an Affordable Housing Loan (“Loan”) in the amount of [XX] DOLLARS AND [XX] CENTS (\$____). The Lender has agreed to make the Loan to the Borrower in accordance with the Lender’s Loan Guidelines and subject to this Agreement.

D. The Housing Trust has agreed to make the Loan in order to make possible the development of the Project, to assist in the implementation of the Housing Trust’s stated purpose of funding housing to assist the homeless population and persons and families of extremely low, very low, and low income within the San Gabriel Valley.

E. The development of the Property pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the San Gabriel Valley, and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

F. Borrower has applied to the Lender for the Loan for the purpose of developing 56 residences (plus 1 manager’s residence) of affordable housing for families (38 residences), veterans (8 residences), and homeless households (10 residences) on a 1.43-acre site. 6 residences will serve households with incomes of no more than 20% of Area Median Income (“AMI”), 12 residences will serve households with incomes of no more than 30% AMI, 1 residence will serve a household with income of no more than 50% AMI, and 37 residences will serve households with incomes of no more than 60% AMI.

G. If there is any inconsistency between Federal, State, and local guidelines with regard to any of the terms and conditions contained herein, the more stringent shall apply.

H. This Agreement, together with the Promissory Note (“Promissory Note”), Deed of Trust (“Deed of Trust”), Regulatory Agreement, Assignments of Contracts and Plans, (collectively, “Loan Documents”), all entered into by and between Lender and Borrower, sets forth the requirements of the Loan. These instruments are intended to secure the Lender’s continuing interest in the affordability and habitability of the Project, as well as to secure performance of other covenants contained in these agreements.

I. As an inducement to the Lender to make the Loan, the Borrower has agreed to enter into the Loan Documents and has agreed to the performance of the terms and conditions set forth therein. Borrower also agrees to enter into a regulatory agreement (“Regulatory Agreement”, including as **Exhibit J**.

J. The Borrower acknowledges that in obtaining the Loan, the Borrower has received a direct financial benefit from the Lender. Borrower and Lender agree and acknowledge that this Agreement is a contract providing forms of assistance to the Borrower within the meaning of Civil Code Section 1954.52 (b).

NOW THEREFORE, it is mutually agreed by and between the undersigned as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions

“Administrator” shall mean the Housing Trust’s Executive Director or a project manager designated by the Executive Director in writing. Unless otherwise provided herein or unless the Housing Trust otherwise notifies the Borrower, any matter to be approved (or disapproved) by the Housing Trust or any action to be taken by the Housing Trust pursuant to this Agreement, shall be approved (or disapproved) or shall be taken, as the case may be, by the Administrator.

“Affordable Rent” shall mean, for purposes of this Agreement, a rent (plus a reasonable utility allowance) which does not exceed the applicable maximum percentage of area median income, adjusted for family size appropriate for the unit, as set forth in the Regulatory Agreement.

“Area Median Income” shall mean the median income of the County of Los Angeles, as annually estimated by HUD pursuant to Section 8 of the United States Housing Act of 1937, adjusted for family size.

“Certificate of Occupancy” shall mean the certificate **described in Section 5.12 of this Agreement**.

“Closing” or “Loan Closing” shall mean the point in time when the Deed of Trust and the Regulatory Agreement are recorded in accordance with this Agreement.

“Closing Date” shall mean the date of recordation of the Deed of Trust and the Regulatory Agreement.

“Deed of Trust” shall mean the Deed of Trust, Security Agreement and Fixture Filing securing the Trust Loan, in substantially the form attached hereto as **Exhibit K**, to be dated as of the Closing Date, executed by Borrower in favor of the Housing Trust and recorded on the Closing Date.

“Extremely Low Income Household” shall mean, for purposes of this Agreement, persons and families whose income does not exceed thirty percent (30%) of the Area Median Income, adjusted for family size appropriate for the unit.

“Housing Trust” shall mean the San Gabriel Valley Regional Housing Trust, a joint powers authority established by California Senate Bill 751 (2019-20), and any assignee of or successor to its rights, powers and responsibilities.

“Loan Documents” shall mean and include the following: this Affordable Housing Loan Agreement; the Regulatory Agreement; the Promissory Note; the Deed of Trust; and the UCC-1 Financing Statement.

“Low Income Household” shall mean, for purposes of this Agreement, persons and families whose income does not exceed eighty percent (80%) of the Area Median Income, adjusted for family size appropriate for the unit.

“Management Plan” shall mean the plan prepared by Borrower for the maintenance of the Property, in accordance with the Regulatory Agreement.

“Method of Financing” shall mean the Method of Financing attached to this Agreement as Exhibit C, incorporated herein by this reference.

“Permanent Financing Costs” shall mean the total of costs associated with the predevelopment, acquisition, and construction of the Property, including those costs, as set forth in the Scope of Work and Budget.

“Permitted Transfer” shall mean any Transfer that is approved by the Housing Trust or expressly permitted by the terms of this Agreement, the Promissory Note, the Deed of Trust, or the Regulatory Agreement.

“Project” or “Improvements” shall mean the residential development consisting of the Units, including the Assisted Units, together with structures, improvements, equipment, fixtures and easements located on or used in connection with all such improvements and all functionally related and subordinate facilities, and any infrastructure required by Trust to be provided by Borrower in connection with such Project.

“Project Costs” shall mean all acquisition, predevelopment, and development Costs.

“Promissory Note” shall mean the Promissory Note evidencing the Trust Loan in substantially the form attached hereto as **Exhibit J**, to be dated as of the Closing Date, executed by Borrower in favor of the Housing Trust.

“Property” shall mean the real property commonly known as Street Address (Assessor Parcel Number: _____) and legally described as set forth in Exhibit A.

“Qualified Household” or “Qualifying Household” shall mean a household with an income not exceeding the maximum income levels as established the Regulatory Agreement for a Restricted Unit, who is otherwise eligible to rent a Restricted Unit.

“Refinancing Loan” shall mean a loan to be secured by a deed of trust on the Property, the proceeds of which are used by the Borrower to repay the Senior Loan (or portion thereof) or a Refinancing Loan, but in no event shall the principal amount of such loan exceed the then-outstanding combined balance of the Senior Loan or such prior Refinancing Loan.

“Regulatory Agreement” shall mean the Regulatory Agreement (including Rental Restrictions) in substantially the form attached hereto as Exhibit J, between the City and the Borrower, which shall be recorded on the Closing Date.

“Restricted Units” shall mean the fifty-six (56) of the fifty-seven (57) dwelling units to be constructed on the Property and restricted to Qualified Households at Affordable Rents, with the remaining unit being a property manager’s residence.

“Schedule of Performance” shall mean the Schedule of Performance attached hereto as Exhibit G, and incorporated herein by this reference.

“Scope of Work and Budget” shall mean the Scope of Work and Budget attached hereto as Exhibit B, and incorporated herein by this reference, which identifies the Borrower’s estimates as of the date of this Agreement of the Project, and the sources and uses of funds applicable thereto, provided however that the Scope of Work and Budget is the Borrower’s best estimate based upon the information available to it as of the date of this Agreement. When prepared by the Borrower, a revised Scope of Work and Budget shall be submitted to the Administrator in accordance with Section 2.3.

“Senior Encumbrance” shall mean the deeds of trust and other instruments securing a Senior Loan, to which the Trust Loan Documents shall be subordinate.

“Senior Loan” shall mean the first deed of trust loan to be made by [Senior Lender] in the approximate original principal amount of approximately \$_____.

“Senior Lender” shall mean the maker of the Senior Encumbrance, and shall include, initially, Citibank Bank, and its successor and assigns.

“Title Company” shall mean _____ or another title insurance company acceptable to the Administrator.

“Title Policy” shall mean a CLTA lender’s policy of title insurance in favor of the City, in the amount of the City Loan.

“Transfer” shall mean any sale, transfer, assignment or conveyance of the Property, any portion thereof or interest therein, or any agreement to do so, except for a Permitted Transfer.

“UCC-1 Financing Statement” shall mean the UCC-1 Financing Statement, in substantially the form attached hereto as Exhibit H, to be executed by Borrower in favor of Lender with respect to the Property.

“Very Low Income Household” shall mean, for purposes of this Agreement, persons and families whose income does not exceed fifty percent (50%) of the Area Median Income, adjusted for family size appropriate for the unit.

ARTICLE 2 FINANCING

2.1 Term of Agreement

The term of this Agreement shall commence on the date of execution hereof and shall terminate (provided that no Event of Default as described in Article 9 has occurred) fifty-five (55) years from the date of Certificate of Occupancy, unless extended as provided herein in conjunction with the Promissory Note. The term of affordability for the Project is fifty-five years from the receipt of Certificate of Occupancy for the Project, or repayment of the Trust Loan, whichever is longer.

2.2 The Property

The Borrower will acquire or presently owns the Property. The legal description of the Property is set forth in Exhibit A. A description of the improvements proposed pursuant to this Agreement is set forth as part of the Scope of Work and Budget attached to this Agreement as Exhibit B.

2.3 Scope of Work and Budget

The total Project Costs are set forth in the Scope of Work and Budget, attached hereto as Exhibit B. The Scope of Work and Budget shall be subject to change from time-to-time, subject to the prior written approval by the Administrator (which approval shall not be unreasonably withheld), upon which approval the Scope of Work and Budget shall be replaced by the approved revised Scope of Work and Budget.

2.4 Sources and Uses of Financing

The source of funds received by the Housing Trust for this Agreement includes (i) a transfer from the San Gabriel Valley Council of Governments (“Trust Funds”) and (ii) a grant awarded by the State of California Department of Housing and Community Development from the LHTF Program.

The Borrower shall obtain the funds needed to pay all Project Costs from the sources of financing described in the Method of Financing attached to this Agreement as Exhibit C.

2.5 Trust Loan

2.5.1 General

In furtherance of the Method of Financing described in Exhibit C, and in accordance with and subject to all the terms, conditions and covenants of this Agreement, the Housing Trust agrees to lend, and the Borrower agrees to borrow, the original principal amount not to exceed ONE MILLION THREE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$1,350,000), or so much thereof as may be disbursed by the Housing Trust to or for the benefit or account of the Borrower, which shall consist of Trust Funds and LHTF Funds.

2.5.2 Terms of the Trust Loan

The Trust Loan shall be evidenced by the Promissory Note and secured by the Deed of Trust, and other Loan Documents, as applicable (collectively referred to herein as the “Trust Encumbrances”).

The Trust Encumbrances shall be senior to any other lien against or security interest in the Property or the Project, except the Senior Encumbrances which will be recorded prior to construction and to secure only construction financing. Without the express written consent of the Administrator, the Borrower shall not place any encumbrances other than the Senior Encumbrance, or permit any such encumbrances to be placed, on or against title to the Property, including security interests that are subordinate to the Trust Encumbrances.

The terms of repayment of the Trust Loan are set forth in the Promissory Note.

2.6 Prohibition against Change in Ownership, Management and Control of Borrower, and Transfers of the Property

2.6.1 The Borrower represents and agrees its undertakings pursuant to this Agreement are for the purpose of providing for the construction of affordable housing and not for speculation in land holding. The Borrower further recognizes the qualifications and identity of the Borrower, and its principals, are of particular concern to the community and the Housing Trust, in view of: (1) the importance of the development of the project to the general welfare of the community; (2) the public assistance that has been made available by law and by the government for the purpose of making such development possible; and (3) the fact that a change in ownership or control of the Borrower or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or control of the Borrower or the degree thereof, is for practical purposes a transfer or disposition of the property then owned by the Borrower.

2.6.2 The Borrower further recognizes it is because of such qualifications and identity the City is entering into this Agreement with the Borrower. No voluntary or involuntary successor in interest of the Borrower shall acquire any rights or powers under this Agreement except as expressly set forth herein.

2.6.3 The Borrower shall not assign all or any part of this Agreement without the prior written reasonable approval of the Housing Trust. The Housing Trust agrees to give reasonable approval if: (1) the change is to a limited partnership, limited liability company or other entity formed for financing, in which the Borrower is the managing general partner (if a limited partnership) or managing member (if a limited liability company), and, in any case, possesses not less than a 50% interest in the entity and has control over the management of the entity; and (2) if, in the reasonable determination of the Housing Trust, the proposed reconstituted borrower is comparable in all material respects (including experience, character and financial capability) to the Borrower. Any such change (or assignment of this Agreement in connection therewith) shall be by instruments satisfactory to the Administrator (or his/her designee) and be subject to the approval by the Administrator (or his/her designee) of evidence of the proposed assignee’s qualifications to meet the obligations of the Borrower under this Agreement.

2.6.4 For the reasons cited above, the Borrower represents and agrees for itself and any successor in interest that so long as the Deed of Trust remains unsatisfied of

record, and without the prior written approval of the Housing Trust, there shall be no significant change in the ownership of the Borrower or in the relative proportions thereof, or with respect to the identity of the parties in control of the Borrower or the degree thereof, by any method or means.

2.6.5 The Borrower shall promptly notify the Housing Trust of any and all changes whatsoever in the identity of the parties in control of the Borrower or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information. This Agreement may be terminated by the Housing Trust, and the Housing Trust may require acceleration of the Trust Loan if, without the prior written consent of the Housing Trust, there is any significant change (voluntary or involuntary) in membership, management, or control of the Borrower or its associates (other than such changes occasioned by the death or incapacity of any individual) so long as the Deed of Trust remains unsatisfied of record.

2.6.6 So long as the Deed of Trust remains unsatisfied of record, the Borrower shall not, except as permitted by this Agreement, assign or attempt to assign this Agreement or any right herein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property (hereinafter referred to collectively as the "Borrower's Interests"), without prior written approval of the Housing Trust. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the construction or subsequent rehabilitation of the Property, nor shall it apply to or prohibit the Senior Encumbrances or leases or rental agreements entered into for the use and occupation of individual units.

2.6.7 In the event Borrower does assign this Agreement or any of the rights herein, or does sell, transfer, convey or assign any part of the Property or the buildings or structures thereon, except as permitted by this Agreement, the Housing Trust shall be entitled to accelerate repayment of the Trust Loan and exercise all other rights and remedies available to it.

2.6.8 In the absence of a specific written agreement by the Housing Trust, no such sale, transfer, conveyance or assignment of this Agreement or the Property (or any portion thereof), or approval by the Housing Trust of any such sale, transfer, conveyance or assignment, shall be deemed to relieve the Borrower or any other party from any obligations under this Agreement.

2.7 Representations, Warranties, and Obligations of the Borrower

As an inducement to the Housing Trust to enter into this Agreement and to advance the Trust Loan, the Borrower hereby represents and warrants to the Housing Trust, which representations and warranties are true and correct as of the date of this Agreement and which shall survive the recording of the Deed of Trust and the repayment of the Trust Loan:

2.7.1 The Borrower has the legal power, right, and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

2.7.2 This Agreement and all documents required hereby to be executed by Borrower are, and shall be, valid, legally binding obligations of and enforceable against Borrower in accordance with their terms, subject only to applicable bankruptcy, insolvency,

reorganization, moratorium laws or similar laws or equitable principles affecting or limiting the rights of contracting parties generally.

2.7.3 Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a Default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Borrower is a party or affecting the Property or Project;

2.7.4 To the best of Borrower's knowledge, there are no pending, threatened or contemplated actions, suits, arbitrations, claims or proceedings, at law or in equity, affecting the Property or in which Borrower is, or to the best of Borrower's knowledge will be, a party by reason of Borrower's ownership of the Property or Project, including, but not limited to, judicial, municipal, or administrative proceedings in eminent domain, unlawful detainer or tenant evictions, collections, alleged building code, health and safety or zoning violations, employment discrimination or unfair labor practices, or workers' compensation, personal injuries or property damages alleged to have occurred at the Property or Project or by reason of the condition or use of the Property or Project;

2.7.5 No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or threatened against Borrower, nor are any of such proceedings contemplated by Borrower;

2.7.6 To the best of Borrower's knowledge, there are no violations of any governmental regulations relating to the Property or Project;

2.7.7 Following the Closing, Borrower will be the legal fee simple titleholder of the Property and will then have and thereafter continue to have good, marketable, and insurable title to the Property;

2.7.8 All reports, documents, instruments, information and forms of evidence delivered to the Housing Trust concerning or required by this Agreement are accurate, correct and sufficiently complete to give the Housing Trust true and accurate knowledge of their subject matter, and do not contain any misrepresentation or omission.

2.7.9 No representation, warranty or statement of Borrower in this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements or facts contained therein not misleading.

2.7.10 The undisbursed proceeds from the Senior Loan, Trust Loan and Borrower's Equity Contribution or other approved sources of funding are sufficient to (i) pay, through completion, all Project Costs; and (ii) enable the Borrower to perform and satisfy all of the covenants of the Borrower contained in this Agreement.

2.7.11 Borrower shall be responsible for construction and management activities required for the development and operation of the Project, including but not limited to: (i) completing financing for the Project; (ii) contracting for the construction of the Project; (iii)

obtaining Certificate of Occupancy; (iv) leasing residences to eligible households and maintaining the Project's regulatory compliance; and (v) operating and maintaining the property.

2.7.12 Borrower shall provide to the Housing Trust a project management plan ("Project Management Plan") for the Lender's approval, which includes, among other things, the following: (i) procedures for the management and maintenance of the units and common space; and (ii) procedures for obtaining the income certifications required by the Housing Trust.

2.7.13 Borrower shall provide to the Housing Trust for its review all plans, drawings, and related documents for the development of the Project, including the schematic design drawings and design development drawings. The Borrower shall consider changes suggested by the Housing Trust in a timely manner, if any, and either incorporate such changes or provide an explanation as to why such changes cannot be incorporated. The scope of the Housing Trust's review shall include, in addition to the items provided for in the Scope of Work and Budget, consideration of such items as the general architectural appearance, site planning considerations, building materials, colors, and landscape design. Nothing in this Section 2.7.13 shall be construed to prevent the Borrower from fulfilling the requirements of the City of Pomona or any other governmental agency.

2.7.14 Affordability restrictions required by the Housing Trust shall be placed on the Property and shall run with the land for the minimum 55-year term required by the Loan Guidelines. Affordability restrictions shall be set forth in the Regulatory Agreement to be executed by the parties. Borrower shall execute the Regulatory Agreement with the Housing Trust's Loan Documents before the commencement of construction. Borrower agrees to the recordation of the Regulatory Agreement against the Property.

2.7.15 Borrower shall perform the activities specified in the Schedule of Performance attached hereto as **Exhibit F** within the time periods specified in such schedule, or within such extensions of times as may be granted by the Housing Trust. The Schedule of Performance shall be subject to revision from time to time as mutually agreed upon in writing between the parties.

2.7.16 Borrower shall complete the Project as described in that certain Letter of Intent, executed on July 29, 2020 ("Letter of Intent"), attached hereto as **Exhibit I**.

2.7.17 Borrower shall satisfy all terms and conditions of the Loan Documents, and execute and acknowledge (as applicable) said Loan Documents substantially in the form attached hereto as **Exhibits J-M**.

Borrower's representations and warranties made in this Section 2.7 shall be continuing and shall be true and correct as of the Closing Date with the same force and effect as if remade by Borrower in a separate certificate at that time. The truth and accuracy of Borrower's representations and warranties made herein shall constitute a condition for the benefit of the Housing Trust to the advance of the Trust Loan.

2.8 Conditions Precedent to Disbursement of the Trust Loan

The Housing Trust's obligation to disburse the Loan is subject to the satisfaction, or waiver by the Administrator, of the following conditions precedent:

2.8.1 There exists no "Default" (as that term is defined in **Section 9.1** of this Agreement), or event, omission or failure of condition which would constitute a Default after notice or lapse of time, or both;

2.8.2 The Borrower fully executes and delivers to the Housing Trust or into escrow, as applicable, the following:

- a) this Loan Agreement;
- b) the Deed of Trust;
- c) the Promissory Note;
- d) the Regulatory Agreement; and
- e) the Agreement Containing LHTF Program Requirements.

2.8.3 The Borrower acquires fee simple title to the Property prior to or concurrently with the Closing.

2.8.4 The Borrower submits to the Housing Trust's Risk Manager satisfactory evidence the policies of insurance required by Section 8.4 are in full force and effect.

2.8.5 The Housing Trust has received an ALTA Extended (LP-10) Loan Policy (6-17-06), or evidence of a commitment therefore satisfactory to the Housing Trust, in form and substance satisfactory to the Housing Trust, together with all endorsements and binders required, naming the Housing Trust as the insured, in a policy amount of not less than the total Loan Amount, showing Borrower as the fee owner of the Property and insuring the Deed of Trust to be a valid priority lien on the Property. This Agreement, the Promissory Note, and the Deed of Trust shall all be subordinate to any Senior Loan Note and Senior Loan Deed of Trust.

2.8.6 The Administrator must be satisfied net proceeds from the Senior Loan, the Trust Loan, the Borrower's Equity Contribution and all other sources reasonably approved by the Administrator, if any, will be sufficient to: (1) pay all costs necessary to acquire the Property, including the purchase price and all closing costs and fees; (2) pay, through completion, all Project Costs as provided in the approved Scope of Work and Budget; and (3) enable the Borrower to perform and satisfy all of the covenants of the Borrower contained in this Agreement. If the Administrator determines at any time during the prosecution of the Construction work said funds are not sufficient for said purposes, then the Borrower may satisfy this condition by depositing the amount of such deficiency with the Housing Trust's Director of Finance within seven (7) days after the receipt of written demand from the Administrator, which amount will be disbursed for Project Costs in accordance with Section 2.8 of this Agreement. The sources of funds shown on the Method of Financing are hereby approved by the Administrator.

2.8.7 The Borrower submits, and the Administrator approves, the Exterior Maintenance Plan and the Management Plan.

2.8.8 Borrower shall have delivered to the Escrow Holder, in the form attached hereto as **Exhibit B, the Affordability Restrictions on Transfer of Property** pursuant to which,

among other things, Borrower agrees that the Property shall be used only for decent, safe, sanitary and affordable rental housing pursuant to the affordability requirements of the California Health and Safety Code ("HSC") sections applicable to Housing Trust Funds, section 50842.1 et seq., as applicable.

2.8.9 The Administrator shall have the authority to waive any condition of disbursement set forth herein; however any waiver must be expressly made in writing. The decision to waive any condition of disbursement shall be in the sole discretion of the Administrator, and the decision to waive any requirement may be conditioned upon its satisfaction at a later date or upon the substitution of another condition. The disbursement of all or any portion of the Trust Loan prior to fulfillment of one or more of the foregoing conditions shall not be construed as a waiver of such conditions, and the Housing Trust reserves the right to require their fulfillment prior to making any subsequent disbursements.

ARTICLE 3 LOAN DISBURSEMENT AND LOAN REPAYMENT

3.1 Disbursement

After the conditions of Section 2.8 are satisfied, the Housing Trust shall disburse _____ DOLLARS AND ____ CENTS (\$XX) for Borrower's use in development of the Project.

3.2 Repayment of Loan

Payments on the Loan shall be made in accordance with the Promissory Note (**Exhibit H**).

3.3 Relationship of Housing Trust and the Borrower as Creditors and Debtor Only

The Housing Trust and the Borrower intend the relationship between the Housing Trust and the Borrower shall be solely that of creditor and debtor. Nothing contained in this Agreement or in any other document or instrument made in connection with this Agreement shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture, or co-ownership by or between the Housing Trust and the Borrower. The Housing Trust shall not be in any way responsible or liable for the debts, losses, obligations, or duties of the Borrower with respect to the Property or otherwise.

ARTICLE 4 COMPLIANCE WITH APPLICABLE LAW

Borrower shall comply with applicable local, state and federal laws, ordinances, rules and regulations in connection with the use of the Property or the development of the Project, including, but not limited to, applicable labor standards. Borrower shall discontinue immediately any activity on the Property that is declared by any governmental authority with jurisdiction over the Project to be a violation of law.

ARTICLE 5 CONSTRUCTION

5.1 Scope of Work and Budget

The Borrower shall develop the proposed Project on the Property in accordance with the Scope of Work and Budget and within the time period set forth in the Schedule of Performance.

5.2 Condition of Property

As part of the Construction, the Borrower shall conduct such tests on the existing Property as Borrower may deem necessary or appropriate. The Borrower shall promptly deliver to the Administrator the results of all environmental studies conducted on the Property. It shall be the responsibility of the Borrower, at its sole cost and expense, to remove, remediate and abate any Hazardous Materials required by applicable governmental requirements to be removed, remediated, or abated as part of the Construction.

5.3 Cost of Construction

The Construction Costs, including any and all public improvements and any other permit conditions required by the City of Pomona, shall be borne by the Borrower, as provided in the Method of Financing.

5.4 Construction Schedule

Within the times established therefor in the Schedule of Performance, the Borrower shall begin and thereafter diligently complete the Construction.

5.5 Permits

Before the commencement of any work on the Property, the Borrower shall secure or shall cause to be secured any and all permits that may be required by the City of Pomona or any other governmental agency having jurisdiction over the Project.

5.6 Rights of Access

Representatives of the Housing Trust shall have the reasonable right of access to the Property at normal hours during the period of the Construction for the purposes of this Agreement, including but not limited to the inspection of the work being performed. Such representatives of the Housing Trust shall be the Administrator and persons so identified in writing by the Administrator.

5.7 Local, State and Federal Laws; Prevailing Wages

5.7.1 The Borrower shall carry out the Construction in conformity with all applicable laws, including all applicable federal and state labor laws and standards.

5.7.2 The Borrower shall and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Improvements as those wages are determined pursuant to Labor Code Sections 1770-1781 and implementing regulations of the Department of Industrial Relations and comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations, if

applicable. The Borrower shall and shall cause the contractor and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1770-1781. During the construction of the Improvements, Borrower shall or shall cause the contractor to post at the Property the applicable prevailing rates of per diem wages. Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Housing Trust) the Housing Trust against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Borrower, its contractor, and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq. and implementing regulation or comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations in connection with construction of the Improvements or any other work undertaken or in connection with the Property.

