

**DEVELOPMENT AGREEMENT**

**(4307 PARK AVENUE)**

by and between the

**CITY OF RIVERSIDE,**

**HOUSING AUTHORITY OF THE CITY OF RIVERSIDE,**

and

**RIVERSIDE HOUSING DEVELOPMENT CORPORATION**

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## **ATTACHMENTS**

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ATTACHMENT NO. 2	SITE LEGAL DESCRIPTION
ATTACHMENT NO. 3	PROJECT DEVELOPMENT
ATTACHMENT NO. 4	SCHEDULE OF PERFORMANCE
ATTACHMENT NO. 5	PROJECT BUDGET
ATTACHMENT NO. 6	AUTHORITY PROMISSORY NOTE
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## **DEVELOPMENT AGREEMENT**

### **(4307 PARK AVENUE)**

**THIS DEVELOPMENT AGREEMENT (4307 PARK AVENUE)** (“Agreement”) dated for identification purposes only as of \_\_\_\_\_, 2017, is made and entered into by and between the **CITY OF RIVERSIDE**, a California charter city and municipal corporation (“City”), **HOUSING AUTHORITY OF THE CITY OF RIVERSIDE**, a public body, corporate and politic (“Authority”), and **RIVERSIDE HOUSING DEVELOPMENT CORPORATION**, a California corporation (“Developer”), whose DUNS Number is: 80-543-6268 with reference to the following:

### **RECITALS**

The following Recitals are a substantive part of this Agreement. Capitalized terms used in these Recitals and not otherwise defined shall have the meaning set forth in Section 1.1.

A. The City is a California municipal corporation which has received funds from the United States Department of Housing and Urban Development (“HUD”) pursuant to the federal HOME Investment Partnerships Act and HOME Investment Partnerships Program, 42 U.S.C. Section 12701, et seq., and the implementing regulations thereto set forth in 24 CFR, Section 92.1, et seq. (collectively, the “HOME Program”) for the purposes of strengthening public-private partnerships to provide decent, safe, sanitary, and affordable housing, with primary attention to housing, for very low income and low income households in the City.

B. The Authority is a body, corporate and politic established by action of the City Council of the City of Riverside pursuant to Resolution No. 21275 for the purpose of providing affordable housing opportunities through a variety of programs within the City of Riverside and exercising governmental functions and powers pursuant to the California Housing Authorities Law (Health & Safety Code § 34200, et seq., “Housing Authority Law”).

C. The City of Riverside (“City”) has adopted a Housing Element to its General Plan pursuant to Government Code Section 65580 et seq., which sets forth the City’s policies, goals and objectives to provide housing to all economic segments of the community, including the preservation and development of rental housing affordable to very low income, low income and moderate income households.

D. By action of the City Council pursuant to Chapter 2 of the California Community Redevelopment Law (Health & Safety Code § 33000 *et seq.*, “Community Redevelopment Law”), the City established the Redevelopment Agency of the City of Riverside (the “Agency”), whose purpose included increasing, improving and preserving the community’s supply of housing affordable to and occupied by low and moderate income households pursuant to Section 33334.2, 33334.3, 33334.6 and 33413 of the Community Redevelopment Law.

E. On December 29, 2011 in the petition *California Redevelopment Association v. Matosantos* (Case No. S194861), the California Supreme Court upheld Assembly Bill X1 26 that added Parts 1.8 and 1.85 to Division 24 of the Health and Safety Code (“Dissolution Act”), which laws caused the dissolution of all redevelopment agencies in California as of February 1, 2012.

F. As of, on, and after February 1, 2012, the Agency became a dissolved redevelopment agency pursuant to the Dissolution Act.

G. By the adoption of its Resolution No. 22322 on January 10, 2012, the City Council re-affirmed its authorization to have the City serve as the “Successor Authority” to the dissolved Agency under the Dissolution Act. As of, on, and after February 1, 2012, the City began to perform and will continue to perform its functions as the Successor Authority to the dissolved Agency under the Dissolution Act.

H. By adoption of its Resolution No. 22323 on January 10, 2012, the City Council elected not to have the City retain the responsibility for performing housing functions previously performed by the Agency following dissolution of the Agency and, instead, allowed the Housing Authority to make the election authorized under the Dissolution Act to retain the housing assets and functions previously performed by the Agency.