5.7.3 The foregoing indemnity shall survive termination of this Agreement and shall continue after Completion.

5.8 Disclaimer by Housing Trust

Except as expressly provided in this Agreement, the Housing Trust does not undertake or assume, nor will it have any responsibility or duty to the Borrower or to any third party to review, inspect, supervise, pass judgment upon, or inform the Borrower or any third party of any matter in connection with the Construction of the Property, whether regarding the quality, adequacy, or suitability of the plans, any labor, service, equipment or material furnished to the Property, any person furnishing the same, or otherwise. The Borrower and all third parties shall rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment, or information supplied to the Borrower or to any third party by the Housing Trust in connection with such matter is for the public purpose of improving affordable housing in the San Gabriel Valley, and neither Borrower (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon.

5.9 Covenants of the Borrower

The Borrower covenants for itself and its successors and assigns as follows:

5.9.1 Equal Opportunity Employment Practices

The Borrower certifies and represents that, during the performance of this Agreement, the Borrower and each of its contractors and subcontractors will adhere to equal employment practices to assure applicants and employees are treated equally and are not discriminated against because of their race, religion, creed, color, national origin, ancestry, handicap, sex, marital status, or age. The Borrower further certifies that it shall not maintain any segregated facilities.

The Borrower agrees it shall, in all solicitations or advertisements for applicants for employment placed by or on behalf of the Borrower, state that it is an "Equal Opportunity Employer" or all qualified applicants will receive consideration for employment without regard to their race, religion, creed, color, national origin, ancestry, handicap, sex, marital status, or age.

The Borrower agrees that it shall, if requested to do so by the Housing Trust, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their membership in a protected class.

The Borrower agrees to provide the Housing Trust with access to, and, if requested to do so by the Housing Trust, provide copies of all of its records pertaining to or relating to its employment practices, to the extent such records are not confidential or privileged under state or federal law.

The Borrower agrees to encourage businesses owned by persons who are members of a protected class to bid on its contracts and subcontracts.

The Borrower agrees to recruit residents of the San Gabriel Valley initially and to give them preference, if all other factors are equal, for any new positions which result from the performance of this Agreement and which are performed within the San Gabriel Valley.

Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.

The Borrower shall include the provisions of this Section 5.9.1 in all of its contracts.

5.9.2 Compliance with Environmental Laws

The Borrower shall comply with all environmental laws and environmental permits applicable to the operations of the Borrower and the ownership or use of the Property, shall immediately pay or cause to be paid all costs and expenses incurred by reason of such compliance, shall keep the Property free and clear of any environmental claims or liens imposed pursuant to any environmental law, and shall obtain and renew all environmental permits required for ownership or use of the Property.

5.10 Holder Not Obligated to Construct Improvements

The holder of any lien or encumbrance authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to complete the Construction, or to guarantee the completion of the Construction. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Premises to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

5.11 Right of the Housing Trust to Satisfy Other Liens on the Property

Prior to the repayment in full of the Trust Loan, and after the Borrower has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Property, or any portion thereof, the Housing Trust shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Borrower to pay or make provision for the payment of any tax, assessment, lien, or charge so long as the Borrower in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Property (or any portion thereof) to forfeiture or sale.

5.12 Certificate of Occupancy

The construction of the Project shall be considered complete for purposes of this Agreement only when (a) all work described has been completed and fully paid for and (b) all work requiring inspection or certification by all governmental agencies has been completed and all requisite certificates, approvals, and other necessary authorizations (including a Certificate of Occupancy) have been obtained. After recordation of the Certificate of Occupancy, any party then owning or thereafter purchasing, leasing, or otherwise acquiring any interest therein shall not (because of such ownership, purchase, lease, or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by any covenants contained in the Regulatory Agreement and the Deed of Trust.

ARTICLE 6 USE OF THE PROPERTY

6.1 Uses

The Borrower covenants and agrees (for itself, its successors, assigns, and every successor in interest to the Property or any part thereof) that the Borrower, such successors, and such assigns shall:

6.1.1 Develop and devote the Property and the Project to the uses specified in the Scope of Work and Budget attached hereto and the Regulatory Agreement. The Property shall be managed and operated in accordance with a Management Plan as described in the Regulatory Agreement.

6.1.2 Maintain, repair and keep the Property in good repair and free from any accumulation of debris, graffiti, or waste materials; maintain the landscaping required to be planted and/or retained under the Scope of Work and Budget in a healthy and attractive condition; and take all other actions necessary to maintain and ensure the neat and clean appearance of the Property and the Project. The exterior of the Property shall be maintained in accordance with the Management Plan as described in Section 6.2 of this Agreement.

6.1.3 Not permit the use of the Project or the Property for any purpose other than permitted by this Agreement without the prior written approval of the Housing Trust.

6.1.4 Execute the Regulatory Agreement in recordable form, which the Housing Trust is authorized to record against the Property at the Closing.

6.2 Maintenance of the Property

6.2.1 Prior to the Closing, Borrower shall prepare and submit to the Administrator (or his/her designee) for review and approval a plan ("Management Plan") for the maintenance of the Property.

6.2.2 The Management Plan shall describe in reasonable detail the standards to be followed in maintaining the Property, including a schedule indicating the proposed frequency of each element of maintenance, and shall include, at a minimum, the following: periodic cleaning of the exterior of the structures on the Property, including windows; removing graffiti; removing debris and waste materials and otherwise maintaining outdoor areas of the Property; performing inspections of features as appropriate to determine whether repairs are

required; conducting periodic protective treatments such as rust removal and caulking; conducting repairs to facades, roof, doors, windows and other features; maintaining fencing and other security devices and systems; and periodic repainting. The Management Plan, including any amendments proposed by Borrower, shall be subject to the approval of the Administrator, and shall be made part of the Regulatory Agreement for the project.

6.2.3 For so long as the Deed of Trust remains unsatisfied of record, Borrower and its successors and assigns to the Property (“Owners”) shall maintain the Property in accordance with the approved Management Plan. In the event Owners fail to maintain the Property in accordance with the approved Management Plan, the Housing Trust shall have the right, but not the obligation, to enter the Property, correct any violation, and hold the Owners responsible for the cost thereof, and such cost, until paid, shall constitute a lien on the Property.

6.2.4 The Regulatory Agreement shall contain appropriate provisions implementing this Section 6.2.

6.3 Nondiscrimination

Borrower covenants and agrees that there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, or any part thereof. All deeds, leases, and contracts shall contain the nondiscrimination covenant contained in this section and shall run with the land.

6.4 Effect and Duration of Covenants

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on the Borrower and any successor in interest to the Property, or any part thereof, the Project or any part thereof for the benefit and in favor of the Housing Trust, their respective successors and assigns. Except as set forth in the following sentence, the covenants contained in this Article 6 and the Regulatory Agreement (collectively, “Covenants”) shall remain in effect for the period of time provided therefore in the Regulatory Agreement, unless this Agreement provides for their earlier termination. The Covenants against discrimination (set forth in Section 6.3) shall remain in perpetuity.

ARTICLE 7 ENCUMBRANCES AND LIENS

7.1 Encumbrances and Liens

Prior to the repayment in full of the Trust Loan, the Borrower shall not place or allow to be placed on the Property, or on any portion thereof, any mortgage, trust deed, encumbrance or lien superior to the Deed of Trust (other than Senior Encumbrances authorized by this Agreement); and the Borrower shall remove, or shall have removed, any levy or attachments made on the Property (or any portion thereof), or shall assure the satisfaction thereof within a reasonable time. The Borrower shall pay, or cause to be paid, prior to delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Deed of Trust; provided, however that the Borrower shall not be required to pay and discharge any such tax, assessment, charge, or levy so long as the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings.

7.2 No Encumbrances Without Consent of Housing Trust

The Borrower shall notify the Housing Trust in advance of any mortgage, deed of trust, sale and lease-back, or other form of conveyance (including Senior Encumbrances) if the Borrower proposes to enter into the same before repayment in full of the Trust Loan. The Borrower shall not enter into any such conveyance for financing without the prior written approval of the Housing Trust, which the Housing Trust shall not unreasonably withhold, in light of all the circumstances. In any event, the Borrower shall promptly notify the Housing Trust of any mortgage, deed of trust, sale and lease-back, or other financing conveyance, encumbrance or lien that has been created or attached thereto prior to the repayment in full of the Trust Loan, whether by voluntary act of the Borrower or otherwise. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction, and land development.

ARTICLE 8 INDEMNIFICATION AND INSURANCE

8.1 Requirement to Indemnify and Hold Harmless

The Borrower shall defend, release, indemnify, and hold harmless the Housing Trust and its officers, employees, agents, and contractors against any and all loss, damages, liability, claims, suits, costs and expenses, whatsoever, including reasonable attorneys' fees, regardless of the merit or outcome of any such claim or suit, arising from or in any manner connected to the acquisition, development, use, or operation of the Property regardless of the active or passive negligence of the Indemnitees, except as otherwise stated herein. This duty to indemnify and defend pursuant to this Section shall survive the termination of this Agreement.

8.2 Indemnification Exception

Borrower shall not be required to indemnify the Indemnitees for claims and losses arising from the Indemnitee's gross negligence, or willful or malicious acts of misconduct.

8.3 Non-liability of Housing Trust Officials and Employees

No member, official, employee, attorney, or consultant of the Housing Trust shall be personally liable to the Borrower, or any successor in interest, in the event of any default or breach by the Housing Trust or for any amount which may become due to the Borrower or to its successor, or on any obligations under the terms of this Agreement.

8.4 Insurance

Prior to the Closing, the Borrower shall furnish or cause to be furnished to the Administrator evidence of a liability insurance policy in a form acceptable to the Housing Trust, written by an insurance company acceptable to the Housing Trust, naming the Housing Trust as a Loss Payee and as an Additional Insured Party and in accordance with the Borrower Insurance Requirements set forth in Exhibit D attached hereto. The insurance shall be kept in force for the entire term of the Trust Loan.

ARTICLE 9 DEFAULTS, REMEDIES, AND TERMINATION

9.1 Defaults - General

9.1.1 Subject to the extensions of time set forth in Section 10.2, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who fails or delays must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction, or remedy with reasonable diligence.

9.1.2 The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

9.1.3 If a monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default written notice of such default. The party in default shall have a period of ten (10) days after such notice is given within which to cure the default prior to exercise of remedies by the injured party.

9.1.4 If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default notice of such default. If the default is reasonably capable of being cured within thirty (30) days, the party in default shall have such period to effect a cure prior to exercise of remedies by the injured party. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and the party in default (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in default shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the injured party. In no event shall the injured party be precluded from exercising remedies if its rights become or are about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the first notice of default is given.

9.2 Institution of Legal Actions

Subject to the notice and cure provisions of Section 9.1, in addition to any other rights or remedies (and except as otherwise provided in this Agreement), either party may institute legal action to cure, correct, or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Los Angeles, State of California, in any other appropriate court of that county, or in the United States District Court for the Central District of California.

9.3 Acceptance of Service of Process

9.3.1 In the event any legal action is commenced by the Borrower against the Housing Trust, service of process on the Housing Trust shall be made by personal service upon the Administrator, or in such other manner as may be provided by law.

9.3.2 In the event any legal action is commenced by the Housing Trust against the Borrower, service of process on the Borrower shall be made by personal service upon an officer of the Borrower and shall be valid whether made within or without the State of California, or in such manner as may be provided by law.

9.4 Rights and Remedies Are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

9.5 Damages

If either party defaults with regard to any of the provisions of this Agreement, then the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within the time provided in Section 9.1, the defaulting party shall be liable to the non-defaulting party for any damages caused by such default, and the non-defaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default.

9.6 Specific Performance

If either party defaults with regard to any of the provisions of this Agreement, then the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within the time provided in Section 9.1, then the non-defaulting party, at its option, may thereafter (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such default.

9.7 Termination by Borrower

In the event the Housing Trust fails to disburse the Trust Loan as provided herein, then this Agreement and any rights of Borrower in this Agreement may be terminated by Borrower by giving written notice thereof to the Housing Trust, and neither the Housing Trust nor Borrower shall have any further rights against or liability to the other under this Agreement with respect to the Property.

9.8 Termination by Housing Trust

In the event that any of the following occur, and are not cured within the time provided in Section 9.1, then this Agreement with respect to the Property and the Project, and any rights of Borrower, or any assignee or transferee, may, at the option of the Housing Trust, be terminated and rescinded, and thereafter Borrower shall have no further rights against the Housing Trust with respect to the Trust Loan under this Agreement:

9.8.1 The Borrower fails to acquire fee simple title to the Property on or before the Closing; or

9.8.2 The Borrower (or any successor in interest) transfers or assigns or attempts to transfer or assign this Agreement or any rights therein or in the Property, or any portion thereof, or in the Project or any portion thereof, in violation of this Agreement; or

9.8.3 The Borrower fails to deliver to the Housing Trust the fully-executed Promissory Note, Deed of Trust, other Loan Documents, the LHTF Program Agreement, the Regulatory Agreement, or any other document required by this Agreement within the time established therefor in the Schedule of Performance; or

9.8.4 The Borrower or its general contractor does not begin with the Construction in accordance with the Schedule of Performance and proceed continuously with the Construction or if Borrower or its general contractor discontinues the Construction for a period of thirty (30) days or more for any reason or cause within the control of the Borrower; or

9.8.5 Any representation or warranty by the Borrower to the Housing Trust contained herein proves to be materially false or misleading and the Borrower does not, after receiving written notice thereof from the Administrator, initiate and diligently pursue all actions necessary to make such representation or warranty no longer false or misleading; or

9.8.6 The Borrower neglects, fails or refuses to keep in full force and effect any permit or approval with respect to the Construction, any policy or policies of insurance or title insurance, or any other undertakings required hereunder; or

9.8.7 The Borrower is in breach or default with respect to any other covenant or obligation of the Borrower under this Agreement, including the LHTF Program Agreement, the Regulatory Agreement, or any other Loan Documents; or

9.8.8 Any party files a mechanic's lien or materialman's lien against the Property, or any portion thereof, or the Project or any portion thereof and within thirty (30) business days after the Borrower's receipt of written notice from the Administrator of the filing thereof, either: (a) the claim set forth therein is not discharged by the Borrower, or (b) if the amount claimed is disputed in good faith by the Borrower or Borrower's general contractor, the Borrower fails to obtain and record in the Official Records of the County of Los Angeles, a mechanic's lien release bond, in form and substance and issued by a surety company acceptable to the Administrator, in a penal sum equal to 1 and 1/2 times the amount set forth in such claim of lien, whereby the Property, or any portion thereof, and the Project or any portion thereof, will be released from such lien, and from any action brought to foreclose such lien, in accordance with Section 3143 of the California Civil Code, as the same may be amended from time to time; or

9.8.9 The Borrower becomes insolvent or unable to pay its debts as they mature or makes an assignment for the benefit of creditors.

ARTICLE 10 TIME OF ESSENCE, CONSENTS, AND ENFORCED DELAY

10.1 Time of Essence

Time is of the essence in this Agreement and each and every provision hereof. The waiver by the Housing Trust of any breach or breaches hereof shall not be deemed nor shall the same constitute a waiver of any subsequent breach or breaches.

10.2 Consents and Approvals

Consents and approvals required of the City or the Borrower shall not be unreasonably withheld or delayed.

10.3 Enforced Delay; Extension of Time of Performance

Notwithstanding Section 10.1, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, Acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplier, acts of the other party, acts or failure to act of any public or governmental agency or entity (except that acts or failures to act by the Housing Trust shall not excuse performance by the Housing Trust, as the case may be) or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time the party claiming such extension gives notice to the other party, provided notice by the party claiming such extension is sent to the other party within thirty (30) days of knowledge of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the Housing Trust and the Borrower.

ARTICLE 11 GENERAL PROVISIONS

11.1 Integrated Agreement, Waivers, and Amendments

This Agreement is made for the sole benefit and protection of the Borrower and Housing Trust and their successors and assigns, and no other person shall have any right of action or right to rely thereon. This Agreement, including all attachments and addenda hereto, contain all of the terms and conditions agreed upon between the parties, supersede all negotiations or previous agreements between the parties with respect to all or any part of the Property, and no other agreement regarding the subject matter hereof shall be deemed to exist or bind any party unless in writing and signed by the parties and approved as to form by the Housing Trust's legal counsel.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Housing Trust or the Borrower. No waiver by the Lender of any breach of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach thereof or default hereunder.

This Agreement shall not be altered or amended except by writing executed between the parties and approved as to form by the Housing Trust's legal counsel. No such amendment

shall be effective without the prior written approval of the Housing Trust. Such amendment shall not require the consent of any other fee owner, tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust, or any other person or entity having an interest in the Property, except as otherwise expressly provided in this Agreement.

11.2 Incorporation of Recitals and Exhibits

The Recitals set forth above and Exhibits A through N attached hereto are incorporated herein and made a part of the terms and conditions of this Agreement.

11.3 Inspection of Books and Records

The Housing Trust has the right at all reasonable times to inspect the books and records of Borrower pertaining to the Property as pertinent to the purposes of this Agreement. Borrower also has the right at all reasonable times to inspect the books and records of the Housing Trust pertaining to the Property as pertinent to the purposes of the Agreement.

11.4 Notices

All notices required to be given herein shall specify the address of the Property and shall be deemed served upon personal service or five (5) calendar days after deposit in certified first-class United States mail, postage prepaid, and addressed to the parties as follows:

If to Borrower:	[Name] 17701 Cowan Ave, Suite 200 Irvine, CA 92614 Attn: Chief Executive Officer
With copies to:	[Name] (Attorney address 1) (Attorney address 2) Attn: (Attorney name)
If to Lender:	San Gabriel Valley Regional Housing Trust 1000 S. Fremont Avenue, Unit 42, Building A-10N, Suite 10-210 Alhambra, CA 91803 Attn: Executive Director
With copies to:	San Gabriel Valley Regional Housing Trust c/o (Attorney name) (Attorney address) (Attorney address 2) Attn: (Attorney name)

11.5 Conflicts of Interest

No member, official, or employee of the Housing Trust shall have any personal interest, direct or indirect, in this Agreement; nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his/her personal interests or the interests

of any corporation, partnership, or association in which he/she is, directly or indirectly, interested.

Borrower warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

11.6 Cost of Litigation

If any legal action is necessary to enforce any provision hereof, or for damages by reason of an alleged breach of any provisions of this Agreement, the prevailing party shall be entitled to recover all costs and expenses and such amount as the court may adjudge to be reasonable attorneys' fees. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

11.7 Governing Law

This Agreement shall be construed in accordance with and governed by the laws of the State of California.

11.8 Gender

Wherever the context of this Agreement requires, the singular shall include the plural and the masculine gender shall include the feminine and/or neuter.

11.9 Partial Invalidity

If any provision of this Agreement shall be found to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the Housing Trust and the Borrower have caused this Agreement to be executed as of the date first set forth hereinabove.

LENDER:

SAN GABRIEL VALLEY REGIONAL
HOUSING TRUST,
A joint powers authority

BORROWER:

[BORROWER NAME],
a California nonprofit public benefit corporation

By: _____
MARISA CRETER
Executive Director

By: _____
[NAME]
[TITLE]

ATTEST:

NAME
Title (Clerk)

APPROVED AS TO FORM:

NAME
Title (Attorney)

EXHIBIT A
Legal Description of Property

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

Insert legal description of property here

(For the purpose of complying with Civil Code Section 3097 only, the street address of the said property is _____)

EXHIBIT B
Approved Scope of Work and Budget

These are placeholders, need final numbers from SGVRHT or developer:

DEVELOPMENT COSTS	Use of Funds	TOTAL	PER UNIT
Land / Acquisition Costs		3,400,000	59,649
Total Hard Costs		15,519,667	272,275
Hard Cost Contingency		1,031,166	18,091
Construction Interest		658,470	11,552
Loan Fees		186,301	3,268
Soft Costs		5,026,464	88,184
Soft Costs Contingency		282,646	4,959
TOTAL DEVELOPMENT COSTS		26,104,714	457,977

EXHIBIT C
Method of Financing

Total Development Cost for the Project is _____.

The anticipated interim and permanent sources of funding for the Project are as follows:

A. Construction Financing:

Name of Lender/Source	Funding Amount
TOTAL	

B. Permanent Financing:

Name of Lender/Source	Funding Amount
TOTAL	

Borrower shall promptly inform Lender of any changes in the amount, terms, and/or sources of financing or funding for the Project. Unless otherwise approved by Lender, any increases in a financing source shall be utilized to reduce the Loan amount where feasible. Unless otherwise approved by Lender, any cost savings and unused contingency funds shall be utilized to reduce Lender's loan.

Deferred developer fees shall be drawn from project cash flow over the first fifteen (15) years of project operation.

EXHIBIT D
Borrower Insurance Requirements

Borrower shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with Borrower's possession, occupancy, operation, or use of the property by Borrower, its agents, representatives, employees, subcontractors, and guests. The Borrower agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance.

Minimum Scope and Limits of Insurance

Coverage shall be at least as broad as the following:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury, with limits of no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (Insurance Services Office Form CG 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Workers' Compensation:** Workers' Compensation insurance as required by the State of California, with Statutory Limits and Employers' Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease. The Borrower shall also furnish or cause to be furnished to the Administrator evidence satisfactory to the Housing Trust any contractor with whom the Borrower has contracted for the performance of the Construction carries workers' compensation insurance as required by law.
3. **Property Insurance:** Property insurance covering all property owned in connection with this Agreement, including improvements and betterments. The policy shall be written on an "all risks" basis (excluding earthquake and flood) and insure the property and improvements/betterments at full replacement cost. To ascertain the amount of coverage required, Borrower shall cause the full insurable value to be determined from time to time by appraisal by the insurer, by agreement between the Borrower and Housing Trust, or by an appraiser mutually acceptable to the Housing Trust and Borrower, not less often than once every three years.
4. **Builder's Risk Policy and Physical Damage Policy:** Builder's Risk Policy and Physical Damage Policy. During the period of construction, Borrower must obtain or cause to be obtained a builder's risk or equivalent policy covering damage or loss up to the value of labor and materials and naming the Housing Trust as loss payee as its interests may appear. After completion of the Project, Borrower must cause to be issued a physical damage insurance policy covering the replacement value of the property as mutually agreed between Borrower and insurer with a lender's loss payable endorsement listing the Housing Trust and Borrower as the loss payee as their interests may appear. This policy must remain in effect throughout the term of the Loan.
5. **Rental Income Insurance:** The Borrower shall maintain or cause to be maintained use and occupancy or business interruption or rental income insurance against the perils

ordinarily included in extended coverage rental income insurance policies, in an amount that is acceptable to the Borrower and the Housing Trust.

6. **Proceeds:** All proceeds of insurance with respect to loss or damage to the Project during the term of the Loan shall be payable, under the provisions of the policy of insurance, jointly to the Borrower, the Housing Trust, construction lender(s), permanent lenders, and any other lender permitted by the Housing Trust, and said proceeds shall constitute a trust fund to be used for the restoration, repair, or rebuilding of the Project in accordance with plans and specifications approved in writing by the Housing Trust. To the extent that such proceeds exceed the cost of such restoration, repair, or rebuilding, such proceeds shall be applied first to repay the construction lenders and second to repay the Trust Loan. In the event of any fire or other casualty to the project or eminent domain proceedings resulting in condemnation of the project improvements or any part thereof, the Owner shall have the right to rebuild the improvements, and to use all available insurance or condemnation proceeds therefor, provided that
 - a. such proceeds are sufficient to keep the Trust Loan in balance and rebuild the improvements in a manner that provides adequate security to the Housing Trust for repayment of the Trust Loan or if such proceeds are insufficient then the Borrower shall have funded any deficiency,
 - b. the Housing Trust shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and
 - c. no material default then exists under the Trust Loan.

If the casualty or condemnation affects only part of the improvements and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Trust Loan in a manner that provides adequate security to the Housing Trust for repayment of the remaining balance of the Trust Loan.

If Borrower maintains broader coverage or higher limits than the minimums shown above, the Housing Trust requires and shall be entitled to the broader coverage or higher limits maintained by Borrower. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Housing Trust.

Other Insurance Provisions

1. The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - a. **Additional Insured Status:** The Housing Trust, its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of the use, occupancy, operations, or maintenance of the property, including work or operations performed by or on behalf of Borrower. CGL coverage can be provided in the form of an endorsement to Borrower's insurance (at least as broad as Insurance Services Office Form CG 20 10 11 85, or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38 **and** CG 20 37).

- b. **Primary Coverage:** For any claims related to this Agreement, Borrower's insurance shall be primary coverage at least as broad as Insurance Services Office Form CG 20 01 04 13 as respects the Housing Trust, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Housing Trust of its officers, officials, employees, or volunteers shall be in excess of Borrower's insurance and shall not contribute with it. Borrower's policy shall contain such an endorsement.
- c. **Notice of Cancellation:** Each insurance policy required herein shall state that coverage shall not be cancelled, reduced, or let to expire, except after written notice has been given to the Housing Trust, to the extent practicable within 30 days, but in any event prior to the effective date thereof.
- d. **Waiver of Subrogation:** Borrower hereby grants to the Housing Trust a waiver of any right of subrogation which any insurer of said Borrower may acquire against the Housing Trust by virtue of payment of any loss. Borrower agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Housing Trust has received a waiver of subrogation endorsement from the insurer.
- e. **Loss Payee:** The property insurance shall name the Housing Trust as Loss Payee as its interests appear.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Housing Trust. The Housing Trust may require Borrower to purchase coverage with a lower retention or provide satisfactory proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the Housing Trust.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in California with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to the Housing Trust.

Verification of Coverage

Borrower shall furnish the Housing Trust with original certificates and amendatory endorsements (or copies of the applicable policy language effecting coverage provided by this clause). All certificates and endorsements are to be received and approved by the Housing Trust before the Agreement commences. However, failure to obtain required documents prior to the Agreement beginning shall not waive Borrower's obligation to provide them. The Housing Trust reserves the right to require complete, certified copies of all required insurance policies, including the endorsements required herein, at any time.

Failure to Maintain Insurance Coverage

If Borrower, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. The Housing Trust, at its sole option, may terminate this Agreement and obtain damages from Borrower resulting from

said breach or may cure the default upon five (5) days prior notice to Borrower, by procuring and maintaining such insurance. The premiums paid by the Housing Trust shall be treated as a loan, due from Borrower, to be paid on the first day of the month following the date on which the premiums were paid. The Housing Trust shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

EXHIBIT E
Disbursement Instructions

All Loan funds shall be maintained by the Lender and shall be disbursed to Borrower only upon receipt and approval of a draw request. The Housing Trust staff shall review, evaluate and recommend to the Administrator draw requests.

The disbursement process shall be as follows:

1. Borrower will submit draw requests for funds to Housing Trust staff using the attached disbursement request form, Exhibit F.
2. Housing Trust staff will review disbursement requests and either submit approved total request to the Housing Trust's Director of Finance for disbursement, or, in the case of funds controlled jointly by Lender and Borrower, directly authorize the disbursement of funds from the joint account to Borrower.
3. The Director of Finance will issue a check, which he/she will forward to Housing Trust staff. Borrower may pick up the check from the Housing Trust or request that it be mailed. Only upon written authorization from Borrower will the Housing Trust release the check to a Contractor.

EXHIBIT F
Request for Funds Form

BORROWER: _____

ADDRESS: _____

GENERAL CONTRACTOR: _____

Pursuant to the Loan Agreement for the above referenced project, request for Lender approval of withdrawal from funds for the following expenses is hereby requested:

Line Item	Description	Approved Budget	Previous Draws	Current Draw	Balance

LOAN SUMMARY- LENDER USE ONLY	
TOTAL LOAN AMOUNT:	\$ _____
LESS DISBURSED AT CLOSING:	\$ ()
PREVIOUS DRAWS:	_____
PREVIOUS RETENTION:	_____
PREVIOUS LOAN BALANCE:	_____

PAY DRAW NO. _____ SUMMARY	
DRAW REQUEST:	_____
LESS 10% RETENTION:	()
AMOUNT TO BE DISBURSED:	_____
CURRENT LOAN BALANCE:	_____

BORROWER APPROVAL

HOUSING TRUST APPROVAL

_____ Date

_____ Date

EXHIBIT G
Schedule of Performance

Anticipated Project Timeline

11/04/19	Draft Affordable Housing Disposition & Development Agreement (AHDDA)
12/04/19	MHSA Awarded from Tri-City
12/11/19	VASH Voucher Application
12/16/19	AHDDA Approval from City Council
1/13/20	VASH Vouchers Awarded
02/20/20	Entitlement Approval
07/01/20	9% TCAC Application Submittal
09/16/20	TCAC Preliminary Reservation
03/29/21	Close on Financing
04/01/21	Construction Start
07/30/22	Construction Completion
12/30/22	Lease Up
04/01/23	Conversion

EXHIBIT H
UCC-1 Financing Statement

EXHIBIT I
Letter of Intent

EXHIBIT J
Promissory Note

EXHIBIT K
Residual Receipts Report Form

Residual Receipts Report
For the Year Ending _____

Date Prepared _____

Please complete the following information and execute the certification at the bottom of this form.

Project Revenue		
	Please report Project Revenue for the year ending _____ on the following lines:	
(1)	Rent Payments (including Section 8 tenant assistance payments, if any)	\$
(2)	Interest Income (do not include interest income from replacement and operating reserves nor interest income on tenant security deposits)	\$
(3)	Additional Income (for example, vending machine income, tenant forfeited deposits, laundry income not paid to the residents' association)	\$
(4)	Total Annual Project Revenue (Add Lines 1, 2, and 3)	\$
Operating Expenses		
	Please report Operating Expenses for the year ending _____ on the following lines:	
(5)	Operating and Maintenance Expenses	\$
(6)	Utilities	\$
(7)	Property Management Expenses and On-Site Staff Payroll	\$
(8)	Administrative Expenses	\$
(9)	Property Taxes	\$
(10)	Insurance	\$
(11)	Other Expenses Please list these expenses: _____ _____	\$
(12)	Total Annual Operating Expenses for the Housing Project (Add Lines 5, 6, 7, 8, 9, 10, and 11)	\$
(13)	Net Operating Income (Subtract Line 12 from Line 4)	\$
	Do not include expenses unrelated to the operation of the Rental Portion of the Project, such as depreciation, amortization, accrued principal and interest expense on deferred payment debt, or capital expenditures.	

Additional Cash Flow Payments		
(14)	Obligated First Mortgage Debt Service Payments (as approved by the Lender and other parties that may have such approval rights) and Obligated Secondary Subordinate Debt Service Payments (as approved by the Lender and other parties that may have such approval rights)	\$
(15)	Scheduled Deposits to Reserves (as approved by the Lender)	\$
(16)	Additional Payment Obligations (such as partnership management fees, deferred developer fees, or repayments on loans to partners, as approved by the Lender to have priority over Residual Receipt Payment to the Lender)	\$
(17)	Total Additional Cash Flow Payments (Add Lines 14, 15, and 16)	\$
(18)	Residual Receipts for Year Ending (Subtract Line 17 from Line 13)	\$
(19)	Percentage of Residual Receipts to be Paid to the Lender (as shown in the Promissory Note by and between the Lender and Borrower)	%
(20)	Amount Payable to the Lender (Multiply Line 18 by Line 19)	\$

The amount payable to the Lender listed on Line 20 is subject to payment according to the terms of the Promissory Note by and between the Lender and Borrower dated _____, 2021. If Line 20 is \$0.00 or negative, the Borrower owes nothing to the Lender for the corresponding year. If Line 20 is a positive number, Borrower should remit a check payable to the San Gabriel Valley Regional Housing Trust and attach to this report.

EXHIBIT L
Deed of Trust

EXHIBIT M
Regulatory Agreement

EXHIBIT N
Assignment of Contracts and Plans

AFFORDABLE HOUSING LOAN PROMISSORY NOTE
SECURED BY DEED OF TRUST

[Address] _____, CA [zip code] _____, 2021 \$XX

FOR VALUE RECEIVED, the undersigned, [Borrower], a California limited liability company ("Borrower"), promises to pay to the order of the SAN GABRIEL VALLEY REGIONAL HOUSING TRUST, a joint powers authority formed by statute of the State of California ("Lender"), the principal sum of _____ DOLLARS AND _____ CENTS (\$XX), or so much thereof as is disbursed from the Lender's Trust Fund ("Trust Fund") to or for the benefit of Borrower ("Principal"), due and payable with 3% interest, by residual receipts over the fifty-five (55) year term, as set forth in this Affordable Housing Loan Promissory Note ("Note"). All sums are payable in lawful money of the United States of America.

This Note is secured by, among other things, the Deed of Trust ("Deed of Trust") of the same date as this Note, executed by Borrower as Trustor, in favor of the Lender as Beneficiary, and encumbering the real property described in the Deed of Trust ("Property"). The holder of this Note shall be entitled to the benefits of the security provided by the Deed of Trust and shall have the right to enforce the covenants and agreements of Borrower contained in the Deed of Trust.

Lender and Borrower acknowledge and agree that this Note evidences Borrower's obligation to repay Lender the Principal and interest stated herein, in accordance with the terms and conditions of this Note and that certain Affordable Housing Loan Agreement, dated _____, 2021. Borrower shall pay to the Lender the Principal amount of this Note, and accrued interest if any, as follows:

Commencing on the date one hundred twenty (120) days after the close of the initial Calendar Year following the issuance of the Certificate of Occupancy, and on or before the 120th day of each Calendar Year thereafter, the Borrower shall make a loan payment to the Lender annually, in the amount of the lesser of the outstanding balance due under this Note or the Housing Trust's percentage of the residual receipts, as provided in this Note.

Within one hundred twenty (120) days after the close of the initial Calendar Year following the Issuance of the Certificate of Occupancy and on or before the 120th day of each Calendar Year thereafter, the Borrower shall submit to the Lender an audited financial statement of Gross Revenues and Operating Expenses attributable to the Property for the applicable Calendar Year, along with a computation of the amount of the Residual Receipts applicable to such Calendar Year with which to make a Trust Loan payment then due.

Except as otherwise provided, the Borrower shall pay to the Lender the Lender's Percentage of the Residual Receipts as payment interest and then to principal. At least fifty percent (50%) of the Residual Receipts shall remain with the Borrower, with all Residual Receipts remaining with Borrower to the extent the Trust Loan has been fully repaid.

Prior to the Trust Loan being fully repaid, Borrower shall retain fifty percent of the Residual Receipts. The other fifty percent shall be divided according to the table below:

Source	Percentage
Trust Funds	25.00%
LHTF Program Funds	25.00%
TOTAL	50.00%

Repayment of the Loan in full may be achieved by Borrower’s sale or transfer of the Property for an amount not less than the amount of this Note or by Borrower’s refinancing of the Project loans.

- (i) If the net proceeds from the sale of the property plus any net income Borrower receives from rents, from the period starting with acquisition and ending with sale, exceeds the loan amount (“Net Proceeds Differential”), Borrower may recover Housing Trust-approved development costs, in an amount up to but not to exceed the total Net Proceeds Differential. The Housing Trust will not provide any additional resources from other funds or sources to pay for expenses incurred.
- (ii) Prior to entering into a Purchase and Sale Agreement to sell the property, Borrower must submit a request and verification of approved costs to the Housing Trust before Housing Trust approves payment of the Net Proceeds Differential. The Housing Trust must also approve all terms and conditions of a Purchase and Sale Agreement.

If Borrower fails to make any required payment within ten (10) days following the date upon which it becomes due, Borrower shall pay, at Lender’s option, a late charge equal to one half of one percent (0.5%) of the amount of the unpaid payment, but not less than Ten Dollars (\$10.00) and not more than One Hundred Dollars (\$100.00). Lender shall not assess this late charge more than once on any late payment.

Unless the term of this Note has been extended by the Lender, from and after the Maturity Date, or any earlier date upon which all sums owing under this Note become due by acceleration or otherwise, all sums owing under this Note shall bear interest until paid in full at a rate equal to the greater of either: (i) ten percent (10%) per annum; or (ii) the federal discount rate plus five percent (5%), where the federal discount rate is defined as the primary credit rate established by the Federal Reserve Bank of San Francisco on advances to member banks on the most recent effective date preceding the earlier of the date the Loan Agreement was executed or the date the Loan was funded to Borrower (“Default Rate”). The applicable federal discount rate is 0.75% as of January 31, 2021.

All payments on this Note shall be applied first to the payment of any costs, fees, late charges, or other charges incurred in connection with the indebtedness evidenced by this Note; next, to the payment of accrued interest, if any; then to current interest; then to the reduction of the principal balance; or in any other order that the Lender shall require.

If the Borrower fails to pay when due any sums payable under this Note after notice and opportunity to cure pursuant to the terms of the Deed of Trust, or if an Event of Default (as that term is defined in the Deed of Trust) occurs, or any other event or condition occurs that gives rise to a right of acceleration of sums owing under this Note under the terms of the Deed of Trust executed concurrently herewith, then the Lender, at its sole option, shall have the right to

declare all sums owing under the Note immediately due and payable. In addition, if any document related to this Note provides for the automatic acceleration of payment of sums owing under this Note, all sums owing shall be automatically due in accordance with the terms of that document.

Borrower shall have the right to pay, without penalty or premium, at any time prior to the Maturity Date, all or any portion of the outstanding principal amount of this Note. The Lender shall apply all prepayments first to the payment of any costs, fees, late charges, or other charges incurred in connection with the indebtedness evidenced by this Note; next, to the payment of accrued and current interest, if any; then to the outstanding principal amounts of this Note in inverse order of maturity, or, at the option of the Lender, in the regular order of maturity; or in any other order that the Lender requires.

Borrower shall pay to Lender all sums owing under this Note without deduction, offset, or counterclaim of any kind. The relationship of Borrower and Lender under this Note is solely that of borrower and lender, and the loan evidenced by this Note and secured by the Deed of Trust will in no manner make Lender the partner or joint venture partner of Borrower.

If any party hereto brings an action or proceeding against any other party by reason of a default under this Note or otherwise arising out of this Note or any document related to this Note, the prevailing party in such action or proceeding shall be entitled to receive from the losing party all costs and expenses in such amount as the Court may adjudge to be reasonable attorney's fees and costs, together with interest at the Default Rate from the date of such order until paid in full. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorney's fees paid to third parties.

No previous waiver or failure or delay by the Lender in acting with respect to the terms of this Note, the Deed of Trust, or any other document related to this Note shall constitute a waiver of any breach, default, or failure of condition under this Note, the Deed of Trust, or any document related to this Note. A waiver of any term of this Note, the Deed of Trust, or other document related to this Note must be made in writing and will be limited to the express written terms of the waiver. If there are any inconsistencies between the terms of this Note and the terms of any other document related to this Note, the terms of this Note shall prevail. No waiver or failure or delay by the Lender in acting with respect to the terms of this Note, the Deed of Trust, or any document related to this Note shall permit any guarantor of this Note to claim that the Lender's actions or failure to act resulted in an exoneration of the guarantor. All of the Lender's remedies in connection with this Note or under applicable law shall be cumulative, and the Lender's exercise of any one or more of those remedies shall not constitute an election of remedies.

Notwithstanding anything to the contrary herein, this Note shall be payable by the Borrower without personal liability of the Borrower, or any partner (general or limited) of the Borrower therefore and Note holder shall have no recourse for such payment with interest except against the Property against which this Note is secured. This provision shall not apply in the event of fraud, waste, or intentional damage by the Borrower or any partner (general or limited) of the Borrower to the Property securing this Note.

All notices required to be given herein shall specify the address of the Property and shall be deemed served upon personal service or five (5) calendar days after deposit in certified first class United States mail, postage prepaid, and addressed to the parties as follows:

Promissory Note
[Project Name]

If to Borrower: [Borrower]
17701 Cowan Ave, Suite 200
Irvine, CA 92614
Attn: Chief Executive Officer

With copies to: [Developer]
c/o (Attorney name)
(Attorney address)
(Attorney address 2)
Attn: (Attorney name)

If to Lender: San Gabriel Valley Regional Housing Trust
1000 S. Fremont Avenue, Unit 42, Building A-10N, Suite 10-210
Alhambra, CA 91803
Attn: Executive Director

With copies to: San Gabriel Valley Regional Housing Trust
c/o (Attorney name)
(Attorney address)
(Attorney address 2)
Attn: (Attorney name)

or to such other address as the party may designate by notice to the other parties from time to time. All notices shall specify the address of the Property.

If this Note is executed by more than one person or entity as Borrower, the obligations of each person or entity shall be joint and several. No person or entity shall be a mere accommodation maker, but each shall be primarily and directly liable. Borrower waives presentment, demand, notice of dishonor, notice of default or delinquency, notice of acceleration, notice of protest and nonpayment, notice of costs, expenses or losses and interest, notice of interest on interest and late charges, and diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights or interests to properties securing payment of this Note. Borrower's waiver shall be binding upon all makers, sureties, guarantors, and endorsees and their successors and assigns. Time is of the essence with respect to every provision of this Note. This Note shall be construed and enforced in accordance with California law, except to the extent that Federal law preempts State law; and all persons and entities in any manner obligated under this Note consent to the jurisdiction of any Federal or State Court in California having proper venue and also consent to service of process by any means authorized by California or Federal law.

Amounts owing under this Note shall be payable at 1000 S. Fremont Avenue, Unit 42, Building A-10N, Suite 10-210, Alhambra, CA 91803, or such other place as the Note holder may designate in writing from time to time.

IN WITNESS WHEREOF, the undersigned has executed this Note.

[BORROWER],
a California nonprofit public benefit corporation

By: _____
[NAME]
[Title]

Property Address: Commonly known as _____, CA [zip code]

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

San Gabriel Valley Regional Housing Trust
1000 S. Fremont Ave.
Unit 42, Building A-10N, Suite 10-210
Alhambra, CA 91803
Attn: Regional Housing Trust Administrator

NO RECORDING FEE REQUIRED:
GOVERNMENT CODE SECTION 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING WITH
ASSIGNMENT OF LEASES AND RENTS

(THIS DOCUMENT IS A DEED OF TRUST SECURING
AN AFFORDABLE HOUSING LOAN AGREEMENT)
([BORROWER],
a California Nonprofit Public Benefit Corporation)

(Project Address: _____)

[Project Name]
Deed of Trust

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RECITALS

THIS DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING, WITH ASSIGNMENT OF LEASES AND RENTS (“Deed of Trust”) is made as of the ____ day of _____, 2021 by [Borrower], a California nonprofit public benefit corporation (“Trustor”), to **Commonwealth Title Company** (“Trustee”) for the San Gabriel Valley Regional Housing Trust, a joint powers authority formed by statute of the State of California (“Beneficiary”). This Deed of Trust is intended to function as (i) a deed of trust, (ii) a security agreement with a fixture filing, and (iii) an assignment of leases and rents. Anyone examining this Deed of Trust is advised to review all portions of this document for the rights and obligations of the parties hereto.

I. DEED OF TRUST.

ARTICLE 1. GRANT IN TRUST WITH SECURED OBLIGATIONS.

Section 1.1 Grant in Trust

For the purposes of securing payment and performance of the Secured Obligations defined and described hereinafter, Trustor does irrevocably and unconditionally grant, convey, transfer and assign to Trustee, in trust, with power of sale, all of Trustor’s right, title and interest now owned or later acquired in the real property (“Property”), or all or any part of such property, or any interest in all or any part of such property as the context may require, located in the County of Los Angeles, State of California, commonly known as 408 West Mission Boulevard, Pomona, California, and more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference.

Trustor agrees that any greater title to the Property later acquired during the term of this Deed of Trust will be subject to this Deed of Trust, together with all of Trustor’s right, title and interest in and to the Property, including all present and future easement and other rights benefitting the Property; and Trustor also irrevocably grants, transfers and assigns to Trustee, in trust, with power of sale, of all Trustor’s right, title and interest now owned or later acquired to the following (including the rights or interest pertaining to the following) located on the Property:

(a) all existing and future appurtenances, privileges, easements and tenements of the Property, including all minerals, oil, gas and other hydrocarbons and associated substances, if any, which may exist in, under or produced from any part of the Property, all development rights and audits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant); together with

(b) all real property and any improvements on it, and all appurtenances and other property and interests of any kind or character, whether described in Exhibit A or not, which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Property and Improvements; together with

(c) all of Trustor’s interest in and to the Loan proceeds, whether dispersed or not, now or later held on deposit; together with

(d) all rights to the payment of money, accounts, accounts receivable, reserves deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received by third parties (including all earnest money sales deposits) or deposited by Trustor

Deed of Trust
[Project Name]

with third parties, contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notices, drafts and letters of credit (other than those in favor of Beneficiary), which arise from or relate to the Property or to any use of the Property; together with

(e) all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Property, Improvements or the other property described above into cash or liquidated claims, including all present and future fire, hazard, casualty or earthquake insurance policies, and all condemnation awards or payments now or later to be made by any public body or by decree of any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and the proceeds from all causes of action for any damage or injury to the Property, Improvements or other property described above or any part of them or breach of warranty in connection with the Property or Improvements, including causes of action arising in tort, contract, fraud or concealment of material facts; together with

(f) all books and records pertaining to any or all of the Property described above, including computer-readable memory and any computer hardware and software necessary to access and process such material; together with

(g) The Property to the extent not included in clauses (a) through (f) above.

Section 1.2 Secured Obligations

Trustor makes the grant, conveyance, transfer and assignment set forth in Section 1.1 and grants the security interest set forth in Section 1.2 for the purpose of securing the following obligations ("Secured Obligations") in the order of priority that Beneficiary determines:

(a) Payment of the indebtedness evidenced by that certain Acquisition and Predevelopment Loan Promissory Note Secured by Deed of Trust ("Note") of Trustor ("Borrower" therein) of the same date as this Deed of Trust in the principal amount of ONE MILLION THREE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$1,350,000) ("Note"), payable to Beneficiary ("Lender" therein) or to order, and all extensions, modifications or renewals of that Note; and

(b) Payment of the interest, if any, on that indebtedness according to the terms of the Note; and

(c) Payment of all other sums (with interest as provided in this Deed of Trust) becoming due and payable to Beneficiary or Trustee pursuant to the terms of this Deed of Trust; and

(d) Performance of every obligation contained in this Deed of Trust, the Note, any instrument now or later evidencing or securing any indebtedness secured by this Deed of Trust, and that certain Affordable Housing Loan Agreement, dated _____, 2021, executed by and between Trustor ("Borrower" therein) and Beneficiary ("Lender" therein), and any agreements, supplemental agreements, or other instruments of security executed by Trustor as of the same date as this Deed of Trust or at any time subsequent to the date of this Deed of Trust for the purpose of further securing any indebtedness secured by this Deed of Trust or any part of it, or

for the purpose of supplementing or amending this Deed of Trust or any instruments secured by this Deed of Trust; and

(e) Payment of all other obligations owed by Trustor to Beneficiary that by their terms recite that they are secured by this Deed of Trust, including those incurred as primary obligor; and

(f) Performance of every obligation contained in the Affordable Housing Loan Agreement; and

(g) Performance of every obligation contained in any other Security Document or the Loan Documents as defined below, including all modifications, amendments, extensions and renewals, however evidenced, of any of the Secured Obligations.

Section 1.3 Certain Defined Terms

As used in this Deed of Trust the following terms will have the following meanings:

Affordable Housing Loan Agreement: The Affordable Housing Loan Agreement referenced in Section 1.2.

Assignment of Leases: The assignment of Lessor's interest in leases and Seller's interest in contracts for sale dated as of the same date as this Deed of Trust executed by Trustor in favor of Beneficiary.

Collateral: The Collateral as defined in Section 9.1 of this Deed of Trust.

Default Rate: A rate of interest per annum equal to the greater of either (i) ten percent (10%) per annum; or, (ii) the federal discount rate plus five percent (5%), where the federal discount rate is defined as the primary credit rate established by the Federal Reserve Bank of San Francisco on advances to member banks on the most recent effective date preceding the earlier of the date the Loan was executed or the date the Loan was funded to Trustor as Borrower under the Note.

Hazardous Substance: Any and all of the following:

(a) any oil, petroleum, petroleum by-product, 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 Property or to persons on the Property; or

(ii) causes the Property to be in violation of any Hazardous Substance Law as defined below;

(b) asbestos in any form or condition;

(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 waste,” “hazardous material,” “extremely hazardous waste,” “restricted hazardous waste,” or “toxic substance” 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 Section 726.5, as amended from time to time, Code of Civil Procedure Section 736, as amended from time to time, and Civil Code Section 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 Property or the owners or occupants of property adjacent to or surrounding the Property, or any other person coming on the Property or any adjacent property; and

(h) any other chemical, material, or substance that may pose a hazard to the environment. For purposes of this definition, the term “Hazardous Substance” shall not include substances which meet prevailing industry standards for non-toxicity at the time of use, are used, handled, and disposed of in accordance with accepted and legal standards and practices at the time of use, handling and disposal, and are: (i) used for maintenance of buildings and grounds; (ii) used for routine household maintenance and cleaning; or (iii) used in the conduct of routine office and administrative activities.

Hazardous Substance Claim: Any enforcement, cleanup, removal, remedial, or other governmental, regulatory, or private action, agreements, consent decrees or orders threatened, instituted, or completed pursuant to any Hazardous Substance Law, together with all claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost-recovery compensation, loss, or injury resulting from the presence, release, or discharge of any Hazardous Substance.

Hazardous Substance Law: 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 Property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”) [42 USCA Sections 9601 et seq.], as amended from time to time; the Hazardous Substances Transportation Act [49 USCA Sections 1801 et seq.], as amended from time to time; the Resource Conservation and Recovery Act (“RCRA”) [42 USCA Sections 6901 et seq.], as amended from time to time, the Federal Water Pollution Control Act [33 USCA Sections 1251 et seq.], as amended from time to time; the Hazardous Substance Account Act [California Health and Safety Code Sections 25300 et seq.], as amended from time to time; the Hazardous Waste Control Law [California Health and Safety Code Section 25100 et seq.], as amended from time to time; the Medical Waste Management Act [California Health and Safety Code Sections 25015 et seq.], as amended from time to time; and the Porter-Cologne Water Quality Control Act [Water Code Sections 13000 et seq.], as amended from time to time.

Impositions: All real estate, possessory interest and personal property taxes and other taxes and assessments, water and sewer rates and charges, and all other federal, state, county

or local governmental charges and any interest or costs or penalties with respect to those charges, assessments, or taxes, ground rent and charges for any easement or agreement maintained for the benefit of the Property, general and special, ordinary and extraordinary, foreseen or unforeseen, of any kind that at any time prior to or after the execution of the Loan Documents may be assessed, levied, imposed, or become a lien on the Property or the rent of income received from the Property, or any use or occupancy of the Property; and any charges, expenses, payments, or assessments of any nature, if any, that are or may become a lien on the Property or the rent or income received from the Property.

Impound Account: The account, if any, that Trustor may be required to maintain pursuant to Section 4.4(c) of this Deed of Trust for the deposit of amounts required to pay Impositions and insurance premiums.

Indebtedness: The principal of and interest on, and all other amounts, payments, and premiums due under, the Note and any extensions or renewals (including, without limitation, extensions or renewals at a different rate of interest, regardless of whether evidenced by a new or additional promissory note or notes), and all other indebtedness of Trustor to Beneficiary under or secured by the Security Documents, together with all other sums owed by Trustor to Beneficiary, including those incurred as primary obligor or as guarantor, that recite that they are secured by the Security Documents.

Land: The real property commonly known as 408 West Mission Boulevard, Pomona, California, and more particularly described in Exhibit "A".

Loan: The predevelopment loan from Beneficiary to Trustor in the amount of ONE MILLION THREE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$1,350,000), as evidenced by the Note.

Loan Documents: The Note, the Affordable Housing Loan Agreement, this Deed of Trust, the Assignment of Contracts and Plans, dated _____, 2021, and executed by Trustor ("Developer" therein), and all other documents, whether referenced herein or not (including guaranties), evidencing, securing, or relating to the Loan.