I. By the adoption of its Resolution No. 7 on January 10, 2012, the governing board of the Authority elected to have the Authority assume the housing assets and housing functions previously held and performed by the dissolved Agency pursuant to the Dissolution Act, effective upon dissolution of the Agency. Accordingly, as of, on, and after February 1, 2012, the Housing Authority began to perform and will continue to perform its functions as the “successor housing agency” of the former Agency pursuant to the Dissolution Act.

J. The Authority has received funds designated for the purposes of increasing, improving and preserving the community’s supply of affordable housing, including rental housing available for occupancy at affordable rent to very low income, low income and moderate income households in the City.

K. Developer is a California a California nonprofit public benefit corporation organized under the Internal Revenue Code of 1986 at Section 501(c)(3), whose purpose is to acquire, construct, operate and manage residential properties and who is an experienced affordable housing developer certified by the City as a CHDO and has demonstrated effective control of projects similar in size, scope and level of complexity as the Project here and its commitment to employ professional staff having the knowledge, skills and experience necessary to undertake HOME funded projects.

L. Developer will acquire that certain real property located at 4307 Park Avenue, located in the City of Riverside, California and further identified as Assessor Parcel No. (APN) 211-233-001 (“Site”) as depicted on the Site Plan (Attachment No. 1) and described in the Site Legal Description (Attachment No. 2).

M. Developer has successfully obtained the other necessary commitments for the funding of the Project and Developer stands ready to proceed with commencement of construction of the Project within the next 12 months.

N. Current market demand in the neighborhood in which the Project is located has been assessed and the City is satisfied that there exist reasonable, credible and verifiable market support for the Project.

O. The City, Authority, and Developer desire to enter into an agreement by which:

(i) Developer will acquire the Site from the Riverside Successor Agency and develop a single-family housing unit to be rented to a low-income household (60% AMI or below – “Qualified Household”) which shall have a rent consistent with the affordability requirements of the various funding sources, and thereafter, operate and maintain the Site to provide quality affordable housing to a Qualified Household.

This rental unit will provide an affordable rental opportunity to an income qualified artist. While living within the community, the artist will engage with their neighbors and lead art programming with the goal to engage, inspire, and build community through the arts. The programming will cultivate individual skills, foster social interactions and promote neighborhood development. UCR’s Master Gardner program has committed to creating a passive demonstration garden, showcasing how an underutilized front-yard area can be transformed into an active, water-wise garden that produces food for residents and neighbors.

(ii) Authority will loan to Developer an aggregate amount not to exceed One Hundred Eighty-Three Thousand Two Hundred Thirty-Eight Dollars (\$183,238) for acquisition of the Site, predevelopment and construction related project expenses in accordance with this Agreement; and

(iii) City will loan to Developer an aggregate amount not to exceed Two Hundred Fifty-Two Thousand Six Hundred Sixty-Two Dollars (\$252,662) for acquisition of the Site and construction related project expenses in accordance with this Agreement.

P. The provision of financial assistance to the Developer and the development of the Project pursuant to the terms and conditions of this Agreement are in the vital and best interest of the City and Authority and the health, safety and welfare of the City’s residents, and in accord with the public purposes and provisions of applicable federal, state and local laws, including (without limitation) the Authority’s housing obligations.

**NOW, THEREFORE**, the City, Authority, and the Developer hereby agree as follows:

## **1. DEFINITIONS**

### **1.1. Defined Terms**

As used in this Agreement, the following capitalized terms shall have the following meanings:

**“Affordable Rent”** means the amount of monthly rent, including a reasonable utility allowance, that does not exceed the lesser of the maximum allowable rent to be charged by Developer and paid by the Qualified Household, occupying the Affordable Unit, as determined pursuant to (i) Section 92.252 of the HOME Regulations or any successor regulation, (ii) Section 50053 of the Health & Safety Code or any successor statute, (iii) applicable regulations pursuant to any other source of financing secured for, and continuing to be secured by, the Project, or (iv) if applicable, any effective Section 8 Program regulations as to any Affordable Unit designated as a project-based Section 8 unit or otherwise occupied by a holder of a Rental Voucher or Rental

Certificate evidencing participation in the Section 8 Program. For purposes of calculating Affordable Rent a “reasonable utility allowance” shall be the allowance established by the County of Riverside Housing Authority or such lesser allowance reasonably permitted by the City and Authority including, but not limited to, the California Utility Allowance Calculator, if applicable.

**“Affordable Unit”** means the construction of one affordable rental unit on the Site required to be maintained on the Site and available to, occupied by, or held vacant for occupancy, Qualified Low Income Households. Preference shall be given to households as identified in Section 6.2.3.

**“Affordability Period”** means the period commencing upon the recordation of the Release of Construction Covenants and terminating on the fifty-fifth (55<sup>th</sup>) anniversary thereof for the Authority and twenty (20<sup>th</sup>) anniversary thereof for the City.

**“Agreement”** means this Development Agreement, including all of the Attachments hereto, by and among the Parties.

**“Assignment of Plans, Reports and Data”** means that assignment attached hereto as Attachment No. 15.

**“Authority”** means the Housing Authority of the City of Riverside, a public body, corporate and politic.

**“Authority Deed of Trust”** means the Deed of Trust, Fixture Filing and Assignment of Rents in substantially the form attached as Attachment No. 7 to be executed by the Developer as Trustor, in favor of the Authority, as Beneficiary, and to be recorded as a lien against the Site securing the Authority Loan in accordance with the terms and conditions of this Agreement.

**“Authority Loan”** means the loan from the Authority to the Developer in an amount not to exceed One Hundred Eighty-Three Thousand Two Hundred Thirty-Eight Dollars (\$183,238).

**“Authority Loan Documents”** means the following documents evidencing the Authority Loan and required as consideration for the Authority to make the Authority Loan: (i) the Authority Promissory Note; (ii) the Authority Deed of Trust; (iii) the Authority Regulatory Agreement; (iv) the Assignment of Plans, Reports and Data; and (v) this Agreement.

**“Authority Promissory Note”** means the promissory note evidencing the Authority Loan in substantially the form shown in Attachment No. 8 hereto.

**“Authority Regulatory Agreement”** means the regulatory agreement which is to be recorded against the Site in substantially the form of Attachment No. 10.

**“Capital Replacement Reserve”** is defined in Section 6.4.

**“City”** means the City of Riverside, a California municipal corporation.

**“City HOME Regulatory Agreement”** means the Regulatory Agreement (HOME) in the form attached hereto as Attachment No. 11.

***“City HOME Loan”*** means the loan from the Authority to the Developer in an amount not to exceed Two Hundred Fifty - Two Thousand Six Hundred Sixty - Two Dollars (\$252,662).

***“City HOME Loan Documents”*** means the following documents evidencing the City HOME Loan and required as consideration for the City to make the City HOME Loan: (i) the City HOME Promissory Note; (ii) the City HOME Deed of Trust; (iii) the City HOME Regulatory Agreement; (iv) the Assignment of Plans, Reports and Data; and (v) this Agreement.

***“City Manager”*** means the City Manager of the City of Riverside or his/her designated representative.

***“City Promissory Note”*** means the promissory note evidencing the Authority Loan in substantially the form shown in Attachment No. 8 hereto.

***“City Regulatory Agreement”*** means the regulatory agreement which is to be recorded against the Site in substantially the form of Attachment No. 11.

***“Close” or “Closing”*** is defined in Section 4.1.11.

***“Community Housing Development Corporation”*** is defined in Section 92.2 of the HOME Regulations.

***“Construction Contract”*** is defined in Section 3.2.

***“Conversion”*** means the date upon which the Construction Loan is converted to the Permanent Loan.

***“County”*** means the County of Riverside, California.

***“Developer”*** means Riverside Housing Development Corporation, a California corporation, and any permitted successors and assigns pursuant to section 2.2 of this Agreement.

***“Developer Approval Period”*** shall be the one month period following the Effective Date.

***“Disbursement Request”*** is defined in Section 3.5.

***“Effective Date”*** means the date upon which this Agreement was approved by the Authority.

***“Environmental Laws”*** means any and all present and future federal, state and local laws (whether under common law, statute, ordinance, rule, regulation or otherwise), court or administrative orders or decrees, requirements of permits issued with respect thereto, and other requirements of governmental authorities relating to the environment or to any Hazardous Substance or Hazardous Substance Activity (including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601, *et seq.*), as heretofore or hereafter amended from time to time (“CERCLA”), and the applicable provisions of the California Health and Safety Code and the California Water Code, and any and all successor statutes and regulations, orders, decrees, guidelines, or pronouncements promulgated thereunder).