Loan Party or Loan Parties: Trustor and any guarantors of the Loan or any obligations under the Loan, together with their respective affiliates and their respective employees, representatives, agents.

Material Adverse Change: Any change in:

- (a) the business or properties or condition (financial or otherwise) of Trustor;
- (b) the condition or operation of the Property; or
- (c) the business or properties or condition, financial or otherwise, of a guarantor; that has or could have, in Beneficiary's reasonable judgment, a material and adverse effect on the payment and performance of the Secured Obligations granted herein.

Note: The Note as defined in Section 1.2.

Obligations: All of the covenants, promises, and other obligations, including the Secured Obligations defined in Section 1.2, other than the Indebtedness:

(a) made or owing by Trustor to or due to Beneficiary under or as set forth in the Loan Documents; and

(b) made or owing by Trustor to every other Person, a breach of which would or may affect Trustor's ownership, development, use or operation of the Property.

Person: Any natural person, corporation, firm, association, government, governmental agency, or any other entity, whether acting in an individual, fiduciary, or other capacity.

Property: The Land together with:

(a) all rights, privileges, tenements, hereditaments, rights-of-way, easements, and appurtenances of the Land, and all right, title, and interest of Trustor in any streets, ways, alleys, strips, or gores of land adjoining the Land; and

(b) all of Trustor's right; title, and interest in the Land, including any award for any change of grade of streets affecting the Land.

Receiver: Any trustee, receiver, custodian, fiscal agent, liquidator, or similar officer.

Release: Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of Hazardous Substances that goes into the soil, surface water, or groundwater of the Property, whether or not caused by, contributed to, permitted by, acquiesced to, or known to Trustor.

Security Documents: This Deed of Trust and all other documents now or later securing any part of the payment of the Indebtedness or the observance or performance of the Obligations.

Title Policy: The title insurance policy issued by Chicago Title Company to Beneficiary.

ARTICLE 2. WARRANTY OF TITLE.

Trustor warrants that:

(a) Trustor is or upon close of escrow will be the lawful owner of the Property and possess and hold fee title to all of the Property;

(b) Trustor will maintain and preserve the lien of this Deed of Trust until the Indebtedness has been paid in full;

(c) Trustor has good, right, and lawful authority to grant the Property as provided in this Deed of Trust; and

(d) Trustor will forever warrant and defend the grant made in this Deed of Trust against all claims and demands, except as are specifically set forth in this Deed of Trust.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES.

Trustor covenants, represents and warrants to Beneficiary that as of the date of this Deed of Trust:

Section 3.1 Organization of the Loan Parties

(a) Trustor is a California nonprofit public benefit corporation, duly organized, validly existing, and in good standing under the laws of the State of California and is qualified to do business in California;

(b) Trustor has the requisite power and authority to own and manage its properties, to carry on its business as it is now being conducted, and to own, develop, and operate the Property;

(c) Trustor is qualified to do business in every jurisdiction in which the nature of its business or its properties makes qualification necessary; and

(d) Trustor is in compliance with all laws, regulations, ordinances, and orders of public authorities applicable to it.

Section 3.2 Validity of Documents

(a) The execution, delivery, and performance by the Loan Parties of the Loan Documents, the borrowing evidenced by the Loan Note: (i) are within the power of the Loan Parties; (ii) have been duly authorized by all requisite corporate or partnership actions, as appropriate; (iii) have received all necessary governmental approvals; and (iv) will not violate any provision of law, any order of any court or agency of government, the charter documents of any Loan Party, or any indenture, agreement, or any other instrument to which any Loan Party is a party or by which any Loan Party or any of its property is bound, or by which the Property is bound, nor will they conflict with, result in a breach of, or constitute (with due notice and lapse of time) a default under any indenture, agreement, or other instrument, or result in the creation or imposition of any lien, charge, or encumbrance of any nature on any of the property or assets of any Loan Party, except as contemplated by the provisions of the Loan Documents.

(b) Each of the Loan Documents, when executed and delivered to Beneficiary, will constitute a valid obligation, enforceable in accordance with its terms.

Section 3.3 Financial Statements

(a) All financial statements and data that have been given to Beneficiary with respect to any Loan Party: (i) are complete and correct in all respects; (ii) accurately and fully present the financial condition of that Loan Party on each date as of which they have been furnished, and accurately and fully present the results of the operations of that Loan Party for the periods for which they have been furnished; and (iii) have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered;

(b) All balance sheets and the notes with respect to the Loan Parties furnished to Beneficiary disclose all liabilities of the Loan Parties, fixed and contingent, as of their respective dates, as well as all obligations of those Loan Parties under any guaranties, loan applications or other agreements of the Loan Parties;

(c) There has been no Material Adverse Change in the financial condition or operations of Trustor since: (i) the date of the most recent financial statement given to Beneficiary with respect to Trustor of the Property; or (ii) the date of the financial statements given to Beneficiary immediately prior to the date of this Deed of Trust, other than changes in the ordinary course of business, none of which constitute a Material Adverse Change, either individually or in the aggregate.

Section 3.4 Use of Proceeds

Trustor shall use the funds advanced pursuant to the Note solely to acquire and develop the Property, in a manner consistent with the Loan Documents, and the Security Documents.

Section 3.5 No Other Arrangements

Trustor is not a party to any agreement or instrument materially and adversely affecting Trustor's present or proposed business, properties, assets, operation, or condition, financial or otherwise, and Trustor is not in default in the performance, observance, or fulfillment of any of the material obligations, covenants, or conditions in any agreement or instrument to which Trustor is a party that materially affect Trustor's present or proposed business, properties, assets, operation, or condition, financial or otherwise.

Section 3.6 Other Information

All other reports, papers, data, and information given to Beneficiary with respect to Trustor and the Property are accurate and correct in all respects and complete insofar as completeness may be necessary to give Beneficiary a true and accurate knowledge of the subject matter.

Section 3.7 No Litigation Pending

There is not now pending against or affecting any Loan Party, nor to the knowledge of any Loan Party is there threatened, any action, suit, or proceeding at law or in equity or before any administrative agency that, if adversely determined, would materially impair or affect: (a) the financial condition or operations of Trustor; or (b) the condition or operation of the Property.

Section 3.8 Taxes

Trustor has filed or will file all federal, state, county, and municipal income tax returns required to have been filed and has paid all taxes that have become due pursuant to those returns or pursuant to any assessments received by Trustor; and Trustor does not know of any basis for any additional assessment against Trustor in respect of those taxes.

Section 3.9 Compliance with Laws

The Property and the proposed use of the Property comply with all applicable laws, ordinances, rules, agreements, and regulations (including, but not limited to, the Americans With Disabilities Act) of all local, regional, county, state, and federal governmental authorities having jurisdiction, and there is no action or proceeding pending or, to the knowledge of Trustor after due inquiry, threatened before any court, quasi-judicial body or administrative agency at the time of any disbursement by Beneficiary relating to the validity of the loan or the proposed or

actual use of the Property. All rights to appeal any decision rendered will have expired prior to the date of this Deed of Trust.

ARTICLE 4. AFFIRMATIVE COVENANTS.

Until the entire Indebtedness has been paid in full, Trustor covenants to and agrees with Beneficiary as follows:

Section 4.1 Obligations of Trustor

Trustor shall pay the Indebtedness and Trustor shall continue to be liable for the payment of the Indebtedness until it has been paid in full or repayment has been forgiven by Beneficiary. In addition, Trustor:

(a) shall timely perform all the covenants, agreements, terms, and conditions to be performed by Trustor including but not limited to the Secured Obligations: (i) under this Deed of Trust; (ii) as seller under each contract of sale of, and as lessor under each lease of any portion of the Property for which a contract of sale or lease has been approved in writing by Beneficiary; (iii) as required of Trustor under each document and agreement constituting one of the Security Documents; (iv) under all other agreements between Trustor and Beneficiary in accordance with the respective terms of those agreements; and (v) as required of Trustor under all other agreements to which Trustor is a party with respect to the Property;

(b) shall not cancel, surrender, modify, amend, or permit the cancellation, surrender, modification, or amendment of any of the previously mentioned agreements or any of the covenants, agreements, terms, or conditions contained in any of them without the prior written consent, in each case, of Beneficiary; and

(c) shall keep Beneficiary indemnified against all actions, proceedings, costs, claims, and damages incurred or sustained by Beneficiary in respect of the nonpayment of any charges or the nonobservance or nonperformance of any of the covenants, agreements, management agreements, terms, or conditions in accordance with the provisions of the previously mentioned agreements.

Section 4.2 Insurance

Trustor, at its sole cost and expense, shall maintain insurance in accordance with the Trustor Insurance Requirements set forth in Exhibit "B" attached hereto.

Section 4.3 Maintenance, Waste, and Repair

(a) Trustor shall maintain the Property in good repair.

(b) Except in connection with the demolition and construction contemplated herein, Trustor shall not alter the Property without the prior written consent of Beneficiary.

(c) Trustor shall not permit or allow any waste of the Property or make any change in the use of the Property that will in any way increase any ordinary fire or other hazard insurance premiums or permit anything that may in any way impair the security of this Deed of Trust.

(d) Trustor shall not abandon the Property or leave the Property unprotected.

(e) Trustor shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value.

Section 4.4 Imposition, Taxes and Impounds

(a) Trustor shall pay prior to delinquency all taxes, fees, assessments, charges, and levies imposed by any public authority or utility company that are or may become a lien affecting the Security. However, Trustor shall not be required to pay and discharge any such tax, assessment, charge, or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings and (b) Trustor maintains reserves adequate to pay any contested liabilities.

(b) Impositions Affecting the Property. Trustor shall immediately discharge any lien on the Property which Beneficiary has not consented to in writing or obtain a bond for such lien to Beneficiary's reasonable satisfaction. Trustor shall pay when due all Impositions that are or that may become a lien on the Property or are assessed against the Property or its rents, royalties, profits, and income.

(c) Taxes Affecting Trustor. Trustor shall file all federal, state, county, and local income and gross receipts tax returns required to be filed and shall pay all taxes that become due pursuant to the returns or pursuant to any assessments received by Trustor. Trustor shall provide receipts for such taxes pursuant to the provisions of Section 4.12.

(d) Impounds; Impound Account. Commencing at close of escrow and continuing for the life of the loan, Trustor shall set aside on a monthly basis an amount equal to one-twelfth (1/12) of the annual cost of taxes and assessments on the Property together with insurance premiums. Trustor shall pay all taxes, assessments and insurance premiums as and when they become due. The amounts to be deposited may be adjusted from time to time by the City on the basis of actual expenses incurred for these purposes. Any interest accruing on funds so deposited shall accrue to the benefit of Trustor.

Section 4.5 Compliance with Law

Trustor shall preserve and keep in full force its existence, rights, and powers. Trustor shall promptly and faithfully comply with all present and future laws, ordinances, rules, regulations, and requirements of every governmental authority or agency, and of every board of fire underwriters (or similar body exercising similar functions) having jurisdiction that may be applicable to it or relates to the Property or to the use, possession, operation, maintenance, alteration of the Property, whether the law, ordinance, rule, order, regulation, or requirement necessitates structural changes or improvements or interferes with the use or enjoyment of the Property.

Section 4.6 Books and Records

Trustor shall maintain complete books of account and other records reflecting the results of Trustor's operations (both in conjunction with its other operations as well as its operation of the Property), in a form satisfactory to Beneficiary and shall furnish to Beneficiary any information about the financial condition of Trustor.

Section 4.7 Further Assurances

Trustor, at Trustor's expense and at any time on the reasonable request of Beneficiary, shall execute, acknowledge, and deliver any additional papers and instruments (including, without limitation, a declaration of no offsets) and any further assurances of title and shall do or cause to be done all further acts and things that may be proper or reasonably necessary to carry out the purpose of this Deed of Trust and of the Loan Documents and to subject to the liens any property intended to be so covered, including any additions, substitutions, replacements, or betterments of such property; provided however, such instruments and assurances shall not change the terms of the transaction or expand the liability of the parties hereunder.

Section 4.8 Statement by Trustor

Trustor, on ten (10) days' written request, shall furnish a statement of the amount due or outstanding on the Note and a statement of any offsets, counterclaims, or defenses to the payment.

Section 4.9 Indemnity

(a) If any action or proceeding (whether judicial, regulatory or administrative) is threatened or commenced, except an action to foreclosure this Deed of Trust or to collect the Indebtedness: (i) that affects the Property or any portion of it; (ii) in which Beneficiary is or could be made a party; or (iii) in which it becomes necessary to defend or uphold the lien of this Deed of Trust, then all costs, fees, and expenses incurred by Beneficiary with respect to the action or proceeding (including, without limitation, attorney's fees and expenses) shall, within ten (10) days after the submission of bills for the costs to Trustor, be paid directly to the billing party by Trustor.

(b) In addition, Trustor agrees to pay all costs, including, without limitation, reasonable attorney fees and expenses, incurred by Beneficiary in enforcing the terms of this Deed of Trust or the terms of any of the Loan Documents, whether or not suit is filed.

(c) Trustor agrees to indemnify Trustee and Beneficiary and hold them harmless from all liability, loss, damage, claims, causes of action, judgments, court costs, reasonable attorney fees and other legal expenses, costs of evidence of title or evidence of value and such other costs or expenses that may be incurred:

(i) under this Deed of Trust;

(ii) in connection with the making of any of the loans, grants, or financial arrangements secured by this Deed of Trust; and

(iii) in the enforcement of any of Beneficiary's rights or remedies; in any action taken by Beneficiary under this Deed of Trust or in connection with any claims or demands that may be asserted against Beneficiary arising out of the Collateral regardless of the active or passive negligence of Beneficiary; provided however, that Trustor shall not be required to indemnify Beneficiary for Beneficiary's negligence, gross negligence or willful acts of misconduct.

(d) On the failure of Trustor to make timely payment pursuant to the terms of Section 4.9(a) of this Deed of Trust, the payment may be paid by Beneficiary. Sums of money paid by Beneficiary, and sums owed to Beneficiary pursuant to Section 4.9(a) of this Deed of Trust, together with interest at the Default Rate from the date Beneficiary makes the payment or incurs the loss, shall be secured by this Deed of Trust, prior to any title or interest in or claim on the Property attaching or accruing subsequent to the lien of this Deed of Trust, and shall be payable by Trustor to Beneficiary on demand.

(e) Trustor shall pay all obligations to pay money arising under this Section 4.9 immediately upon demand by Trustee or Beneficiary.

(f) Notwithstanding the foregoing, nothing herein shall be deemed to result in the personal liability of the Trustor or its partners for repayment of the principal and/or interest under the Loan, and Beneficiary shall have no recourse for repayment of the principal and/or interest under the Loan; provided, however, that this provision shall not apply in the event of fraud, waste, or intentional damage, by Trustor or its partners, to the Property.

Section 4.10 Reimbursement

Beneficiary shall have the right to declare immediately due any amount paid by it for any tax, stamp tax or filing fee, assessment, water rate, sewer rate, insurance premium, repair, rent charge, debt, claim, inspection, or lien having priority over this Deed of Trust, or over any other agreement given to secure the Indebtedness.

Section 4.11 Notice of Litigation

Trustor shall, within three (3) business days, give written notice to Beneficiary of any litigation commenced or threatened affecting the Property other than unlawful detainer proceedings brought by Trustor.

Section 4.12 Tax Receipts

Subject to the provisions of Section 4.4 of this Deed of Trust, Trustor shall exhibit to Beneficiary, within seven (7) days after demand, bills (that will be receipted from and after the date receipted bills are obtainable) showing the payment to the extent then due of all taxes, assessment (including those payable in periodic installments), water rates, sewer rates, or any other Imposition that may have become a lien on the Property or any Personalty prior to the lien of this Deed of Trust.

Section 4.13 Duplicate Plans

Trustor shall submit to Beneficiary a duplicate set of plans and specifications for approval, which approval shall not unreasonably be withheld, before any material improvements, repairs or alterations are begun that affect the Property.

Section 4.14 Additional Information

Trustor shall furnish to Beneficiary, within seven (7) days after written request, all information that Beneficiary may request concerning the performance by Trustor of the covenants of the Loan Documents; and Trustor shall permit Beneficiary or its representatives at all reasonable times to make investigation or examination concerning that performance.

Section 4.15 Right of Entry

Trustor grants to Beneficiary and its agents, employees, consultants, and contractors the right to enter on the Property for the purpose of making any inspections, reports, tests (including, without limitation, environmental assessment tests, soils borings, groundwater testing, wells, or soils analysis), inquiries, and reviews that Beneficiary, in its sole and absolute discretion, and at Beneficiary's expense, deems necessary to assess the then current condition of the Property. Trustor's consent shall not be required for entry or for the performance of tests. Beneficiary shall provide Trustor with at least one business day's prior written notice of the entry to the common areas of the Property and at least three (3) days prior notice to enter individual unit. Beneficiary shall endeavor not to materially interfere with the Trustor's operations on the Property. Beneficiary shall be responsible for any damage or injury sustained as a result of the Beneficiary's negligence. In the event such inquiry identifies a default of a secured obligation, all costs, fees, and expenses (including, without limitation, those of Beneficiary's attorneys and consultants) incurred by Beneficiary with respect to the inspections, reports, tests, inquiries, and reviews, together with all related preparation, consultation, analyses, and review, shall be paid by Trustor to Beneficiary on demand, shall accrue interest at the Default Rate until paid, and shall be secured by this Deed of Trust, prior to any right, title, or interest in or claim on the Property attaching or accruing subsequent to the lien of this Deed of Trust.

ARTICLE 5. NEGATIVE COVENANTS.

Trustor covenants to and agrees with Beneficiary as follows:

Section 5.1 Restrictive Uses

Trustor covenants not to initiate, join in, or consent to any change in any deed restriction, zoning ordinance, private restrictive covenant, assessment proceedings, or other public or private restriction limiting or restricting the uses that may be made of the Property or any part of it without the prior written consent of Beneficiary.

Section 5.2 Other Financing

Except for the liens securing the Indebtedness, Trustor shall not create or permit to continue in existence any mortgage, pledge, encumbrance, lien, or charge of any kind (including purchase money and conditional sale liens) on any of the Property except for: (i) liens for taxes not yet delinquent; and (ii) any other liens or charges that are specifically approved in writing by Beneficiary prior to their recordation.

Any transaction in violation of this Section shall cause all Indebtedness, irrespective of the maturity dates, at the option of the holder and without demand or notice, to immediately become due, together with any prepayment premium in accordance with the terms of the Note.

Section 5.3 Prohibition Against Transfer

One of the inducements to Beneficiary for making the Loan is the identity of Trustor. The existence of any interest in the Property other than the interests of Trustor and Beneficiary and any encumbrance permitted in this Deed of Trust, even though subordinate to the security interest of Beneficiary, and the existence of any interest in Trustor other than those of the present owners, would impair the Property and the security interest of Beneficiary; and,

therefore, Trustor shall not sell, convey, assign, transfer, alienate, or otherwise dispose of its interest in the Property, either voluntarily or by operation of law, or agree to do so, without the prior written consent of Beneficiary, which may be withheld in Beneficiary's sole and complete discretion. Consent to one transaction by Beneficiary will not be deemed a waiver of the right to require consent to further or successive transactions. When Trustor is a corporation, any sale, transfer, or disposition of fifty percent (50%) or more of the voting stock of Trustor or of any corporation that directly or indirectly owns or controls Trustor, including, without limitation, the parent company of Trustor and the parent company of the parent company of Trustor, shall constitute a sale of the Property for purposes of this Section. When Trustor is a partnership, any change or addition of a general partner of Trustor, change of a partnership interest of Trustor, or sale, transfer, or disposition of fifty percent (50%) or more of the voting stock or partnership interest of any partner of Trustor or of any corporation or partnership that directly or indirectly owns or controls any partner of Trustor, including, without limitation, each parent company of a partner of Trustor and each parent company of any parent company of a partner of Trustor, shall constitute a sale of the Property for purposes of this Section. Any transaction in violation of this Section shall cause all Indebtedness, irrespective of the maturity dates, at the option of the holder and without demand or notice, immediately to become due, in accordance with the terms of the Note.

In the event that Trustor, without the prior written consent of the Beneficiary, sells, agrees to sell, transfers, or conveys its interest in the Security or any part thereof or interest therein, Beneficiary may at its option declare all sums secured by this Deed of Trust to be immediately due and payable. This option shall not apply in the case of:

- (a) the grant of a tenant, leasehold, or fee interest to qualifying households who will occupy Project units as provided for under the Loan Documents and the Regulatory Agreement; or
- (b) sale or transfer of fixtures or personal property pursuant to the grant provisions in this Deed of Trust.

Consent to one sale or transfer shall not be deemed to be a waiver of the right to require such consent to future or successive transactions.

ARTICLE 6. ENVIRONMENTAL PROVISIONS.

Section 6.1 Representations and Warranties

Except as disclosed in writing as set forth in the Phase I Environmental Report, to the best of its knowledge Trustor represents and warrants to Beneficiary that:

- (a) after diligent inquiry, Trustor has no knowledge of or reason to believe that there has been: (i) any use, generation, manufacture, storage, treatment, disposal, Release, or threatened Release of any Hazardous Substance by any prior owners or prior occupants of the Property or by any third parties onto the Property; or (ii) any actual or threatened litigation or claims of any kind by any person relating to these matters;
- (b) no Hazardous Substances in excess of permitted levels or reportable quantities under applicable Hazardous Substance Laws are present under, in or about the Property or any nearby real property that could migrate to the Property;

- (c) no Release or threatened Release exists or has occurred;
- (d) no underground storage tanks of any kind are or ever have been located in or about the Property;
- (e) the Property and all operations and activities at, and the use and occupancy of, the Property, comply with all applicable Hazardous Substance Laws;
- (f) Trustor shall use the Property in strict compliance with every permit, license, and approval required by all applicable Hazardous Substance Laws for all activities and operations at, and the use and occupancy of, the Property;
- (g) to the best of Trustor's knowledge, after diligent inquiry, there are no Hazardous Substance Claims pending or threatened with regard to Property or against Trustor or any Guarantor;
- (h) to the best of its knowledge after diligent inquiry, there exists no occurrence or condition on any real property adjoining or within 2,000 feet of the Property that would cause the Property or any part of it to be designated as "hazardous waste property" or "border zone property" under the provisions of Health and Safety Code § 25220 et seq. and any regulation adopted in accordance with that section; and
- (i) any written disclosure submitted by or on behalf of Trustor to Beneficiary concerning any Release or threatened Release, past or present compliance by Trustor, any user of any Hazardous Substance or any Hazardous Substance Laws applicable to the Property, the past and present use and occupancy of the Property and any environmental concerns relating to the Property was true and complete when submitted and continues to be true and correct as of the date of this Deed of Trust.

Section 6.2 Covenants

Trustor covenants and agrees, except in the ordinary course of business and as permitted under all applicable Hazardous Substance Laws, as follows:

- (a) not to cause or permit the Property to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation, or presence of any Hazardous Substance;
- (b) not to cause, contribute to, permit, or acquiesce in any Release or threatened Release;
- (c) not to change or modify the use of the Property without the prior written consent of Beneficiary;
- (d) to comply with and to cause the Property and every user of the Property to comply with all Hazardous Substance Laws;
- (e) to immediately notify Beneficiary in writing and to provide Beneficiary with a reasonably detailed description of: (i) any noncompliance of the Property with any Hazardous Substance Laws; (ii) any Hazardous Substance Claims; (iii) any Release or threatened Release; and (iv) the discovery of any occurrence or condition on any real property adjoining or in the

vicinity of the Property that would cause the Property or any part of it to be designated as “hazardous waste property” or “border zone property” under the provisions of Health and Safety Code §25220 et seq. and any regulation adopted in accordance with that section;

(f) in the event that Trustor discovers a Release or the presence of any Hazardous Substance on or about the Property in violation of any Hazardous Substance Law, to: (i) notify Beneficiary of that discovery together with a reasonably detailed description; (ii) promptly after a request by Beneficiary, engage a qualified environmental engineer reasonably satisfactory to Beneficiary to investigate these matters and prepare and submit to Beneficiary a written report containing the findings and conclusions resulting from that investigation, all at the sole expense of Trustor; and (iii) take, at Trustor’s sole expense, all necessary actions to remedy, repair, clean up, or detoxify any Release or Hazardous Substance, including, but not limited to, any remedial action required by any Hazardous Substance Laws or any judgment, consent, decree, settlement, or compromise in respect of any Hazardous Substance Claims, these actions to be performed in accordance with Hazardous Substance Laws, in a good and proper manner, under the supervision of a qualified environmental engineer approved in writing by Beneficiary, in accordance with plans and specifications for these actions approved in writing by Beneficiary, and using licensed and insured qualified contractors approved in writing by Beneficiary;

(g) immediately furnish to Beneficiary copies of all written communications received by Trustor from any governmental authority or other person or given by Trustor to any person and any other information Beneficiary may reasonably request concerning any Release, threatened Release, Hazardous Substance Claim, or the discovery of any Hazardous Substance on or about the Property in violation of any Hazardous Substance Law; and

(h) keep Beneficiary generally informed regarding any Release, threatened Release, Hazardous Substance Claim, or the discovery of any Hazardous Substance on or about the Property in violation of any Hazardous Substance Law.

Section 6.3 Inspection and Receivership Rights

Upon Beneficiary’s reasonable belief of the existence of a past or present Release or threatened Release not previously disclosed by Trustor in connection with the making of the Loan or the execution of this Deed of Trust or upon Beneficiary’s reasonable belief that Trustor has failed to comply with any environmental provision of this Deed of Trust or any other Loan Document and upon reasonable prior notice (except in the case of an emergency) to Trustor, Beneficiary or its representatives, employees, and agents, may from time to time and at all reasonable times (or at any time in the case of an emergency) enter and inspect the Property and every part of it (including all samples of building materials, soil, and groundwater, and all books, records and files of Trustor relating to the Property) and perform those acts and things that Beneficiary reasonably deems necessary or desirable to inspect, investigate, assess and protect the security of this Deed of Trust for the purpose of determining:

(a) the existence, location, nature, and magnitude of any past or present Release or threatened Release;

(b) the presence of any Hazardous Substances on or about the Property in violation of any Hazardous Substance Law; and

(c) the compliance by Trustor of every environmental provision of this Deed of Trust and every other Loan Document. In furtherance of the purposes above, without limitation of any

of its other rights, Beneficiary may: (i) obtain a court order to enforce Beneficiary's right to enter and inspect the Property under Civil Code § 2929.5, to which the decision of Beneficiary as to whether there exists a Release, a threatened Release, any Hazardous Substance on or about the Property in violation of any Hazardous Substance Law, or a breach by Trustor of any environmental provision of this Deed of Trust or any other Loan Document, shall be deemed reasonable and conclusive as between the parties; and (ii) have a receiver appointed under Code of Civil Procedure ' 564 to enforce Beneficiary's right to enter and inspect the Property for the purpose set forth above.

All costs and expenses incurred by Beneficiary with respect to the audits, tests, inspections, and examinations that Beneficiary or its agents, representatives, or employees may conduct, including the fees of the engineers, laboratories, contractors, consultants, and attorneys, shall be paid by Trustor immediately upon demand of Beneficiary. All costs or expenses incurred by Trustee and Beneficiary pursuant to this Section (including without limitation court costs, consultant's fees, and attorney fees, whether before or after judgment) shall bear interest at the Default Rate from the date they are incurred until those sums have been paid in full. Except as provided by law, any inspections or tests made by Beneficiary or its representatives, employees, and agents shall be for Beneficiary's purposes only and shall not be construed to create any responsibility or liability on the part of Beneficiary to Trustor or to any other person. Beneficiary shall have the right, but not the obligation, to communicate with any governmental authority regarding any fact or reasonable belief of Beneficiary that constitutes or could constitute a breach of any of Trustor's obligations under any environmental provision contained in this Deed of Trust or any Loan Document.

Nothing in this Section shall preclude any of the post-default inspection rights set forth in Section 8.7.

Section 6.4 Release and Indemnity

Trustor:

(a) releases and waives any future claims against Beneficiary for indemnity or contribution in the event Trustor becomes liable for cleanup or other costs under any Hazardous Substance Law or under any Hazardous Substance Claim;

(b) agrees to reimburse Beneficiary, on demand, for all costs and expenses incurred by Beneficiary in connection with any review, approval, consent, or inspection relating to the environmental provisions in this Deed of Trust together with interest, after demand, at the Default Rate; and

(c) agrees to indemnify, defend, and hold Beneficiary and Trustee harmless from all losses, costs, claims, damages, penalties, liabilities, causes of action, judgments, court costs, attorney fees and other legal expenses, costs of evidence of title, cost of evidence of value, and other expenses (collectively, "Expenses"), including, but not limited to, any Expenses incurred or accruing after the foreclosure of the lien of this Deed of Trust, which either may suffer or incur and which directly or indirectly arises out of or is in any way connected with the breach of any environmental provision either in this Deed of Trust or in any Loan Document or as a consequence of the presence, use, generation, manufacture, storage, disposal, transportation, Release or threatened Release of any Hazardous Substance on or about the Property, including the soils and groundwaters, caused or permitted by Trustor, any prior owner or operator of the Property, any adjoining landowner or any other party, including, without limitation, the cost of

any required or necessary repair, cleanup, remedy or detoxification of any Hazardous Substance and the preparation of any closure, remedial action, or other required plans, whether that action is required or necessary by reason of acts or omissions occurring prior to or following the recordation of this Deed of Trust. Trustor's obligations shall survive the satisfaction, release, or cancellation of the Indebtedness, the release and reconveyance or partial release and reconveyance of this Deed of Trust, and the foreclosure of the lien of this Deed of Trust or deed in lieu of foreclosure on the Deed of Trust.

Section 6.5 Request for Information

Trustor and Beneficiary agree that:

(a) this Section is intended as Beneficiary's written request for information and Trustor's written response concerning the environmental condition of the Property as provided by Code of Civil Procedure § 726.5; and

(b) each representation, warranty, covenant or indemnity made by Trustor in this Section or in any other provision of this Deed of Trust or any Loan Document that relates to the environmental condition of the Property is intended by Trustor and Beneficiary to be an "environmental provision" for purposes of Code of Civil Procedure § 736 and shall survive the payment of the Indebtedness and the termination or expiration of this Deed of Trust and shall not be affected by Beneficiary's acquisition of any interest in the Property, whether by full credit bid at foreclosure, deed in lieu of that, or otherwise. If there is any transfer of any portion of Trustor's interest in the Property, any successor-in-interest to Trustor agrees by its succession to that interest that the written request made pursuant to this Section shall be deemed remade to the successor-in-interest without any further or additional action on the part of Beneficiary and that by assuming the debt secured by this Deed of Trust or by accepting the interest of Trustor subject to the lien of this Deed of Trust, the successor remakes each of the representations and warranties in this Deed of Trust and agrees to be bound by each covenant in this Deed of Trust, including, but not limited to, any indemnity provision.

Section 6.6 Effect of Site Assessment

Even though Trustor may have provided Beneficiary with an environmental site assessment or other environmental report together with other relevant information regarding the environmental condition of the Property, Trustor acknowledges and agrees that Beneficiary is not accepting the Property as security for the Loan based on that assessment, report, or information. Rather Beneficiary has relied on the representations and warranties of Trustor in this Deed of Trust, and Beneficiary is not waiving any of its rights and remedies in the environmental provisions of this Deed of Trust or any other Loan Document.

Section 6.7 Additional Rights and Obligations

The rights of Beneficiary and obligations of Trustor set forth in this Article 6 shall not preclude or supersede the exercise by Beneficiary of any of its rights or remedies set forth in Article 8 under the circumstances set forth in Article 8 permitting the exercise of those rights and remedies.

ARTICLE 7. CASUALTIES AND CONDEMNATION.

Section 7.0 Condemnation

Trustor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Property or any portion of it, shall notify Trustee and Beneficiary of the pendency of the proceedings. Trustee and Beneficiary may participate in any such proceedings, and Trustor from time to time shall deliver to Beneficiary all instruments requested by Beneficiary to permit participation. If there are condemnation proceedings, the award or compensation payable is assigned to and shall be paid to Beneficiary. Beneficiary shall be under no obligation to question the amount of any award or compensation and may accept it in the amount in which it is paid. In any condemnation proceedings, Beneficiary may be represented by counsel selected by Beneficiary. The proceeds of any award or compensation received shall, at the option of Beneficiary, be applied, without premium, to the prepayment of the Indebtedness.

ARTICLE 8. EVENTS OF DEFAULT AND REMEDIES OF BENEFICIARY.

Section 8.1 Events of Default, Notice and Cure Period

- (a) Each of the following events is an "Event of Default":
- (i) the failure, after notice and opportunity to cure as set forth below, to pay any sum when due under the Note or any other sum due under the Loan Documents;
 - (ii) the failure, after notice and opportunity to cure as set forth below, of any Loan Party to observe, perform, or discharge any obligation, term, covenant, or condition of the Loan Documents, any agreement relating to the Property, or any agreement or instrument between any Loan Party and Beneficiary, including, but not limited to the Note;
 - (iii) the entry of an order for relief under federal bankruptcy laws as to Trustor or the adjudication of Trustor as insolvent or bankrupt pursuant to the provisions of any state insolvency or bankruptcy act; the commencement by Trustor of any case, proceeding, or other action seeking any reorganization, arrangement, composition, adjustment, liquidation, dissolution, or similar relief for itself under any present or future statute, law, or regulation relating to bankruptcy, insolvency, reorganization, or other relief for debtors; Trustor's consent to, acquiescence in, or attempt to secure the appointment of, any Receiver of all or any substantial part of its properties or of the Property; Trustor's generally not paying its debts as they become due or admitting in writing its inability to pay its debts or making a general assignment for the benefit of creditors; or Trustor's taking of any action to authorize any of the acts set forth above in this Section;
 - (iv) any case, proceeding, or other action against Trustor is commenced, seeking to have an order for relief entered against it as a debtor or seeking any reorganization, arrangement, composition, adjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation relating to bankruptcy, insolvency, reorganization, or other relief for debtors, or seeking appointment of any Receiver for Trustor or for all or any substantial part of its property or for the Property, and that case, proceeding, or other action (A) results in the entry of an order for relief against it that is not fully stayed within seven (7) Business Days after the entry, or (B) remains undismissed for an aggregate of one hundred

twenty (120) days (whether or not consecutive); or the possibility that any portion of the Property would, by operation of law or otherwise, devolve on or pass to any Person other than Trustor and that situation continues and is not remedied by Trustor within thirty (30) days after the happening of the event;

(v) the assignment by Trustor, as lessor or sublessor, as the case may be, or the rents or the income of the Property or any part of it (other than Beneficiary) without first obtaining the written consent of Beneficiary;

(vi) the filing of any claim or lien against the Property or any part of it, whether or not the lien is prior to this Deed of Trust, and the continued maintenance of the claim or lien for a period of thirty (30) days without discharge, satisfaction, or adequate bonding in accordance with the terms of this Deed of Trust;

(vii) the existence of any interest in the Property other than those of Trustor, Beneficiary, and any tenants of Trustor; or

(viii) the sale, hypothecation, conveyance, or other disposition of the Property except in accordance with Sections 5.2 or 5.3 of this Deed of Trust, any of which shall be an Event of Default because Trustor's obligation to own and operate the Property is one of the inducements to Beneficiary to make the Loan;

(ix) any representation or warranty made by any Loan Party or any other Person under this Deed of Trust or in, under, or pursuant to the Loan Documents, is false or misleading in any material respect as of the date on which the representation or warranty was made and breach of such representation or warranty materially and adversely affects the security for the Loan;

(x) any of the Loan Documents, at any time after their respective execution and delivery and for any reason, cease to be in full force or are declared null and void, or the validity or enforceability of the Loan Documents is contested by any Loan Party or any stockholder or partner of any Loan Party, or any Loan Party denies that it has any or further liability or obligation under any of the Loan Documents to which it is a party;

(xi) any of the Security Documents, at any time after their respective execution and delivery and for any reason, cease to constitute valid and subsisting liens or valid and perfected security interests in and to the property purported to be subject to any of the Security Documents; or

(xii) the occurrence of any Material Adverse Change.

(b) Notice of Event of Default:

Prior to declaring an Event of Default, the Beneficiary shall give written notice thereof ("Notice of Default") to Trustor and to any lender who has requested such notice by certified mail addressed to Trustor at the address stated in this Deed of Trust and to any lender requesting such notice at the address set forth in the request for notice from such lender, or such other addresses as may have been designated by such parties from time to time in writing. The written Notice of Default shall specify the nature of the default, the remedial actions necessary to cure the default, and a reasonable time period (not less than the time periods set forth below) after receipt of the Notice of Default to commence remedial actions. If the default is

not cured to the reasonable satisfaction of the Beneficiary within the cure period, the Beneficiary may, without further prior notice, declare in writing an Event of Default under this Deed of Trust effective on the date of such declaration.

(c) Cure Period:

The following shall constitute the cure periods under this Deed of Trust:

(i) The cure period for the failure to pay a monetary obligation shall be ten (10) days after Beneficiary gives Trustor written notice of such failure to pay; and

(ii) The cure period for Trustor's failure to perform any non-monetary obligation shall be thirty (30) days after Beneficiary gives Trustor written notice of such failure to perform; provided, however, in the event Trustor cannot reasonably cure such failure within such thirty (30) day period, such failure shall not constitute an Event of Default hereunder so long as Trustor commences to cure such failure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion to the satisfaction of the Beneficiary.

(d) Beneficiary's Rights Upon Event of Default:

If an Event of Default occurs, then Beneficiary may declare all the Indebtedness to be due and the Indebtedness shall become due without any further presentment, demand, protest, or notice of any kind, and Beneficiary may:

(i) in person, by agent, or by a receiver, and without regard to the adequacy of security, the solvency of Trustor, or the existence of waste, enter on and take possession of the Property or any part of it in its own name or in the name of Trustee, sue for or otherwise collect the rents, issues and profits, and apply them, less costs and expenses of collection, including reasonable attorney's fees, upon the Indebtedness, all in any order that Beneficiary may determine. The entering on and taking possession of the Property, the collection of rents, issues and profits, and the application of them will not cure or waive any default or notice of default or invalidate any act done pursuant to the notice;

(ii) commence an action to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages of real property;

(iii) deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause the Property to be sold, which notice Trustee or Beneficiary shall cause to be filed for record;

(iv) with respect to any Personalty, proceed as to both the real and personal property in accordance with Beneficiary's rights and remedies in respect of the land, or proceed to sell the Personalty separately and without regard to the Land in accordance with Beneficiary's rights and remedies; or

(v) exercise any of these remedies in combination or any other remedy at law or in equity.

(e) Non-Recourse:

The parties intend that the Note secured by this Deed of Trust shall be a nonrecourse note. Therefore, the Beneficiary's remedy in an Event of Default under this Deed of Trust or the Note secured hereby shall be limited to foreclosure of the Property encumbered by this Deed of Trust or the exercise of power of sale and the other rights granted under this Deed of Trust, and the Beneficiary shall have no right to obtain a deficiency judgment after such foreclosure. This provision shall not apply in the event of Borrower's fraud, willful misrepresentation, misapplication of funds, waste or intentional damage to the Property.

Section 8.2 Power of Sale

(a) If Beneficiary elects to foreclose by exercise of the power of sale in this Deed of Trust, Beneficiary shall also deposit with Trustee this Deed of Trust, the Note, and any receipts and evidence of expenditures made and secured as Trustee may require. If notice of default has been given as then required by law, and the time that may be required by law to have lapsed has lapsed, after recordation of the notice of default, Trustee shall, without demand on Trustor and after notice of sale having been given as required by law, sell the Property at the time and place of sale fixed by it in the notice of sale, either as a whole or in separate parcels as Trustee determines, and in any order that it may determine, at public auction to the highest bidder. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time after that may postpone the sale by public announcement at the time fixed by the preceding postponement, and without further notice make the sale at the time fixed by the last postponement; or Trustee may, in its discretion, give a new notice of sale. Beneficiary may rescind any notice of default at any time before Trustee's sale by executing a notice of rescission and recording it. The recordation of the notice shall constitute a cancellation of any prior declaration of default and demand for sale and of any acceleration of maturity of Indebtedness affected by any prior declaration or notice of default. The exercise by Beneficiary of the right of rescission shall not constitute a waiver of any default then existing or subsequently occurring, or impair the right of Beneficiary to execute other declarations of default and demand for sale, or notices of default and of election to cause the Property to be sold, nor otherwise affect the Note or this Deed of Trust, or any of the rights, obligations, or remedies of Beneficiary or Trustee. After sale, Trustee shall deliver to the purchaser its deed conveying the property sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of their truthfulness. Any Person, including Trustor, Trustee, or Beneficiary, may purchase at that sale. If allowed by law, Beneficiary, if it is the purchaser, may turn in the Note at the amount owing on it toward payment of the purchase price (or for endorsement of the purchase price as a payment on the Note if the amount owing exceeds the purchase price). Trustor expressly waives any right of redemption after sale that Trustor may have at the time of sale or that may apply to the sale.

(b) Trustee, upon the sale, shall make (without any covenant or warranty, express or implied), execute and, after due payment made, deliver to a purchaser and its heirs or assigns a deed or other record of interest, as the case may be, to the Property sold, which shall convey to the purchaser all the title and interest of Trustor in the Property and shall apply the proceeds of the sale in payment:

(i) first, of the expenses of the sale together with the expenses of the trust, including, without limitation, attorney's fees, that shall become due on any default made by Trustor, and also any sums that Trustee or Beneficiary have paid for procuring a search of the title to the Property subsequent to the execution of this Deed of Trust; and

(ii) second, in payment of the Indebtedness then remaining unpaid, and the amount of all other monies with interest in this Deed of Trust agreed or provided to be paid by Trustor.

Trustee shall pay the balance or surplus of the proceeds of sale to Trustor and its successors or assigns as its interests may appear.

Section 8.3 Proof of Default

If there is a sale of the Property, or any part of it, and the execution of a deed for it, the recital of default and of the recording of notice of breach and election of sale, and of the elapsing of the required time between the recording and the following notice, and of the giving of notice of sale, and of a demand by Beneficiary that the sale should be made, shall be conclusive proof of the default, recording, election, elapsing of time, and the due giving of notice, and that the sale was regularly and validly made on proper demand by Beneficiary. Any deed with these recitals shall be effectual and conclusive against Trustor, its successors, and assigns, and all other Persons. The receipt for the purchase money recited in any deed executed to the purchaser shall be sufficient to discharge the purchaser from all obligations to see to the proper application of the purchase money.

Section 8.4 Protection of Security

If an Event of Default is declared and is continuing, Beneficiary or Trustee, without obligation to do so, without notice to or demand upon Trustor, and without releasing Trustor from any obligations or defaults may:

- (a) enter on the Property in any manner and to any extent that either deems necessary to protect the security of this Deed of Trust;
- (b) appear in and defend any action or proceeding purporting to affect, in any manner, the Obligations or the Indebtedness, the security of this Deed of Trust, or the rights or powers of Beneficiary or Trustee;
- (c) pay, purchase, or compromise any encumbrance, charge, or lien that in the judgment of Beneficiary or Trustee is prior or superior to this Deed of Trust; or
- (d) pay necessary expenses, employ counsel, and pay reasonable attorney fees.

Trustor agrees to repay on demand all sums expended by Trustee or Beneficiary pursuant to this Section with interest at the Default Rate, and those sums, with interest, shall be secured by this Deed of Trust.

Section 8.5 Receiver

If an Event of Default occurs, Beneficiary, as a matter of strict right and without notice to Trustor or anyone claiming under Trustor and without regard to the then value of the Property, shall have the right to apply ex parte to any court having jurisdiction to appoint a Receiver of the Property, and Trustor waives notice of any such application, provided a hearing to confirm the appointment with notice to Trustor is set within fourteen (14) days after the appointment. Any Receiver shall have all the powers and duties of receivers in similar cases and all the powers and duties of Beneficiary in case of entry as provided in this Deed of Trust and shall continue as

such and exercise all those powers until the date of confirmation of sale unless the receivership is terminated sooner.

Section 8.6 Beneficiary's Option to Cure the Default

If Trustor at any time fails to perform or comply with any of the terms, covenants and conditions required on Trustor's part to be performed and complied with under this Deed of Trust, the Note, any of the other Loan Documents, or any other agreement that under the terms of this Deed of Trust the Trustor is required to perform, then the Beneficiary, after seven (7) Business Days' notice to Trustor (or without notice if Beneficiary determines that an emergency exists) and without waiving or releasing Trustor from any of the Obligations, may, at its sole discretion and option, subject to the provisions of any of such agreements:

- (a) make from its own funds any payments payable by Trustor and take out, pay for, and maintain any of the insurance policies provided for; and
- (b) perform any other acts on the part of Trustor to be performed and enter on the Property for that purpose.

The making by Beneficiary of payments out of Beneficiary's own funds shall not, however, be deemed to cure the default by Trustor, and the default shall not be cured unless and until Trustor reimburses Beneficiary for the payments. All sums paid and all reasonable costs and expenses incurred by Beneficiary in connection with the performance of any act, together with interest on any unpaid balance at the Default Rate from the respective dates of Beneficiary's making of each payment, shall be added to the principal of the Indebtedness, shall be secured by the Security Documents and by the lien of this Deed of Trust, prior to any right, title, or interest in or claim on the Property attaching or accruing subsequent to the lien of this Deed of Trust, and shall be payable by Trustor to Beneficiary on demand.

Section 8.7 Additional Post-Default Inspection Rights

On reasonable notice (except in the case of an emergency), and without releasing Trustor from any obligation to cure any default of Trustor, Beneficiary or its agents, representatives, and employees acting by themselves or through a court-appointed receiver, may, from time to time and at all reasonable times (or at any time in the case of an emergency) enter and inspect the Property and every part of it (including all samples of building materials, soil and groundwater, and all books, records and files of Trustor relating to the Property) and perform any acts and things as Beneficiary deems necessary or desirable to inspect, investigate, assess, and protect the security of this Deed of Trust, for the purpose of determining:

- (a) the existence, location, nature, and magnitude of any past or present Release or threatened Release;
- (b) the presences of any Hazardous Substances on or about the Property in violation of any Hazardous Substance Law; and
- (c) the compliance by Trustor of every environmental provision of this Deed of Trust and every other Loan Document.

In furtherance of these purposes and without limitation of any of its other rights, Beneficiary may:

(a) obtain a court order to enforce Beneficiary's right to enter and inspect the Property under Civil Code Section 2929.5, to which the decision of Beneficiary as to whether there exists a Release, threatened Release, any Hazardous Substance on or about the Property in violation of any Hazardous Substance Law, or a breach by Trustor of any environmental provision of this Deed of Trust or any other Loan Document, shall be deemed reasonable and conclusive as between Trustor, Trustee, and Beneficiary; and

(b) have a receiver appointed under Code of Civil Procedure Section 564 to enforce Beneficiary's right to enter and inspect the Property for Hazardous Substances.

All costs and expenses incurred by Beneficiary with respect to the audits, tests, inspections, and examinations that Beneficiary or its agents, representatives, or employees may conduct, including the fees of the engineers, laboratories, contractors, consultants, and attorneys, shall be paid by Trustor. In exercising its rights under this Section, Beneficiary shall use its best efforts not to materially interfere with Trustor's operation on the Property. All costs or expenses incurred by Trustee and Beneficiary pursuant to this Section (including, without limitation, court costs, consultant's fees and attorney's fees, whether incurred in litigation and whether before or after judgment) shall bear interest at the Default Rate from the date they are incurred until they have been paid in full. Except as provided by law, any inspections or tests made by Beneficiary or its representatives, employees and agents shall be for Beneficiary's purposes only and shall not be construed to create any responsibility or liability on the part of Beneficiary to Trustor or to any other person. Beneficiary shall have the right, but not the obligation, to communicate with any governmental authority regarding any fact or reasonable belief of Beneficiary that constitutes or could constitute a breach of any of Trustor's obligations under any environmental provision in this Deed of Trust or any Loan Document.

Section 8.8 Judgment on Environmental Provision

Beneficiary or its agents, representatives, and employees may seek a judgment that Trustor has breached its covenants, representations, or warranties in Article 6 of this Deed of Trust or any other covenants, representations, or warranties that are deemed to be "environmental provisions" pursuant to Code of Civil Procedure Section 736 (each an "Environmental Provision"), by commencing and maintaining an action or actions in any court of competent jurisdiction pursuant to Code of Civil Procedure Section 736, whether commenced prior to or after foreclosure of the lien of this Deed of Trust. Beneficiary or its agents, representatives and employees may also seek an injunction to cause Trustor to abate any action in violation of any Environmental Provision and may seek the recovery of all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties and other out-of-pocket costs or expenses actually incurred by Beneficiary (collectively, "Environmental Costs") incurred or advanced by Beneficiary relating to the cleanup, remedy or other response action required by any Hazardous Substance Law, or any Hazardous Substance Claim, or which Beneficiary believes necessary to protect the Property. It will be conclusively presumed between Beneficiary and Trustor that all Environmental Costs incurred or advanced by Beneficiary relating to the cleanup, remedy, or other response action of or to the Property were made by Beneficiary in good faith. All Environmental Costs incurred by Beneficiary under this Section (including, without limitation, court costs, consultant fee, and attorney's fees, whether incurred in litigation and whether before or after judgment) shall bear interest at the Default Rate from the date of expenditure until those sums have been paid in full. Beneficiary

shall be entitled to bid, at any trustee's or foreclosure sale of the Property, the amount of the costs, expenses, and interest in addition to the amount of other Indebtedness.

Section 8.9 Waive Lien

Beneficiary or its agents, representatives, and employees may waive its lien against the Property or any portion of it, including the Improvements and the Personal Property, to the extent that the Property is found to be environmentally impaired in accordance with Code of Civil Procedure Section 726.5, and may exercise all rights and remedies of an unsecured creditor against Trustor and all of Trustor's assets and property for the recovery of any deficiency and Environmental Costs, including, but not limited to, seeking an attachment order under Code of Civil Procedure Section 483.010. As between Beneficiary and Trustor, for purposes of Code of Civil Procedure Section 726.5, Trustor shall have the burden of proving that Trustor or any related party (or any affiliate or agent of Trustor or any related party) was not in any way negligent in permitting the Release or threatened Release of the Hazardous Substance.

Section 8.10 Exception to Nonrecourse

Trustor agrees that regardless of anything in this Deed of Trust or in the Loan Documents, the Environmental Costs shall be exceptions to any nonrecourse or exculpatory provision of the Loan Documents, and Trustor shall be fully and personally liable for the Environmental Costs. That liability shall not be limited to the original principal amount of the obligations secured by this Deed of Trust, and Trustor's obligations shall survive the foreclosure, deed in lieu of foreclosure, release, reconveyance, or any other transfer of the Property or this Deed of Trust. For the purposes of any action brought under this Section, Trustor waives the defense of laches and any applicable statute of limitations.

Section 8.11 Remedies Cumulative

All remedies of Beneficiary provided for in this Deed of Trust are cumulative and shall be in addition to all other rights and remedies provided in the other Loan Documents, or provided by law or equity, including any banker's lien or right of offset. The exercise of any right or remedy by Beneficiary shall not in any way constitute a cure or waiver of default, shall not invalidate any act done pursuant to any notice of default, and shall not prejudice Beneficiary in the exercise of any of its rights unless, in the exercise of those rights, Beneficiary collects the total amount of the Indebtedness.

II. SECURITY AGREEMENT.

ARTICLE 9. SECURITY AGREEMENT.