***“Escrow”*** or ***“Escrows”*** mean the escrow or escrows for the recording of the liens against the Site for the Developer to acquire and develop the Site as provided in Section 4.1.

***“Escrow Agent”*** is Stewart Title of California – Inland Empire Division located at 7065 Indiana Avenue, Suite 100, Riverside, CA 92506 or another qualified escrow company approved in writing by the Parties.

***“Event of Default”*** means the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 12.

***“Evidence of Financing”*** is defined in Section 3.1

***“Executive Director”*** means the Executive Director of the Authority or his/her designated representative.

***“General Contractor”*** is defined in Section 3.2.

***“Governmental Regulations”*** means any local, state, and federal laws, ordinances, rules, requirements, resolutions, policy statements and regulations (including, without limitation, those relating to land use, subdivision, zoning, environmental, labor relations, prevailing wage, notification of sale to employees, Hazardous Substance, occupational health and safety, water, earthquake hazard reduction and building and fire codes) bearing on the demolition, alteration, replacement, repair, refurbishing, improvement, construction, maintenance, management, use, or operation of the Project.

***“Hazardous Substance”*** means (i) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101), as amended from time to time, or now or hereafter otherwise classified or regulated pursuant to any Environmental Laws as a “hazardous substance”, “hazardous material”, “hazardous waste”, “extremely hazardous waste”, “infectious waste”, “toxic substance”, “toxic pollutant” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or “EP toxicity”, (ii) any asbestos or asbestos containing material, (iii) any polychlorinated biphenyls (PCB’s), (iv) any ureaformaldehyde, and (v) any petroleum, natural gas, natural gas liquid, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources. Notwithstanding the foregoing, “Hazardous Substances” shall not include any chemical, compound, material, mixture or substance used in the normal course of operating an apartment complex, so long as such chemical, compound, material, mixture or substance is used in accordance with Environmental Laws.

***“Hazardous Substance Activity”*** means any actual, proposed or threatened storage, holding, existence or suspected existence, release or suspected release, emission, discharge, generation, processing, abatement, removal, disposition, treatment, handling or transportation of any Hazardous Substance from, under, into, on, above, around or across the Site or surrounding



property or any other use of or operation on the Site or the surrounding property that creates a risk of Hazardous Substance contamination of the Site.

**“High HOME Rent”** means tenant paid rent that is in accordance with Section 92.252(a) of the HOME regulations.

**“HOME Assisted Unit”** means the one unit available to, occupied by or held vacant for occupancy exclusively for a Low Income Household, for which all HOME Regulations apply, including without limitation, Affordable Rent, and HOME occupancy and monitoring requirements.

**“HOME Program”** means the HOME Investment Partnerships Act, 42 U.S.C. Section 12701, *et seq.* and the implementing HOME Regulations as such now exist and as may hereafter be amended.

**“HOME Regulations”** mean the implementing regulations of the HOME Program set forth at 24 CFR 92.1, *et seq.* as such now exist and as may hereafter be amended.

**“Housing Project Manager”** means that person designated by the Executive Director and City Manager to manage affordable housing projects within the City of Riverside.

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

**“Loan Proceeds”** is defined in Section 3.5.

**“Management Plan”** means the plan for the management of the Project to be submitted by the Developer and approved by the City and Authority, as set forth in Section 6.7 hereof.

**“Marketing Plan”** means the plan for the marketing of the Affordable Unit to be submitted by the Developer and approved by the City and Authority, as set forth in Section 6.6 hereof.

**“Notice”** means a notice in the form prescribed by Section 9.1.

**“Operating Reserve”** is defined in Section 6.5.

**“Outside Closing Date”** means November 30, 2017.

**“Parties”** means the City, Authority, and Developer.

**“Predevelopment Costs”** means predevelopment expenses which are customarily incurred and shall have been actually incurred by Developer in connection with the Project and shall include, without limitation, the following: architectural, engineering or related professional services required to prepare plans, specifications or work write-ups; application, commitment and/or origination fees in connection with construction and/or permanent financing contemplated by this Agreement; security services; land use entitlements and building permits; development fees; utilities fees; property insurance; title and other insurance, legal and accounting fees; tests to determine the condition of the Site; costs of environmental review; development impact fees; property taxes; fees for financial and advisory services and any other appropriate predevelopment costs identified in the Project Budget and reasonably approved by the Authority.