Section 9.1 Grant of Security Interest

Trustor also grants to Beneficiary a security interest in all of Trustor's right, title, and interest now owned or later acquired to the following property (collectively, "Collateral") which is now or later affixed to or located on the Property, or used in connection with the operation of the Property and all the proceeds of that property: all deposits collected from purchasers pursuant to contracts for sale of the Property or any portion of the Property; and, subject to the other provisions of this Deed of Trust, all proceeds of any fire and builder's risk insurance policy, or of

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any policy insuring the Property against any other perils, all awards made in eminent domain proceedings or purchases in lieu thereof made with respect to the Property, and any compensation, award, payment, or relief given by any governmental agency or other source because of damage to the Property resulting from earthquake, flood, windstorm, or any emergency or any other event or circumstance. The specific enumerations in this Section and elsewhere in this Deed of Trust do not exclude the general.

The security interest also includes all additions to, substitutions for, changes in, or replacements of the whole or any part of these articles of property, together with all contract rights of Trustor in agreements for purchase and sale of the Property, all policies of insurance arising out of the ownership of the Property, and all accounts, contract rights, chattel paper, instruments, general intangibles, and other obligations of any kind now or later existing, arising out of, or in connection with the operation or development of the Property. The security interest also includes all rights now or later existing in all security agreements, leases, and other contracts securing or otherwise relating to any accounts, contract rights, chattel paper, instruments, general intangibles, or obligations; all causes of action and recoveries now or later existing for any loss or diminution in value of the Property; all proceeds of any of the Collateral; and to the extent not otherwise included, all payments under insurance (whether Beneficiary is the loss payee), or any indemnity, warranty or guaranty payable by reason of loss or damage to or otherwise with respect to any of the Collateral.

Section 9.2 Remedies

This Deed of Trust constitutes a security agreement with respect to the Collateral in which Beneficiary is granted a security interest. Beneficiary has all of the rights and remedies of a secured party under the California Uniform Commercial Code as well as all other rights and remedies available at law or in equity. Trustor agrees to execute and deliver on demand, and irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor to execute, deliver, and file, any security agreements, financing statements, continuation statements, or other instruments that Beneficiary may request to impose, perfect or continue the perfection of the lien or security interest created by this Deed of Trust. On the occurrence of any Event of Default (taking into account any applicable period of grace or cure), Beneficiary shall have the right to sell at any public or private sale as permitted by applicable law any of the Collateral that is personal property. Beneficiary shall also have any other rights and remedies, whether at law, in equity, or by statute that are available to secured creditors. Any disposition may be conducted by an employee or agent of Beneficiary or Trustee. Any Person, including both Trustor and Beneficiary, shall be eligible to purchase any part or all of the Collateral at any disposition.

Section 9.3 Expenses

Expenses of retaking, holding, and preparing for sale, selling or the like shall be borne by Trustor and shall include Beneficiary's and Trustee's attorney fees and legal expenses. Trustor, on demand of Beneficiary, shall assemble the Collateral, and make it available to Beneficiary at the Property, a place deemed to be reasonably convenient to Beneficiary and Trustor. Beneficiary shall give Trustor at least ten (10) days' prior written notice of the time and place of any public sale or other disposition of the Collateral or of the time after which any private sale or any other intended disposition is to be made. If the notice is sent to Trustor in the manner provided for the mailing of notices in this Deed of Trust, then such notice is deemed reasonable notice to Trustor.

Section 9.4 Assignment of Agreements

(a) As partial security for repayment of the Loan, Trustor sells, assigns, transfers, sets over, and delivers to Beneficiary all of Trustor's right, title, and interest in all agreements, permits, and contracts pertaining to the use or operation of the Property, including, but not limited to, environmental impact reports, negative declarations, map approvals, grading and construction permits, conditional use permits, applications for all permits, management agreements, all development rights in the Property that Trustor may now or later acquire (including, without limitation, development rights arising in connection with any action by a governmental entity, including, by way of illustration, but not of limitation, inducement resolutions of county, municipal, or other governmental entities), and agreements pertaining to the transfer of development rights or permitted floor area under applicable laws or ordinances (collectively, "Agreements"), as they may be amended or otherwise modified from time to time, including, without limitation, the right of Trustor to terminate any of the Agreements, to perform under them, and to compel performance and otherwise exercise all remedies under them, together with the immediate and continuing right to collect and receive all sums that may become due to Trustor or which Trustor may now or later become entitled to demand or claim, arising or issuing out of the Agreements, including, without limitation, claims of Trustor for damages arising out breach of or default under any of the Agreements and all rights of Trustor to receive proceeds of any insurance, indemnity, warranty, or guaranty with respect to any of the Agreements. However, so long as no Event of Default has occurred and is continuing, Trustor shall have the right under a license granted to collect and retain all sums that may become payable to Trustor under the Agreements.

(b) Trustor covenants and agrees to punctually observe, perform, and discharge the obligations, terms, covenants, conditions, and warranties to be observed, performed, and discharged by it under the Agreements. Beneficiary, upon an Event of Default, at its option and upon written notice to Trustor, shall have the right to declare the assignment in this Section 9.5 to be absolute; and, in addition, Beneficiary shall have the complete right then or later to exercise and enforce all of the rights and remedies provided by law.

(c) The acceptance by Beneficiary of the assignment in this Section, with all of the rights powers, privileges, and authority granted shall not (prior to the exercise of Beneficiary's right to declare the assignment in this Section to be absolute) obligate Beneficiary to assume any obligations under the Agreements or to take any action under them, or to expend any money or incur any expense or perform or discharge any obligation, duty, or liability under the Agreements, or to assume any obligation or responsibility for the nonperformance of the provisions by Trustor.

III. ASSIGNMENT OF LEASES AND RENTS

ARTICLE 10. ASSIGNMENT OF LEASES AND RENTS

Section 10.1 Assignment

Trustor irrevocably assigns to Beneficiary:

(a) all of Trustor's right, title and interest in all leases, all agreements relating to the management, leasing, or operation of the Property, and all other agreements of any kind

relating to the use or occupancy of the Property, whether now existing or entered into after the date of this Deed of Trust (“Leases”); and

(b) the rents, issues and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases (“Payments”) for the purposes and on the terms and conditions below.

The term “Leases” will also include all guarantees of and security for the lessees’ performance, and any amendments, extensions, renewals or modifications that are permitted. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary’s right to the Leases and Payments is not contingent on, and may be exercised without, possession of the Property. The terms “lessor” and “lessors” shall include all owners, landlords, licensors, and other parties in a similar position with respect to the Leases. The terms “lessee” and “lessees” shall include any tenants and licensees and any other parties in a similar position and shall also include any guarantor of or other obligors under the Leases.

Section 10.2 License

Beneficiary confers on Trustor a license (“License”) to collect and retain the Payments as they become due until the occurrence of an Event of Default. Upon an Event of Default, the License shall be automatically revoked, and Beneficiary may collect and retain the Payments without notice and without taking possession of the Property. Trustor irrevocably authorizes and directs the lessees under the Leases to rely on and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums that may at any time become due under the Leases, or for the performance of any of the lessees’ undertakings under the Leases. The lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing. Trustor relieves the lessees from any liability to Trustor by reason of relying on and complying with any notice or demand by Beneficiary.

Section 10.3 Effect of Assignment

The assignment shall not impose on Beneficiary any duty to produce rents, issues or profits from the Property, or cause Beneficiary to be:

- (a) a “mortgagee-in-possession” for any purpose;
- (b) responsible for performing any of the obligations of the lessor under any of the Leases; or
- (c) responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property.

Beneficiary shall not be liable to Trustor or any other party as a consequence of the exercise of the rights granted to Beneficiary under this assignment or the failure of Beneficiary to perform any obligation of Trustor arising under the Leases.

Section 10.4 Leasing Covenants

Trustor covenants and agrees as follows:

- (a) at Trustor's sole cost to:
 - (i) perform all obligations of the lessor under the Leases and enforce performance by the lessees of their obligations under the Leases;
 - (ii) subject to the provisions of Section 10.4(b)(iv) below, enforce all remedies available to Trustor in case of default by the lessees under any of the Leases and prosecute and defend any action, arbitration, or other controversy relating to any of the Leases or to Trustor's interest in any of the Leases;
 - (iii) give Beneficiary prompt notice of any default that occurs under any of the Leases, whether by the lessees or Trustor;
 - (iv) exercise diligent, good-faith efforts to keep all portions of the Property leased at all times;
 - (v) promptly upon execution, deliver to Beneficiary fully executed counterpart originals of the Leases (if requested by Beneficiary); and
- (b) except with Beneficiary's prior written consent, not to:
 - (i) enter into any Leases after the date of this Deed of Trust;
 - (ii) execute any other assignment relating to any of the Leases or the Payments;
 - (iii) discount any rent or other sums due under the Leases or collect them in advance, other than to collect rent one (1) month in advance of the time when it becomes due;
 - (iv) terminate, modify, or amend any of the terms of the Leases or release or discharge the lessees from any obligations;
 - (v) consent to any assignment or subletting by any lessee; or
 - (vi) subordinate any of the Leases to any other deed of trust or encumbrance.

Any attempted action in violation of the provisions of Section 10.4(b) shall be voidable at Beneficiary's election.

Section 10.5 Application of Rents

Beneficiary, in its sole discretion, may apply, or require the application of, all amounts received pursuant to the assignment to the payment of any one or more of the Obligations in any order that Beneficiary may elect.

Section 10.6 Estoppel Certificates

Within twenty (20) days after request by Beneficiary, Trustor shall deliver to Beneficiary and to any party designated by Beneficiary estoppel certificates executed by Trustor and will use commercially reasonable efforts to obtain estoppel certificates executed by each of the lessees, in recordable form, certifying:

- (a) that the assignment and the Leases are in full force;
- (b) the date of each lessee's most recent payment of rent;
- (c) that there are no defenses or offsets outstanding, or stating those claimed by Trustor or lessees under the assignment or under the Leases; and
- (d) any other information reasonably requested by Beneficiary.

Section 10.7 Remedies with Regard to Assignment of Leases and Rents

In addition to any other remedies in this Deed of Trust, Beneficiary shall have the following rights and remedies upon the occurrence of an Event of Default:

- (a) To receive the Payments and any other amounts arising or accruing under the Leases or from the Property;
- (b) To collect, sue for, settle, compromise, and give releases for the Payments and pursue and remedies for the enforcement of the Leases or Trustor's rights under the Leases; and
- (c) To take possession of the Property and hold, manage, lease and operate it on any terms and for any period of time that Beneficiary may deem proper and, either with or without taking possession of the Property, in its own name, make from time to time all alterations, renovations, repairs, or replacements that Beneficiary may deem proper.

ARTICLE 11. MISCELLANEOUS.

Section 11.1 Successor Trustee

Beneficiary may remove Trustee or any successor trustee at any time and appoint a successor trustee by recording a written substitution in the county where the Property is located, or in any other manner permitted by law. Upon that appointment, all of the powers, rights and authority of Trustee shall immediately become vested in the successor.

Section 11.2 No Waiver

No waiver by Beneficiary of any default or breach by Trustor shall be implied from any omission by Beneficiary to take action on account of that default if the default persists or is repeated. Also, no express waiver shall affect any default other than the default expressly waived, and such waiver shall be operative only for the time and to the extent stated. Waivers of any covenant, term, or condition in this Deed of Trust shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by Beneficiary for any act by Trustor requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval for any subsequent similar act.

Section 11.3 Abandonment

Subject to any chattel mortgages, security agreement, or other liens on title that may exist with the consent of Beneficiary, or any provided for in this Deed of Trust, all Personality that upon foreclosure of the Property is owned by Trustor and is used in connection with the operation of the Property shall be deemed at Beneficiary’s option to have become on that date a part of the Property and abandoned to Beneficiary in its then condition.

Section 11.4 Notices

All notices, advices, demands, requests, consents, statements, satisfactions, waivers, designations, refusals, confirmations, or denials that may be required or contemplated under this Deed of Trust (“Notices”) for any party to serve on or give to any other shall be in writing, and, if not in writing, shall not be deemed to have been given. Notices shall be deemed served upon personal service or five (5) calendar days after deposit in certified first-class United States mail, postage prepaid, and addressed to the parties as follows:

If to Trustor, addressed to:

Jamboree Housing Corporation
17701 Cowan Ave, Suite 200
Irvine, CA 92614
Attn: Chief Executive Officer

With copies to:

Jamboree Housing Corporation
c/o (Attorney name)
(Attorney address)
(Attorney address 2)
Attn: (Attorney name)

(b) If to Beneficiary, addressed to:

San Gabriel Valley Regional Housing Trust
1000 S. Fremont Avenue, Unit 42, Building A-10N, Suite 10-210
Alhambra, CA 91803
Attn: Executive Director

With a copy to:

San Gabriel Valley Regional Housing Trust
c/o (Attorney name)
(Attorney address)
(Attorney address 2)
Attn: (Attorney name)

All Notices shall specify the address of the Property.

Section 11.5 Survival

The covenants and agreements in this Deed of Trust shall bind and inure to the benefit of Beneficiary and Trustor and their successors and assigns. Beneficiary may assign to or grant a participation in any one or more lenders, free from any right of counterclaim, recoupment, or

offset by Trustor, Beneficiary's rights and obligations in whole or in part under the Loan Documents. Nothing in this Section is intended to limit any other provisions in the Loan Documents that by their terms survive the repayment of the Indebtedness or the termination of any Loan Document.

Section 11.6 Severability

If any term, provision, covenant, or condition of this Deed of Trust or any application of it is held by a court of competent jurisdiction to be invalid, void or unenforceable in whole or in part, all terms, provisions, covenants and conditions of this Deed of Trust and all applications of it not held invalid, void or unenforceable shall continue in full force and shall not be affected, impaired or invalidated.

Section 11.7 References to Foreclosure

References in this Deed of Trust to "foreclosure" and related phrases are references to the appropriate procedure in connection with Trustee's private power of sale, any judicial foreclosure proceeding, and any deed given in lieu of foreclosure.

Section 11.8 Joinder of Foreclosure

If Beneficiary holds any other or additional security for the payment of any Indebtedness or performance of any Obligation, its sale or foreclosure on any default in the payment or performance, in Beneficiary's sole discretion, may be prior to, subsequent to, or joined or otherwise contemporaneous with any sale or foreclosure. In addition to the rights in this Deed of Trust specifically conferred, Beneficiary may at any time exercise any right or remedy now or later given by law or equity to beneficiaries under deeds of trust generally or to the holders of any obligations of the kind secured.

Section 11.9 Methods of Extension, Release, and Reconveyance

At any time and from time to time, without liability and without notice, and without releasing or otherwise affecting the liability of any person for payment of any Indebtedness,

(a) Beneficiary, at its sole discretion and only in writing, may extend the time for or release any Person now or later liable for payment of any Indebtedness, or accept or release additional security, or subordinate the lien or charge of this Deed of Trust; or

(b) Trustee, on written request by Beneficiary and presentation of the Note and any additional notes secured by this Deed of Trust and this Deed of Trust for endorsement, may reconvey any part of the Property, consent to the making of any map or plat of it, join in granting any easement on it, or join in any agreement of extension or subordination.

On Beneficiary's written request and surrender of the Note and any additional notes secured by this Deed of Trust and this Deed of Trust to Trustee for cancellation, and on payment to Trustee of its fees and expense, Trustee shall reconvey without warranty the then trust property. The recitals in any reconveyance shall be conclusive proof of the truthfulness of them, and the grantee in any reconveyance may be described as "the person legally entitled."

Section 11.10 Copies

Trustor shall promptly give to Beneficiary copies of all notices of violation that Trustor receives from any governmental agency or authority and all notices of default that Trustor receives under any agreement relating to the borrowing of money by Trustor from any Person.

Section 11.11 ERISA Compliance

Trustor shall at all times comply with the provisions of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), with respect to any retirement or other employment benefit plan to which it is a party as employer. As soon as possible after Trustor knows, or has reason to know, that any Reportable Event (as defined in ERISA) with respect to any plan of Trustor has occurred, it shall furnish to Beneficiary a statement in writing setting forth details about the Reportable Event and the action, if any, that Trustor proposes to take, together with a copy of the notice of the Reportable Event furnished to the Pension Benefit Guaranty Corporation. In addition, if at any time the Indebtedness evidenced by the Note is deemed in whole or in part to be a transaction prohibited by the provisions of ERISA, Trustor shall immediately reimburse Beneficiary on demand for all taxes levied against or costs incurred by Beneficiary or Trustee by reason of the Reportable Event.

Section 11.12 Subordination

At the option of Beneficiary, this Deed of Trust may become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to any insurance proceeds, damages, awards or compensation resulting from damage to the Property or condemnation or exercise of power of eminent domain), to any contracts of sale or any leases of the Property on the execution by Beneficiary and recording of a unilateral declaration to that effect in the official records of the county and state where the Property is located. Beneficiary may require the issuance of any title insurance endorsements to the Title Policy in connection with any subordination that Beneficiary, in its judgment, determines are appropriate, and Trustor shall be obligated to pay any cost or expense incurred in connection with the issuance.

Section 11.13 No Merger

So long as any of the Indebtedness remains unpaid or Trustor has any further obligation under the Loan Documents , unless Beneficiary otherwise consents in writing, the fee estate of Trustor in the Property or any part of it shall not merge, by operation of law or otherwise, with any leasehold or other estate in the Property or any part of it, but shall always be kept separate and distinct, regardless of the union of the fee estate and the leasehold or other estate in Trustor or any other Person.

Section 11.14 Inspection of Property

Beneficiary is authorized by itself or its agents, employees, or workers, to enter at any reasonable time on prior written notice to Trustor on any part of the Property for the purpose of inspecting it, and for the purpose of performing any of the acts it is authorized to perform under the terms of this Deed of Trust. Trustor agrees to cooperate with Beneficiary to facilitate any inspection. Beneficiary agrees not to disturb the Trustor’s quiet enjoyment of the Property in the course of Beneficiary’s inspection.

Section 11.15 Performance by Trustor

Trustor shall faithfully perform every covenant to be performed by Trustor under any lien or encumbrance, including, without limiting the generality of this Deed of Trust, any construction loan or permanent financing, mortgages, deeds of trust, leases, declarations or covenants, conditions and restrictions, and any other agreements that affect the Property in law or in equity that Beneficiary reasonably believes may be prior and superior to or on a parity with the lien or charge of this Deed of Trust. A breach of or a default under any lien or encumbrance that exists after any applicable grace period in the pertinent instrument has expired without that breach or default having been cured, shall constitute an Event of Default under this Deed of Trust. If Trustor fails to do so, Beneficiary, without demand or notice and in its sole judgment, may do any act or thing required of Trustor by any of the provisions in this Deed of Trust and incur and pay expenses in connection with such act or thing. Nothing in this Section affects Trustor's obligations pursuant to Sections 5.2 and 5.3 of this Deed of Trust or limits Beneficiary's rights.

Section 11.16 Personalty Security Instruments

Trustor agrees that if Beneficiary at any time holds additional security for any obligations secured by this Deed of Trust, it may enforce the terms of it or otherwise realize on it, at its option, either before or concurrently or after a sale is made under this Deed of Trust, and may apply the proceeds on the Indebtedness secured without affecting the status or waiving any right to exhaust any other security, including the security under this Deed of Trust, and without waiving any breach or default or any right or power, whether exercised under this Deed of Trust or in any other security.

Section 11.17 Suits to Protect Property

Trustor agrees to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or any additional or other security for the obligations secured, the interest of Beneficiary or the rights, powers or duties of Trustee, and to pay all costs and expenses, including, without limitation, cost of evidence of title and attorney fees, in any action or proceeding in which Beneficiary or Trustee may appear or be made a party, including, but not limited to, any foreclosure or other proceeding commenced by those claiming a right to any part of the Property under subordinate liens, any action to partition or condemn all or part of the Property, whether pursued to final judgment, and any exercise of the power of sale in this Deed of Trust whether or not the sale is actually consummated.

Section 11.18 Junior Liens

Trustor agrees that as of the date of this Deed of Trust there are no encumbrances to secure debts junior to this Deed of Trust and that there are to be none as of the date when this Deed of Trust becomes of record.

Section 11.19 Further Advances

On the request of Trustor or its permitted successors in ownership of the land, Beneficiary may at its option at any time before full payment of the Indebtedness make further advances to Trustor or the successors in ownership, with interest and late charges to be secured by this Deed of Trust. However, the amount of principal secured by this Deed of Trust (including the advance) and remaining unpaid at the time of the advance will not exceed the original principal sum secured. Also, if Beneficiary, at its option, makes a further advance or

advances, Trustor or the successors in ownership agree to execute and deliver to Beneficiary a note, payable on or before the maturity of the Indebtedness secured and bearing any other terms that Beneficiary will require.

Section 11.20 Waiver of Statute of Limitations

The pleading of any statute of limitations as a defense to obligations secured by this Deed of Trust is waived, to the fullest extent permissible by law.

Section 11.21 Charges for Statements

Trustor agrees to pay Beneficiary's reasonable charges, to the maximum amount permitted by law, for any statement regarding the obligations secured by this Deed of Trust requested by Trustor or on its behalf.

Section 11.22 Entire Agreement

This Deed of Trust and the other Loan Documents set forth the entire understanding between Trustor and Beneficiary, and they will not be amended except by a written instrument duly executed by each of Trustor and Beneficiary. Any previous representations, warranties, agreements and understandings among the parties regarding the subject matter of the Loan or the Loan Documents, whether written or oral, are superseded by this Deed of Trust and the other Loan Documents.

Section 11.23 Incorporation

All terms of the Loan Documents are incorporated in this Deed of Trust by this reference. All persons who may have or acquire an interest in the Property will be deemed to have notice of the terms of the Loan Documents.

Section 11.24 Waiver of Marshaling Rights

Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Property, waives all rights to have the Property or any other property that is now or later may be security for any Obligation ("Other Property") marshaled on any foreclosure of this Deed of Trust or on a foreclosure of any other security for any of the Obligations. Beneficiary will have the right to sell, and any court in which foreclosure proceedings may be brought will have the right to order a sale of, the Property and any of the Other Property as a whole or in separate parcels, in any order that Beneficiary may designate. Beneficiary will have any rights provided by California Civil Code Sections 2899 and 3433, as such sections may be amended from time to time. Each successor and assign of Trustor, including any holder of a lien subordinate to this Deed of Trust, by acceptance of its interest or lien, agrees that it shall be bound by the above waiver as if it had given the waiver itself.

Section 11.25 Acceptance of Trust; Powers and Duties of Trustee

Trustee accepts this trust when this Deed of Trust is recorded. From time to time on written request of Beneficiary and presentation of this Deed of Trust for endorsement, and without affecting the personal liability of any person for payment of an indebtedness or the performance of any obligations, Trustee may, without liability and without notice: (i) reconvey all

Deed of Trust
[Project Name]

or any part of the Property; (ii) consent to the making of any map or plat; or (iii) join in any grant of easement, any declaration of covenants, conditions and restrictions, any extension agreement, or any agreement subordinating the lien or charge of this Deed of Trust.

Except as may be required by applicable law, Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trust and the enforcement of the rights and remedies available and may obtain orders or decrees directing, confirming or approving acts in the execution of the trust and the enforcement of the remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding, including, without limitation, actions in which Trustor, Beneficiary, or Trustee will be a party, unless held or commenced and maintained by Trustee under this Deed of Trust. Trustee will not be obligated to perform any act required of it under this Deed of Trust unless the performance of the act is requested in writing and Trustee is reasonably indemnified and held harmless against any loss, cost, liability, or expense.

Section 11.26 Releases, Extensions, Modifications and Additional Security

Without notice to or the consent, approval, or agreement of any persons or entities having any interest at any time in the Property or in any manner obligated under the Obligations (“Interested Parties”), Beneficiary may, from time to time, release any person or entity from liability for the payment or performance of any Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Obligation, or accept additional security or release the Property or other security for any Obligation. None of these actions will release or reduce the personal liability of any of the Interested Parties, or release or impair the lien of this Deed of Trust, or the priority of it on the Property. However, no action taken, or agreement made by Beneficiary to extend the maturity or otherwise alter the terms or increase the amount of any Obligation will be binding on Trustor without Trustor’s consent.

Section 11.27 Reconveyance

Upon the payment and performance of all Obligations, including, without limitation, Beneficiary’s receipt of all sums owing and outstanding under the Note, Beneficiary will deliver to Trustee a written request for reconveyance, and will surrender to Trustee for cancellation this Deed of Trust and any note or instrument evidencing the Obligations. However, Beneficiary will have no obligation to deliver the written request and documents until Beneficiary has been paid by Trustor, in immediately available funds, all escrow, closing and recording costs, the costs of preparing and issuing the reconveyance, and any trustee’s or reconveyance fees. On Trustee’s receipt of the written request by Beneficiary and the documents, Trustee will reconvey, without warranty, the Property or that portion then held. To the extent permitted by law, the reconveyance may describe the grantee as “the person or person legally entitled” and the recitals of any matters or facts in any reconveyance will be conclusive proof of the truthfulness of them. Neither Beneficiary nor Trustee will have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Property has been fully reconveyed, the last reconveyance will operate as a reassignment of all future rents, issues and profits of the Property to the person legally entitled.

Section 11.28 Subrogation

Beneficiary will be subrogated to the lien of all encumbrances, whether released of record, and paid in whole or in part by Beneficiary pursuant to this Deed of Trust or by the proceeds of any loan secured by this Deed of Trust.

Section 11.29 Obligations of Trustor, Joint and Several

If more than one person has executed this Deed of Trust as "Trustor," the obligations of all those persons will be joint and several.

Section 11.30 Recourse to Separate Property

Any married person who executes this Deed of Trust as a Trustor agrees that any money judgment that Beneficiary or Trustee obtains pursuant to the terms of this Deed of Trust or any other obligation of that married person secured by this Deed of Trust may be collected by execution on that person's separate property and on any community property.

Section 11.31 Rules of Construction

When the identity of the parties or other circumstances make it appropriate, the singular number includes the plural.

Section 11.32 Successors in Interest

The terms, covenants and conditions in this Deed of Trust will be binding on and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section does not waive the provisions of Section 5.3.

Section 11.33 No Offset

Trustor will pay to Beneficiary all amounts owing under the Note, this Deed of Trust, or any of the other Obligations without deduction, setoff, or counterclaim of any kind.

Section 11.34 Governing Law

The parties expressly agree that this Deed of Trust (including, without limitation, all questions regarding permissive rates of interest) will be governed by or construed in accordance with the laws of California.

Section 11.35 Beneficiary's Capacity

Trustor agrees that Beneficiary, in making the Loan and entering into this Deed of Trust is acting and shall be deemed to be acting solely in Beneficiary's capacity as a lender for all purposes and in all respects, and nothing contained in this Deed of Trust shall be deemed directly or indirectly to restrict or impair in any manner or respect whatsoever any of Beneficiary's governmental powers or rights or the exercise thereof by Beneficiary, whether with respect to the Property or the use thereof or otherwise. It is intended that Trustor shall be obligated to fulfill and comply with all such requirements as may be imposed by any governmental agency or authority of the Beneficiary having or exercising jurisdiction over the Property in Beneficiary's governmental capacity.

Section 11.36 Reasonableness Standard

Each party to this Agreement shall act reasonably in taking any action or making any decision permitted or required pursuant to this Agreement; provided, however, that the foregoing shall not apply in situations in which this Agreement expressly provides that a party may act or make a decision in its “sole” or in its “sole and absolute” or in its “sole and absolute” discretion.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

TRUSTOR:

JAMBOREE HOUSING CORPORATION,
a California nonprofit public benefit corporation

By: _____
LAURA ARCHULETA
President/Chief Executive Officer

Property Address: Commonly known as 508 West Mission Boulevard, Pomona, CA 91766

EXHIBIT A
Legal Description of Property

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

Insert legal description of property here

(For the purpose of complying with Civil Code Section 3097 only, the street address of the said property is 508 West Mission Boulevard, Pomona, CA 91766)

EXHIBIT B
Trustor Insurance Requirements

Trustor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with Trustor's possession, occupancy, operation, or use of the property by Trustor, its agents, representatives, employees, subcontractors, and guests. The Trustor agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance.

Minimum Scope and Limits of Insurance

Coverage shall be at least as broad as the following:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury, with limits of no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (Insurance Services Office Form CG 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Workers' Compensation:** Workers' Compensation insurance as required by the State of California, with Statutory Limits and Employers' Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease. The Trustor shall also furnish or cause to be furnished to the Administrator evidence satisfactory to the Housing Trust any contractor with whom the Trustor has contracted for the performance of the Construction carries workers' compensation insurance as required by law.
3. **Property Insurance:** Property insurance covering all property owned in connection with this Agreement, including improvements and betterments. The policy shall be written on an "all risks" basis (excluding earthquake and flood) and insure the property and improvements/betterments at full replacement cost. To ascertain the amount of coverage required, Trustor shall cause the full insurable value to be determined from time to time by appraisal by the insurer, by agreement between the Trustor and Housing Trust, or by an appraiser mutually acceptable to the Housing Trust and Trustor, not less often than once every three years.
4. **Builder's Risk Policy and Physical Damage Policy:** Builder's Risk Policy and Physical Damage Policy. During the period of construction, Trustor must obtain or cause to be obtained a builder's risk or equivalent policy covering damage or loss up to the value of labor and materials and naming the Housing Trust as loss payee as its interests may appear. After completion of the Project, Trustor must cause to be issued a physical damage insurance policy covering the replacement value of the property as mutually agreed between Trustor and insurer with a lender's loss payable endorsement listing the Housing Trust and Trustor as the loss payee as their interests may appear. This policy must remain in effect throughout the term of the Loan.
5. **Rental Income Insurance:** The Trustor shall maintain or cause to be maintained use and occupancy or business interruption or rental income insurance against the perils

ordinarily included in extended coverage rental income insurance policies, in an amount that is acceptable to the Trustor and the Housing Trust.

6. **Proceeds:** All proceeds of insurance with respect to loss or damage to the Project during the term of the Loan shall be payable, under the provisions of the policy of insurance, jointly to the Trustor, the Housing Trust, construction lender(s), permanent lenders, and any other lender permitted by the Housing Trust, and said proceeds shall constitute a trust fund to be used for the restoration, repair, or rebuilding of the Project in accordance with plans and specifications approved in writing by the Housing Trust. To the extent that such proceeds exceed the cost of such restoration, repair, or rebuilding, such proceeds shall be applied first to repay the construction lenders and second to repay the Trust Loan. In the event of any fire or other casualty to the project or eminent domain proceedings resulting in condemnation of the project improvements or any part thereof, the Owner shall have the right to rebuild the improvements, and to use all available insurance or condemnation proceeds therefor, provided that
 - a. such proceeds are sufficient to keep the Trust Loan in balance and rebuild the improvements in a manner that provides adequate security to the Housing Trust for repayment of the Trust Loan or if such proceeds are insufficient then the Trustor shall have funded any deficiency,
 - b. the Housing Trust shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and
 - c. no material default then exists under the Trust Loan.

If the casualty or condemnation affects only part of the improvements and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Trust Loan in a manner that provides adequate security to the Housing Trust for repayment of the remaining balance of the Trust Loan.

If Trustor maintains broader coverage or higher limits than the minimums shown above, the Housing Trust requires and shall be entitled to the broader coverage or higher limits maintained by Trustor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Housing Trust.

Other Insurance Provisions

1. The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - a. **Additional Insured Status:** The Housing Trust, its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of the use, occupancy, operations, or maintenance of the property, including work or operations performed by or on behalf of Trustor. CGL coverage can be provided in the form of an endorsement to Trustor's insurance (at least as broad as Insurance Services Office Form CG 20 10 11 85, or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38 **and** CG 20 37).

- b. **Primary Coverage:** For any claims related to this Agreement, Trustor's insurance shall be primary coverage at least as broad as Insurance Services Office Form CG 20 01 04 13 as respects the Housing Trust, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Housing Trust of its officers, officials, employees, or volunteers shall be in excess of Trustor's insurance and shall not contribute with it. Trustor's policy shall contain such an endorsement.
- c. **Notice of Cancellation:** Each insurance policy required herein shall state that coverage shall not be cancelled, reduced, or let to expire, except after written notice has been given to the Housing Trust, to the extent practicable within 30 days, but in any event prior to the effective date thereof.
- d. **Waiver of Subrogation:** Trustor hereby grants to the Housing Trust a waiver of any right of subrogation which any insurer of said Trustor may acquire against the Housing Trust by virtue of payment of any loss. Trustor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Housing Trust has received a waiver of subrogation endorsement from the insurer.
- e. **Loss Payee:** The property insurance shall name the Housing Trust as Loss Payee as its interests appear.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Housing Trust. The Housing Trust may require Trustor to purchase coverage with a lower retention or provide satisfactory proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the Housing Trust.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in California with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to the Housing Trust.

Verification of Coverage

Trustor shall furnish the Housing Trust with original certificates and amendatory endorsements (or copies of the applicable policy language effecting coverage provided by this clause). All certificates and endorsements are to be received and approved by the Housing Trust before the Agreement commences. However, failure to obtain required documents prior to the Agreement beginning shall not waive Trustor's obligation to provide them. The Housing Trust reserves the right to require complete, certified copies of all required insurance policies, including the endorsements required herein, at any time.

Failure to Maintain Insurance Coverage

If Trustor, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. The Housing Trust, at its sole option, may terminate this Agreement and obtain damages from Trustor resulting from said breach or may cure the default upon five (5) days prior notice to Trustor, by procuring and

maintaining such insurance. The premiums paid by the Housing Trust shall be treated as a loan, due from Trustor, to be paid on the first day of the month following the date on which the premiums were paid. The Housing Trust shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

San Gabriel Valley Regional Housing Trust
1000 S. Fremont Ave.
Unit 42, Building A-10N, Suite 10-210
Alhambra, CA 91803
Attn: Regional Housing Trust Administrator

NO RECORDING FEE REQUIRED:
GOVERNMENT CODE SECTION 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

REGULATORY AGREEMENT

by and between

THE SAN GABRIEL VALLEY REGIONAL HOUSING TRUST

and

[Borrower]
A California Limited Liability Company

[Address], California

[] units

REGULATORY AGREEMENT

by and between

THE SAN GABRIEL VALLEY REGIONAL HOUSING TRUST

and

[BORROWER]

a California Limited Liability Company

_____, California; [] units

THIS REGULATORY AGREEMENT ("Regulatory Agreement"), is entered into this ___ day of _____ 2021 by and between the San Gabriel Valley Regional Housing Trust, a joint powers authority formed by statute of the State of California ("Housing Trust"), and _____, a California nonprofit public benefit corporation ("Owner"), and is made with reference to the following:

RECITALS

A. The Housing Trust has established a Trust Fund to provide financing for Eligible Projects for the planning and construction of extremely low, very low, and low-income projects, as well as homeless housing projects. The Housing Trust administers the Trust Fund pursuant to Loan Guidelines adopted by the Housing Trust on December 21, 2020 and as amended from time to time ("Loan Guidelines").

B. Owner is or will be the fee simple owner of certain real property commonly known as _____, California [zip code] ("Property") and more particularly described in Exhibit A. Owner intends to construct an apartment building resulting in fifty-seven (57) housing units, of which fifty-six (56) shall be rented at prices affordable to households with incomes at 20% of Area Median Income ("AMI"), 30% of AMI, 50% of AMI, and 60% of AMI, as defined in this Regulatory Agreement for the project ("Project").

C. Owner has applied to the City for a loan ("Loan") in the amount of _____ DOLLARS AND _____ CENTS (\$XX) to fund the development of the Project. The Trust has agreed to make the Loan to Owner to develop the Project and to ensure operation of the Project as affordable multifamily housing.

D. The purpose of this Regulatory Agreement is to regulate and restrict the occupancy, rents, operation, ownership, and management of the Property for the benefit of the Property, occupants, and the people of the San Gabriel Valley. The covenants in this Regulatory Agreement are intended to run with the land and be binding on Owner and Owner's successors for the full term of this Regulatory Agreement.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the aforementioned funding, the Owner and Trust hereby agree as follows:

DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Regulatory Agreement or attached exhibits.

1. **“AREA MEDIAN INCOME”** means the median income for the Los Angeles Primary Metropolitan Statistical Area (PMSA), with adjustments for household size, as determined from time to time by the U.S. Department of Housing and Urban Development (HUD) pursuant to the United States Housing Act of 1937 as amended, or such other method of median income calculation applicable to the County of Los Angeles that HUD may hereafter adopt in connection with said Act.

2. **“CITY”** is the City of Pomona, in which the Project is located.

3. **“DEED OF TRUST”** is that deed of trust, security agreement and fixture filing with assignment of leases and rents placed on the Property as security for the Loan by Owner as trustor with Housing Trust as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust.

4. **“ELIGIBLE COSTS”** means those costs for which Trust Loan proceeds may be used as specified in the Loan Agreement, and any revisions to the Loan Agreement that are approved in writing by Housing Trust. In addition, other items may be Eligible Costs if approved in writing by Housing Trust.

5. **“ELIGIBLE HOUSEHOLD”** means a household that qualifies as a 20% of AMI, 30% of AMI, 50% of AMI, and 60% of AMI Households. For reference purposes, the eligibility income requirements are specified in Exhibit B.

6. **“HOUSEHOLD INCOME”** means the gross amount of income of all Adult Household members that is anticipated to be received during the coming 12-month period determined in accordance with the definition of Annual Income contained in **24 C.F.R. 5.609**.

7. **“HOUSING TRUST”** is the San Gabriel Valley Regional Housing Trust, a joint powers authority, and its officers, officials, directors, employees, agents, and authorized representatives.

8. **“HUD”** means the United States Department of Housing and Urban Development.

9. **“IMPROVEMENTS”** shall mean fifty-seven (57) housing units, of which fifty-six (56) units will be affordable to 20% of AMI, 30% of AMI, 50% of AMI, and 60% of AMI Households.

10. **“LHTF FUNDS”** means...

11. **“LOAN”** means the loan of funds provided by Housing Trust to Owner pursuant to this Loan Agreement.

12. **“LOAN AGREEMENT”** means the loan agreement(s) executed concurrently with this Regulatory Agreement by Owner and the Housing Trust, which governs the Trust Loan, as

well as any amendments to, modifications of, or restatements of said loan agreement(s). The Loan Agreement(s) are on file with the Housing Trust.

13. **“LOAN DOCUMENTS”** are collectively the Loan Agreement, the Promissory Note, the Deed of Trust, this Regulatory Agreement, and the UCC-1, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

14. **“OWNER”** is _____, a California nonprofit public benefit corporation, and its authorized representatives, assigns, transferees, or successors-in-interest thereto.

15. **“PROMISSORY NOTE”** means any promissory note executed by Owner in favor of the Housing Trust, directly or by assignment, evidencing any part of the Trust Loan, which is secured by the Deed of Trust, as well as any amendments to, modifications of, or restatements of said promissory note. The Promissory Note is on file with the Housing Trust.

16. **“PROJECT”** means the construction and operation of the Property for residential use according to the terms of the Loan Agreement and the Regulatory Agreement.

17. **“PROPERTY”** means the real property described in the attached Exhibit A, which is hereby incorporated into this Regulatory Agreement by this reference, and any buildings' or Improvements now or hereafter situated on said real property.

18. **“QUALIFIED HOUSEHOLD”** or **“QUALIFYING HOUSEHOLD”** means a household with an income not exceeding the maximum income levels as established in Exhibit B for a Restricted Unit, who is otherwise eligible to rent a Restricted Unit.

19. **“QUALIFYING RENT”** means the maximum rent for a Restricted Unit allowed under the Loan Agreement and this Regulatory Agreement, less an allowance for tenant-paid Utilities as calculated by the County of Los Angeles, and is the consideration, including any bonus, benefits or gratuity, demanded or received by Owner for or in connection with the use or occupancy of a rental unit, including parking, laundry facilities, and other housing services and amenities of any kind that are reasonably deemed as part of rent by the Housing Trust. The following is not permissible: (a) additional service charges resulting in a rent amount above the maximum allowable rent set by this Regulatory Agreement and the Loan Documents; and (b) contracts with other agencies resulting in rent payments on behalf of the tenant for more than the regulatory agreement's qualifying rent, unless the project is designated as a HUD project based rental assisted building.

20. **“RESTRICTED UNIT”** means a housing unit on the Property which is reserved for occupancy by a household with an income of 20% of AMI, 30% of AMI, 50% of AMI, or 60% of, or other designated' income as set forth in Exhibit B, and which is designated to be rented at a Qualifying Rent as set forth in Exhibit B.

21. **“TRUST LOAN”** is any loan of funds provided by the Housing Trust to Owner for the Project.

22. **“TRUST LOAN DOCUMENTS”** are collectively the Loan Agreement, Promissory Note, Deed of Trust, and this Regulatory Agreement as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

23. **“TRUST FUNDS”** means the ... The purpose of these funds is to provide dwelling, units for rental or sale to persons and families of low or moderate income, in accordance with the provision of Health and Safety Code Section 33334.3.

24. **“UTILITIES”** means the provision of electricity, gas, water, sanitation, or other public services.

25. **“20% OF AMI HOUSEHOLD”** means an annual Household Income not exceeding twenty percent (20%) of the median income for the Los Angeles Metropolitan area as determined by HUD with adjustments for smaller and larger households.

26. **“30% OF AMI HOUSEHOLD”** means an annual Household Income not exceeding twenty percent (30%) of the median income for the Los Angeles Metropolitan area as determined by HUD with adjustments for smaller and larger households.

27. **“50% OF AMI HOUSEHOLD”** means an annual Household Income not exceeding twenty percent (50%) of the median income for the Los Angeles Metropolitan area as determined by HUD with adjustments for smaller and larger households.

28. **“60% OF AMI HOUSEHOLD”** means an annual Household Income not exceeding twenty percent (60%) of the median income for the Los Angeles Metropolitan area as determined by HUD with adjustments for smaller and larger households.

OWNER'S OBLIGATIONS

29. **COMPLIANCE WITH LOAN DOCUMENTS.** Owner's actions with respect to the Property and the use of Trust Loan funds shall at all times be in full conformity with all of the requirements of the Loan Documents.

30. **TERM OF AGREEMENT.** This Regulatory Agreement shall commence upon execution and shall remain in full force and effect for fifty-five (55) years from the date a Certificate of Occupancy is issued to the Project, regardless of any expiration of the term of any Trust Loan, any payment or prepayment of any Trust Loan, any assignment of a Promissory Note, any reconveyance of a Deed of Trust, or any sale, assignment, transfer, or conveyance of the Property, unless terminated earlier by the Housing Trust in writing or extended by the mutual consent of the parties. However, failure to record this Regulatory Agreement or the certificate by the Housing Trust shall not relieve Owner of any of the obligations specified herein.

31. **COMPLIANCE WITH FUNDING REQUIREMENTS.** Fifty percent (50%) of the Loan funds are from the Housing Trust's Trust Funds and fifty percent (50%) of the Loan funds are from LHTF Funds. Owner must comply with all the requirements imposed on properties assisted under the applicable sources of funds:

A. **Trust Funds**

B. **LHTF Funds**

PROJECT OCCUPANCY AND RENTS

32. **OPERATION OF PROPERTY.** Owner and its agents shall lease, operate and manage the Property after completion in full conformance with the terms of the Regulatory Agreement.

Owner agrees to: (1) maintain and operate the Restricted Units so as to provide decent, safe, and sanitary housing; and (2) provide the Restricted Units with a level of services (including security), amenities, and maintenance that includes, but is not limited to, access to recreational facilities, parking, cable TV, and interior amenities such as dishwashers and microwave ovens. Optional services provided must be available to all residents under the same terms and conditions.

33. **LEASING THE PROPERTY.** Before leasing any portion of the Property, Owner shall submit its proposed form of lease for Housing Trust's review. The term of the Lease shall be for no less than one (1) year unless mutually agreed upon by Owner and tenant and shall not contain any provision which is prohibited by 24 C.F.R. Section 92.253(b) and any modifications thereto. Any termination of the Lease or refusal to renew must be in conformance with 24 C.F.R. 92.253(c) and must be preceded by not less than thirty (30) days written notice to the tenant by the Owner specifying the grounds for the action.

A. Restricted Units

i. All Restricted Units shall be leased and shall not be withdrawn from the market. Restricted Units shall be rented in a manner consistent with the Space and Occupancy Standards set forth in Chapter 5 of the Uniform Housing Code (1997), and in such a manner that there is no under-utilization of the floor space of Restricted Units.

ii. During the initial lease up, and upon vacancies of a Restricted Unit, Owner shall make reasonable efforts to advertise to Eligible Households. The affirmative marketing requirements and procedures adopted must meet the requirements of federal fair housing laws.

B. The Owner shall provide to each tenant a signed copy of the lease and/or rental agreement.

34. **TENANT SELECTION.** Before leasing the Property, Owner must provide Housing Trust for its review Owner's written tenant selection plan. The Owner's tenant selection plan must, at a minimum, meet the requirements for tenant selection set out in 24 C.F.R. 92.253(d) and any modifications thereto.

Owner shall rent the Restricted Units to any Eligible Household according to the tenant selection plan. Owner shall verify the prospective tenant's eligibility and shall require from each tenant documentation that such household's income from all sources does not exceed allowable limits as described in Exhibit B.

Owner shall maintain and select tenants from a written waiting list in the chronological order of their application. Owner shall provide said waiting list to any subsequent owner and/or property manager.

35. **INCOME CERTIFICATION.** Owner shall limit for the full term of the Regulatory Agreement the rental of Restricted Units to Qualifying Households according to the schedule contained in Exhibit B. The income levels and other qualifications of applicants for Restricted

Units shall be certified within ten (10) business days of the household's expected occupancy of one (1) of the units.

On annual basis, Owner shall provide the Housing Trust with a copy of an occupancy summary report showing the present occupants, rent, and size of the Restricted Units on the Property, and any other information which the Housing Trust requests and which relates to the eligibility of these households. If the household size of an Eligible Household changes, the Housing Trust may request additional income documentation to determine eligibility.

The Housing Trust may require the Owner, at any time, to re-examine for compliance with Exhibit B, the income of each tenant household and immediately submit its findings to the Housing Trust.

36. AFFORDABILITY RESTRICTIONS. The affordability of the Project shall be maintained as follows:

A. Six (6) one-bedroom units in the Project shall at all times be occupied or held vacant and available for rental by 20% of AMI Households (households who do not exceed twenty percent (20%) median income for the Los Angeles Metropolitan area as determined by HUD with adjustments for smaller and larger households). Income determination shall be made at the time of initial occupancy of a unit by a tenant.

B. Six (6) one- bedroom units, three (3) two-bedroom units, and three (3) three-bedroom units in the Project shall at all times be occupied or held vacant and available for rental by 30% of AMI Households (households who do not exceed thirty percent (30%) median income for the Los Angeles Metropolitan area as determined by HUD with adjustments for smaller and larger households). Income determination shall be made at the time of initial occupancy of a unit by a tenant.

C. One (1) two bedroom unit in the Project shall at all times be occupied or held vacant and available for rental by a 50% of AMI Income Household (a household who does not exceed fifty percent (50%) median income for the Los Angeles Metropolitan area as determined by HUD with adjustments for smaller and larger households). Income determination shall be made at the time of initial occupancy of a unit by a tenant.

D. Ten (10) one-bedroom units, (16) two-bedroom units, and eleven (11) three-bedroom units in the Project shall at all times be occupied or held vacant and available for rental by 60% of AMI Households (households who do not exceed sixty percent (60%) median income for the Los Angeles Metropolitan area as determined by HUD with adjustments for smaller and larger households). Income determination shall be made at the time of initial occupancy of a unit by a tenant.

E. All units are described and limited as set forth in Exhibit B.

37. PROJECT RENTS. Rents for Restricted Units shall be limited to Qualifying Rents as set forth in Exhibit B. Qualifying Households shall be given at least thirty (30) days written notice prior to any rent increase.

The maximum allowable rent that may be charged for a Restricted Unit may change from time to time when there are changes in the Area Median Income as published by HUD, or when there are changes made to the allowances deducted for tenant paid Utilities as calculated

by the County of Los Angeles. In no event, however, will the resulting maximum allowable rent for a Restricted Unit exceed the HUD fair market rents set for rental housing units of the same number of bedrooms for the area.

38. **NOTICE TO TENANTS.** There are four (4) points in time when the Owner is required to give written notice to all tenants of Restricted Units:

A. Upon initial move-in/lease execution, Owner shall give written notice, to all tenants of Restricted Units, of the duration of the rent restrictions under this Regulatory Agreement. Owner must maintain, in its files, a copy of each notice containing each tenant's signed acknowledgment of the notice required hereunder. The notice shall, at the least, contain language that the rent restrictions under this Regulatory Agreement shall be for fifty five (55) years, and shall terminate fifty five (55) years from the date a Certificate of Occupancy is issued to the Project. Upon termination of the rent restriction period under this Regulatory Agreement, rents may be set at market rates unless otherwise restricted by some other legal, regulatory, or contractual requirement.

B. Twelve (12) months prior to the termination of the rent restriction period under this Regulatory Agreement, Owner must give written notice to its tenants of the termination of the restrictions on the Restricted Units before their rents may be raised to market rent levels. Owner must also give written notice to the Housing Trust.

C. Six (6) months prior to the termination of the rent restriction period under the Regulatory Agreement, Owner must give written notice to its tenants of the termination of the restrictions on the Restricted Units before their rents may be raised to market rent levels. Owner must also give written notice to the Housing Trust.

D. Ninety (90) days prior to the termination of the rent restriction period under this Regulatory Agreement, Owner must again give written notice to its tenants of the termination of the restrictions on the Restricted Units before their rents may be raised to market rent levels.

39. **MAXIMUM RENTAL CHARGES.** The total charges for rent, Utilities, and related services to each 20% of AMI Household shall not exceed thirty percent (30%) of twenty percent (20%) of Area Median Income. The total charges for rent, Utilities, and related services to each 30% of AMI Household shall not exceed thirty percent (30%) of thirty percent (30%) of Area Median Income. The total charges for rent, Utilities, and related services to each 50% of AMI Household shall not exceed thirty percent (30%) of fifty percent (50%) of Area Median Income. The total charges for rent, Utilities, and related services to each 60% of AMI Household shall not exceed thirty percent (30%) of sixty percent (60%) of Area Median Income. Initial rents for each Unit shall be as set forth in the Regulatory Agreement. Maximum rent increases shall be calculated by Owner based on the change in permissible rents published by HUD. Owner shall annually certify each tenant Household Income and make any rent adjustment pursuant to the terms of the Regulatory Agreement.

40. **CONDOMINIUM CONVERSION.** Owner shall not convert Property units to condominium or cooperative ownership or sell condominium or cooperative conversion rights to the Property during the term of this Regulatory Agreement.

41. **NONDISCRIMINATION.** Owner shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of Property units on the basis of

race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS related conditions (ARC), or any other arbitrary basis. Owner shall include a statement in all advertisements, notices, and signs for the availability of Property units for rent to the effect that Owner is an Equal Opportunity Housing Provider.

PROPERTY MANAGEMENT

42. **MANAGEMENT RESPONSIBILITIES.** Owner is specifically responsible, subject to its obligations herein, for all management functions with respect to the Property, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The Housing Trust shall have no responsibility over management of the Property

43. **MANAGEMENT ENTITY.** The Housing Trust shall have the right to review the management entity chosen by Owner for the Property. Any contracting of management services by Owner shall not relieve Owner of its primary responsibilities for proper performance of management duties.

44. **MANAGEMENT PLAN.** At least ninety (90) calendar days prior to completion of construction of the Project, Owner shall submit to the Housing Trust for review a plan for marketing and managing the Property ("Management Plan"). The Management Plan shall address in detail how Owner plans to market the availability of Project units to prospective Qualifying Households in accordance with affirmative fair housing marketing principles and how Owner plans to certify the eligibility of Qualifying Households. The Management Plan shall also address how the Owner and the management entity plan to manage and maintain the Property, and shall include appropriate financial information and documentation. The Plan shall include a form lease agreement that Owner proposes to enter into with Project tenants. Owner shall abide by the terms of this Management Plan in marketing, managing, and maintaining the Property.

At least ninety (90) calendar days prior to completion of construction of the Project, Owner shall also submit a proposed management contract to the Housing Trust for review.

45. **MAINTENANCE AND SECURITY.** Owner shall, at its own expense, maintain the Property in good condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions for the benefit of Project occupants. Owner shall not commit or permit any waste on or to the Property, and shall prevent and/or rectify any physical deterioration of the Property. Owner shall provide adequate ongoing security equipment and services for Project occupants. Owner shall maintain the Property in conformance with all applicable state, federal, and local laws, ordinances, codes, and regulations and the Management Plan; but Owner's maintenance obligations shall not be limited only to the standards contained in these laws or the Management Plan.

In the event that Owner fails to maintain the Property in accordance with these standards and after at least ten (10) business days prior written notice to Owner, the Housing Trust or the Housing Trust's contractor or agent may, but shall be under no obligation to, enter upon the Property, make such repairs or replacements as are deemed necessary in the Housing Trust's discretion, and provide for payment thereof. Any amount advanced by the Housing Trust to make such repairs, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Promissory Note (unless payment

of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of Owner to the Housing Trust and shall be secured by the Deed of Trust, if not previously reconveyed.

46. **INSPECTION AND RECORDS.** Owner shall maintain records that clearly document Owner's performance of its obligations to operate the Property under the terms of this Regulatory Agreement. Owner shall submit any records to the Housing Trust within ten (10) business days of the Housing Trust's request. Owner shall permit the Housing Trust to enter and inspect the Property for compliance with obligations under this Regulatory Agreement upon 72 hours advance notice of such visit by the Housing Trust to Owner or Owner's management agent and to tenants of any inspected Project units.

47. **FEES, TAXES, AND OTHER LEVIES.** Owner shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property, and shall pay such charges prior to delinquency.

48. **INSURANCE COVERAGE.** Owner shall cause to have in full force and effect during the term of this Regulatory Agreement insurance coverage as required under Exhibit C of this Regulatory Agreement, which is hereby incorporated by reference into this Regulatory Agreement.

49. **PROPERTY DAMAGE OR DESTRUCTION.** If any building or improvements erected by Owner on the Property shall be damaged or destroyed by an insurable cause, Owner shall, at its own cost and expense, diligently repair or restore the Property consistent with the original plans and specifications for the Project. Such work or repair shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be completed within one (1) year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, Owner shall make up the deficiency.

50. **HAZARDOUS MATERIALS.** Owner shall comply with all of the obligations contained in any Loan Agreement with respect to Hazardous Materials.

GENERAL PROVISIONS

51. **SUBORDINATION.** This Regulatory Agreement shall be subordinated in priority only to the liens and encumbrances approved by the Housing Trust in the Loan Agreement or otherwise in writing by the Housing Trust in its sole and absolute discretion.

52. **TRANSFER AND ENCUMBRANCE OF PROPERTY.** During the term of this Regulatory Agreement, Owner shall not make or permit any sale, assignment, conveyance, lease (other than the rental of Project units to Qualifying Households and other eligible residential tenant occupants), or transfer of this Regulatory Agreement, other Loan Documents, the Project, or the Property or any part thereof, including the sale of any general or limited partnership interests, without the prior written consent of the Housing Trust. The Housing Trust shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) Owner is in compliance with this Regulatory Agreement and the other Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of this Regulatory Agreement or the other Loan Documents; (b) the transferee agrees to assume all obligations of Owner imposed by this Regulatory Agreement and the other Loan

Documents and enter into such an agreement (“Assumption Agreement”); (c) the transferee demonstrates to the Housing Trust's satisfaction that it is capable of owning and operating the Property in full compliance with this Regulatory Agreement and the other Loan Documents; (d) the terms of the sale, transfer, or conveyance shall not jeopardize the Housing Trust's security interest in the Property and are in full compliance with all standards, including eligibility requirements and other conditions imposed by any funding sources for the Project and any loan; and (e) the transferee is not in default on any other obligations.

During the term of this Regulatory Agreement, Owner shall not engage in any financing or other transaction creating any mortgage or other encumbrance or lien upon the Property (except for any financing provided by the Housing Trust), without the prior written consent of the Housing Trust. The Housing Trust may give its consent to such financing if and to the extent necessary to maintain or improve the affordability or condition of the Property.

53. DEFAULT AND REMEDIES. In the event of any breach or violation of any agreement or obligation under this Regulatory Agreement, or of any Event of Default as defined by the Loan Agreement which in any way pertains to or affects the continuing operation of the Property, and after the Housing Trust has given written notice to Owner and an opportunity to cure in the same time and manner provided for with respect to Events of Default in said Loan Agreement, the Housing Trust may proceed with any or all of the following remedies:

A. Bring an action in equitable relief seeking the specific performance by Owner of the terms and conditions of this Regulatory Agreement, and/or enjoining, abating, or preventing any violation of said terms and conditions, and/or seeking declaratory relief;

B. Enter upon, take possession of, and manage the Property, either in person, by agent, or by a receiver appointed by a court, and collect any rents, income, deposits, or reserves and apply them to operate the Property;

C. After notice provided for herein, make such repairs or replacements to the Property as are necessary and provide for payment thereof; or

D. Pursue any other remedy allowed at law or in equity.

Notwithstanding anything to the contrary contained herein, Housing Trust hereby agrees that any cure of any default made or tendered by one or more of Owner's limited partners shall be deemed to be a cure by Owner and shall be accepted or rejected on the same basis as if made or tendered by Owner.

54. NON-LIABILITY OF OFFICIALS, EMPLOYEES, AND AGENTS. The Housing Trust's officers, officials, employees, or agents shall not be personally liable to Owner for any obligation created under the terms of this Regulatory Agreement except in the case of actual fraud or willful misconduct by such person.

55. INDEMNIFICATION. Except for the active negligence or willful misconduct of Housing Trust, or any of its boards, officers, agents, employees, assigns, and successors in interest, Owner undertakes and agrees to defend, indemnify and hold harmless the Housing Trust and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands, and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the Housing Trust, including but not

limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Owner's and any contractor's and subcontractor's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance. of this Regulatory Agreement as a result (directly or indirectly) of or in connection with this Regulatory Agreement or the use of the Property by Owner, its agents, employees, contractor, or subcontractor of any tier, including suits, causes of action, claims, losses, demands, and expenses relating to the condition of the Property. Rights and remedies available to the Housing Trust under this provision are cumulative of those provided for elsewhere in this Regulatory Agreement and those allowed under the laws of the United States, the State of California, and the City. The provisions of this paragraph shall survive expiration or termination of this Loan Agreement.

56. **GOVERNING LAW.** This Regulatory Agreement shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

57. **CONFLICTS BETWEEN HOUSING TRUST DOCUMENTS.** In the event that any monetary provisions of the Loan Agreement, Regulatory Agreement, Deed of Trust, and/or Promissory Note conflict, the terms of the Promissory Note and Deed of Trust shall control. In the event that any monetary provisions of the Promissory Note and Deed of Trust conflict or in the event that any non-monetary provisions of the Loan Agreement, Regulatory Agreement, Deed of Trust, and/or Promissory Note conflict, the strictest provision shall control.

58. **TIME.** Time is of the essence in this Regulatory Agreement.

59. **CONSENTS AND APPROVALS.** Any consent or approval of the Housing Trust required under this Regulatory Agreement shall not be unreasonably withheld. Any approval must be in writing and executed by an authorized representative of the Housing Trust.

60. **NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between Owner and the Housing Trust shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of Owner and the Housing Trust as follows:

Owner: [Name]
17701 Cowan Ave, Suite 200
Irvine, CA 92614
Attn: Asset Management
Copy to:
Director of Major Projects Division

Housing Trust: San Gabriel Valley Regional Housing Trust
1000 S. Fremont Avenue, Unit 42, Building A-10N, Suite 10-210
Alhambra, CA 91803
Attn: Executive Director

61. **BINDING UPON SUCCESSORS.** All provisions of this Regulatory Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors,

successors-in-interest, transferee, and assigns of Owner and the Housing Trust, and shall run with the land for the full term of this Regulatory Agreement, regardless of any assignment, payment, prepayment, expiration, extinguishment of any Trust Loan or Promissory Note, any reconveyance of the Deed of Trust, or any conveyance or transfer of the Property. Any successor-in-interest to Owner and any purchaser or transferee of the Property shall be subject to all of the duties and obligations imposed on Owner under this Regulatory Agreement for the full term of this Regulatory Agreement. The term "Owner" as used in this Regulatory Agreement shall include all such assigns, successors-in-interest, and transferee.

62. **RELATIONSHIP OF PARTIES.** The relationship of Owner and Housing Trust for this Project during the term of this Regulatory Agreement shall not be construed as a joint venture, equity venture, or partnership. The Housing Trust neither undertakes nor assumes any responsibility or duty to Owner or any third party with respect to the operation of the Property or the actions of Owner. Except as the Housing Trust may specify in writing, Owner shall have no authority to act as an agent of the Housing Trust or to bind the Housing Trust to any obligation.

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

64. **OTHER AGREEMENTS.** Owner represents that it has not entered and/or will not enter into any agreements that would restrict or compromise its ability to comply with the terms of this Regulatory Agreement. Owner shall not enter into any agreements that are inconsistent with the terms of this Regulatory Agreement without an express waiver by the Housing Trust in writing.

65. **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to this Regulatory Agreement must be in writing, and shall be made only if executed by both Owner and the Housing Trust. No verbal agreement or conversation with any officer or employee of either party shall affect or modify any terms and conditions of this Regulatory Agreement.

66. **SEVERABILITY.** Every provision of this Regulatory Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

67. **NONRECOURSE.** The Trust Loan is a nonrecourse obligation of Owner. Neither Owner nor any other party shall have any personal liability for repayment of the Trust Loan. The sole recourse of the Housing Trust for repayment of the principal and interest shall be the exercise of the Housing Trust's rights against the Property. However, nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement of all the rights and remedies of the Housing Trust against all such security for the Promissory Note, or (b) be deemed in any way to impair the right of the Housing Trust to assert the unpaid principal amount of the Promissory Note as demand for money within the meaning of the California Code of Civil Procedure.

The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Promissory Note; except nothing contained in the foregoing is intended to relieve the Owner of personal liability for (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments, or other charges (which are not contested by Owner in good faith) which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments, or other charges); (3) the Owner's indemnification obligations under the Loan Agreement; (4) misappropriation of any rents, security deposits, insurance proceeds, condemnation awards, or any other proceeds derived from the collateral security; and (5) failure to pay to the Housing Trust any rental income or other income arising with respect to the Property received by the Owner after the Housing Trust has given notice to the Owner of the occurrence of an Event of Default, subject to the rights of any lender providing a loan secured by the Property to which the lender has subordinated the Deed of Trust.

IN WITNESS WHEREOF, the parties have caused this Regulatory Agreement to be executed the day and year first above written.

HOUSING TRUST:

SAN GABRIEL VALLEY REGIONAL
HOUSING TRUST,
A joint powers authority

OWNER:

[NAME],
a California nonprofit public benefit corporation

By: _____
MARISA CRETER
Executive Director

By: _____
[NAME]
[Title]

ATTEST:

NAME
Title (Clerk)

APPROVED AS TO FORM:

NAME
Title (Attorney)

EXHIBIT A
Legal Description of Property

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

Insert legal description of property here

(For the purpose of complying with Civil Code Section 3097 only, the street address of the said property is 508 West Mission Boulevard, Pomona, CA 91766)

EXHIBIT B
Occupancy and Rent Restrictions

To be added

EXHIBIT C
Owner Insurance Requirements

Owner shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with Owner's possession, occupancy, operation, or use of the property by Owner, its agents, representatives, employees, subcontractors, and guests. The Owner agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance.

Minimum Scope and Limits of Insurance

Coverage shall be at least as broad as the following:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury, with limits of no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (Insurance Services Office Form CG 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Workers' Compensation:** Workers' Compensation insurance as required by the State of California, with Statutory Limits and Employers' Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease. The Owner shall also furnish or cause to be furnished to the Administrator evidence satisfactory to the Housing Trust any contractor with whom the Owner has contracted for the performance of the Construction carries workers' compensation insurance as required by law.
3. **Property Insurance:** Property insurance covering all property owned in connection with this Agreement, including improvements and betterments. The policy shall be written on an "all risks" basis (excluding earthquake and flood) and insure the property and improvements/betterments at full replacement cost. To ascertain the amount of coverage required, Owner shall cause the full insurable value to be determined from time to time by appraisal by the insurer, by agreement between the Owner and Housing Trust, or by an appraiser mutually acceptable to the Housing Trust and Owner, not less often than once every three years.
4. **Builder's Risk Policy and Physical Damage Policy:** Builder's Risk Policy and Physical Damage Policy. During the period of construction, Owner must obtain or cause to be obtained a builder's risk or equivalent policy covering damage or loss up to the value of labor and materials and naming the Housing Trust as loss payee as its interests may appear. After completion of the Project, Owner must cause to be issued a physical damage insurance policy covering the replacement value of the property as mutually agreed between Owner and insurer with a lender's loss payable endorsement listing the Housing Trust and Owner as the loss payee as their interests may appear. This policy must remain in effect throughout the term of the Loan.
5. **Rental Income Insurance:** The Owner shall maintain or cause to be maintained use and occupancy or business interruption or rental income insurance against the perils

ordinarily included in extended coverage rental income insurance policies, in an amount that is acceptable to the Owner and the Housing Trust.

6. **Proceeds:** All proceeds of insurance with respect to loss or damage to the Project during the term of the Loan shall be payable, under the provisions of the policy of insurance, jointly to the Owner, the Housing Trust, construction lender(s), permanent lenders, and any other lender permitted by the Housing Trust, and said proceeds shall constitute a trust fund to be used for the restoration, repair, or rebuilding of the Project in accordance with plans and specifications approved in writing by the Housing Trust. To the extent that such proceeds exceed the cost of such restoration, repair, or rebuilding, such proceeds shall be applied first to repay the construction lenders and second to repay the Trust Loan. In the event of any fire or other casualty to the project or eminent domain proceedings resulting in condemnation of the project improvements or any part thereof, the Owner shall have the right to rebuild the improvements, and to use all available insurance or condemnation proceeds therefor, provided that
 - a. such proceeds are sufficient to keep the Trust Loan in balance and rebuild the improvements in a manner that provides adequate security to the Housing Trust for repayment of the Trust Loan or if such proceeds are insufficient then the Owner shall have funded any deficiency,
 - b. the Housing Trust shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and
 - c. no material default then exists under the Trust Loan.

If the casualty or condemnation affects only part of the improvements and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Trust Loan in a manner that provides adequate security to the Housing Trust for repayment of the remaining balance of the Trust Loan.

If Owner maintains broader coverage or higher limits than the minimums shown above, the Housing Trust requires and shall be entitled to the broader coverage or higher limits maintained by Owner. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Housing Trust.

Other Insurance Provisions

1. The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - a. **Additional Insured Status:** The Housing Trust, its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of the use, occupancy, operations, or maintenance of the property, including work or operations performed by or on behalf of Owner. CGL coverage can be provided in the form of an endorsement to Owner's insurance (at least as broad as Insurance Services Office Form CG 20 10 11 85, or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38 **and** CG 20 37).

- b. **Primary Coverage:** For any claims related to this Agreement, Owner's insurance shall be primary coverage at least as broad as Insurance Services Office Form CG 20 01 04 13 as respects the Housing Trust, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Housing Trust of its officers, officials, employees, or volunteers shall be in excess of Owner's insurance and shall not contribute with it. Owner's policy shall contain such an endorsement.
- c. **Notice of Cancellation:** Each insurance policy required herein shall state that coverage shall not be cancelled, reduced, or let to expire, except after written notice has been given to the Housing Trust, to the extent practicable within 30 days, but in any event prior to the effective date thereof.
- d. **Waiver of Subrogation:** Owner hereby grants to the Housing Trust a waiver of any right of subrogation which any insurer of said Owner may acquire against the Housing Trust by virtue of payment of any loss. Owner agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Housing Trust has received a waiver of subrogation endorsement from the insurer.
- e. **Loss Payee:** The property insurance shall name the Housing Trust as Loss Payee as its interests appear.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Housing Trust. The Housing Trust may require Owner to purchase coverage with a lower retention or provide satisfactory proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the Housing Trust.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in California with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to the Housing Trust.

Verification of Coverage

Owner shall furnish the Housing Trust with original certificates and amendatory endorsements (or copies of the applicable policy language effecting coverage provided by this clause). All certificates and endorsements are to be received and approved by the Housing Trust before the Agreement commences. However, failure to obtain required documents prior to the Agreement beginning shall not waive Owner's obligation to provide them. The Housing Trust reserves the right to require complete, certified copies of all required insurance policies, including the endorsements required herein, at any time.

Failure to Maintain Insurance Coverage

If Owner, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. The Housing Trust, at its sole option, may terminate this Agreement and obtain damages from Owner resulting from said breach or may cure the default upon five (5) days prior notice to Owner, by procuring and

maintaining such insurance. The premiums paid by the Housing Trust shall be treated as a loan, due from Owner, to be paid on the first day of the month following the date on which the premiums were paid. The Housing Trust shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

Maintenance/Tenant Improvements

Owner shall require and verify that all contractors hired by Owner maintain CGL with limits of no less than \$1,000,000 per occurrence and comply with the insurance requirements stated herein for all maintenance, repair, and improvements performed on the property. All exceptions must be approved in writing by the Housing Trust.

ASSIGNMENT OF CONTRACTS AND PLANS

THIS ASSIGNMENT OF CONTRACTS AND PLANS (“Assignment”), dated as of _____, ____ 2021 is made by Jamboree Housing Corporation (the “Borrower”) in favor of the San Gabriel Valley Regional Housing Trust, a joint powers authority formed by statute of the State of California (“Housing Trust”), in connection with that certain Affordable Housing Loan Agreement, dated _____, ____ 2021, between Borrower and Housing Trust and subsequent and related financing agreements (collectively, the “Agreement”). Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth for them in the Agreement.

1. **Assignment.** As security for the performance in full of all obligations of Borrower to Housing Trust under the Agreement, Borrower hereby assigns and transfers to Housing Trust all of its right, title and interest in and to:

(a) All construction, development, easement, service, supply, management, landscaping, engineering, consulting, and architectural contracts and agreements and all other similar contracts and agreements relating to the development of the real property described in the Agreement as the “Property”, whoever the parties are to such contracts and agreements and whether such contracts and agreements are currently in existence or are subsequently entered into, together with all amendments, modifications, and supplements thereto and any collateral for any third party's performance under any of the contracts and agreements herein described.

(b) All permits, plans, specifications, surveys, drawings, and other technical descriptions of whatever nature now or hereafter existing that relate to the development, construction, reconstruction, restoration, decoration, repair, or replacement of the Project, including without limitation the plans and specifications for the Project including without limitation those prepared by Borrower's architect, and all amendments, modifications, and supplements to any of the writings described in this subparagraph (b), (collectively referred to as the “Plans”).

All of the writings described in subparagraphs (a) and (b) above are sometimes herein referred to collectively as the “Contracts”. This Assignment of the Contracts is an absolute assignment thereof for security purposes, which shall become void and of no further force or effect with respect to the Property upon the Housing Trust's determination that development of the Project has been completed as agreed between the parties.

2. **Warranties and Representations.** Borrower warrants and represents that (a) it is the true owner of the interests under the Contracts; and (b) it has not assigned or granted a security interest in any of the Contracts to any person or entity other than the Housing Trust, except as required to secure Borrower's financing for construction of the Project.

3. **No Assumption by Housing Trust.** Neither this Assignment nor any action or actions on the part of the Housing Trust shall constitute an assumption of any obligations on the part of the Housing Trust under the Contracts, and Borrower shall continue to be liable for all obligations thereunder. Borrower hereby agrees to perform any and all uncontested obligations it may have under the Contracts and to take such steps as may be reasonably necessary or appropriate to secure performance by all other parties of their obligations under the Contracts.

4. **Use of Plans.** The Housing Trust may use the Plans for any purpose relating to the Project, including, without limitation, inspections of construction and the completion of the Project, subject to the rights of the architect. For the purpose of completing, maintaining, restoring, and otherwise dealing with the Project, the Housing Trust may reassign its right, title, and interest in the Plans to any persons or entities succeeding to the Housing Trust's or Borrower's interest in the Project or any portion thereof, in the Housing Trust's sole discretion without any requirements for the consent of Borrower or Borrower's architect or other party who prepared the Plans, and any such reassignment shall be valid and binding upon Borrower and Borrower's architect as fully as if each had expressly approved the same.

5. **No Approval of Plans.** The Housing Trust's acceptance of this Assignment shall not constitute approval of the Plans by the Housing Trust. The Housing Trust has no liability or obligation whatsoever in connection with the Plans and no responsibility for the adequacy thereof or for the construction of the Project. Subject to the provisions of the Agreement, the Housing Trust has the right but not the duty to inspect the Project. No such inspection nor any failure by the Housing Trust to make objections after any such inspection shall constitute a representation by the Housing Trust that the Project is in accordance with the Plans or constitute a waiver of the Housing Trust's right thereafter to insist that the Project be constructed in strict accordance with the Plans.

6. **Benefits Conditionally Retained by Borrower.** The Housing Trust hereby grants Borrower the right to continue to receive the benefits of, and exercise the rights under, the Contracts unless and until an Event of Default under the Agreement occurs, in which event such rights may be revoked at any time thereafter at the option of the Housing Trust. The Housing Trust may not exercise its rights under this Assignment until an Event of Default under the Agreement occurs.

7. **Action by the Housing Trust Following Default.** The Housing Trust shall have the right, but not the obligation, at any time following the occurrence of an Event of Default subject to any notice requirements and cure periods under the Agreement, without notice and without taking possession of the Property, Project, or any part thereof, to take in its name or in the name of Borrower or otherwise such action as the Housing Trust may at any time or from time to time determine to be necessary to cure any default under the Contracts or to protect or exercise the rights of Borrower or the Housing Trust thereunder, and may otherwise exercise any other rights or remedies the Housing Trust has under the Agreement. The Housing Trust agrees to indemnify and hold the Borrower and Borrower's contractors free and harmless from and against any loss, costs, liability, or expense (including but not limited to actual attorneys' and accountants' fees and expenses, based on itemized invoices for time and charges, court costs and investigation expenses) directly resulting from the Housing Trust's exercise of rights hereunder, unless such loss, cost, liability, or expense arises from or results from (a) the negligence or willful misconduct of Borrower, its employees or agents, or (b) any other act or omission of the Borrower, its employees and agents, to the extent it is not covered by any insurance policy required to be and actually carried by Borrower under the Agreement.

8. **Power of Attorney.** Borrower hereby irrevocably constitutes and appoints the Housing Trust its true and lawful agent and attorney-in-fact, with full power of substitution, to demand, receive, and enforce all rights of Borrower under the Contracts, to modify, supplement, and terminate the Contracts, to give appropriate releases, receipts for or on behalf of Borrower in connection with the Contracts, with the same force and effect as Borrower could do if this Assignment had not been made, which appointment shall be effective following the occurrence of an Event of Default under the Agreement. Borrower authorizes any third party to exclusively

rely on the certificate of an officer of the Housing Trust for the establishment of an Event of Default and hereby waives and releases any claim Borrower may have against such third party for such reliance. Borrower hereby agrees to deliver to the Housing Trust, upon the Housing Trust's written demand, originals of all of the Contracts and such other instruments and documents as the Housing Trust may reasonably require in order to permit the Housing Trust's succession to the right, title, and interest of Borrower in and to the Contracts as provided herein. It is hereby recognized that the power of attorney herein granted is coupled with an interest and is irrevocable.

9. **Binding Effect.** This Assignment shall be binding upon Borrower and Borrower's heirs, executors, administrators, legal representatives, successors, and assigns, and shall inure to the benefit of the Housing Trust and its successors and assigns. The Housing Trust may reassign its right, title, and interest in and to the Contracts in whole or in part, to any person or entities succeeding to the Housing Trust's or Borrower's interest in any portion of the Property, in the Housing Trust's sole discretion without any requirement for Borrower's or any other party's consent, and any such reassignment shall be valid and binding upon Borrower and the other parties to the Contracts as fully as if each had expressly approved the same.

10. **Governing Law.** This Assignment shall be governed by and construed under the laws of the State of California, except to the extent preempted by federal law, in which case federal law shall control.

IN WITNESS WHEREOF, Borrower has executed this Assignment as of the date first written above.

BORROWER:

[BORROWER],
a California nonprofit public benefit corporation

Dated: _____

By: _____
NAME
[Title]

REPORT

DATE: February 3, 2021
TO: Board of Directors
FROM: Marisa Creter, Executive Director
RE: **STRATEGIC PLAN, FUNDING STRATEGY, AND HOUSING NEEDS ASSESSMENT**

RECOMMENDED ACTION


For information only.

BACKGROUND

In December 2020, the San Gabriel Valley Regional Housing Trust (SGVRHT) selected BAE Urban Economics as its consultant to create a strategic plan for the organization. BAE is working with subconsultants Sadlon and Associates and the Future Organization to complete the strategic plan which will include a housing needs assessment and funding strategy. The housing needs assessment will produce data specific to the San Gabriel Valley, demonstrating the types of units needed regionally and in member cities in terms of household size, household income, population, and supportive services needs. The funding strategy will identify opportunities for public and private fund leveraging and develop a fundraising implementation plan and toolkit. The strategic plan will engage the Board of Directors and other stakeholders to develop goals for the SGVRHT and will serve to guide the operations of the SGVRHT for the next 3-5 years. The strategic plan is anticipated to be completed in June 2021 and adopted by the Board of Directors.

The strategic planning team will provide a presentation at today's board meeting to describe the goals of the strategic plan, funding strategy, and housing needs assessment. The presentation will describe the roles of each firm and the plans for input from the Board of Directors and additional stakeholders.

Prepared by: 
Brielle Acevedo
Principal Management Analyst

Approved by: 
Marisa Creter
Executive Director