***“Project”*** means predevelopment activities related to the Site, the acquisition of the Site, construction of one affordable rental unit and any improvements appurtenant thereto by the Developer upon the Site in accordance with Governmental Regulations and all applicable permits and entitlements and as described in Section 5.

***“Project Budget”*** is attached hereto as Attachment 5.

***“Project Costs”*** means all costs and expenses approved pursuant to this Agreement which are customarily incurred and with those permitted by Section 92.206(a) of the HOME Regulations and shall have been actually incurred by Developer for the development of the Project and shall include, without limitation, the following: Predevelopment Costs; construction costs; construction and design fees; architectural and engineering costs and fees (if any); a construction management fee as set forth in the Project Budget; property taxes and assessments; security services; off-site improvements and permits (if any); building permits; utility fees; insurance; legal and accounting fees; escrow fees and costs; title and title insurance; bonds; tests to determine the condition of the Site; and such other costs, fees and expenses, as agreed to in writing by the City; provided, however, that payment to parties related to Developer for Project Costs must not exceed reasonable and customary market rates.

***“Property Manager”*** means the manager of the Project, as set forth in Section 6.8.

***“Qualified Household”*** means a Qualified Low Income Household.

***“Qualified Low Income Household”*** means a household whose gross annual income does not exceed sixty percent (60%) of the Riverside County median income adjusted for family size as set forth from time to time by regulation of the (1) California Department of Housing and Community Development defined under California Health and Safety Code Section 50079.5 and (2) Section 92.252 of the HOME Regulations or any successor regulations. Annual household income is defined in regulations at 24 CFR 5.609 and shall be calculated using source documents or third-party certifications of all income and assets held or generated by all members of the applicant or tenant household, in accordance with regulations published at 24 CFR 5.203(a)(1)(i) and 24 CFR 92.203(a)(1)(i), or 24 CFR 5.617 when calculating the income of persons with disabilities.

***“Release of Construction Covenants”*** means the document which evidences the Developer’s satisfactory completion of the Project, as set forth in Section 5.15, in substantially the form of Attachment No. 13.

***“Request for Notice of Default”*** means a request for notice of default to be recorded in accordance with Section 4.3.11 against the Site in substantially in the form shown in Attachment No. 14.

***“Schedule of Performance”*** means that certain Schedule of Performance attached hereto as Attachment No. 4, setting out the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between the Developer, City and the Authority. The City and Authority authorizes the City Manager and Executive Director to make such revisions to the Schedule of Performance as he/she deems reasonably necessary to effectuate the purposes of this Agreement.

**“Section 3 Clause”** means and refers to Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, as amended. For purposes of this Section 3 Clause and compliance thereto, whenever the word “contractor” is used it shall mean and include, as applicable, Developer, contractor(s), and subcontractor(s). The particular text to be utilized in (a) any and all contracts of any contractor doing work covered by Section 3 entered into on or after the Effective Date and (b) notices to contractors doing work covered by Section 3 pursuant to contracts entered into prior to the Effective Date shall be in substantially the form of the following, as reasonably determined by City, or as directed by HUD or its representative, and shall be executed by the applicable contractor under penalty of perjury:

(i) “The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (“Section 3”). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low income persons [inclusive of Very Low Income Persons, Very Low Income Households, and Very Low Income Tenants served by the Project], particularly persons who are recipients of HUD assistance for housing.

(ii) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

(iii) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of notices in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number of job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(iv) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(v) The contractor will certify that any vacant employment positions, including training positions, that are filled (a) after the contractor is selected but before the contract is executed, and (b) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

(vi) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(vii) With respect to work performed in connection with Section 3 covered Indian Housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible, (a) preference and opportunities for training and employment shall be given to Indians, and (b) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

**"Site"** means that certain real property referenced in Recital L above as delineated on the Site Plan (Attachment No. 1) and more particularly described in the Site Legal Description (Attachment No. 2).

**"Site Legal Description"** means the description of the Site which is attached hereto as Attachment No. 2.

**"Site Plan"** means the map of the Site and the proposed Project is attached hereto as Attachment No. 1.

**"Social Programs"** means social service and support activities provided by Developer or its designee relating to the economic and social needs of the tenant in the Project.

**"Title Company"** is Stewart Title of California – Inland Empire Division, located at 7065 Indiana Avenue, Suite 100, Riverside, CA 92506 or other qualified title company approved in writing by the Parties.

**"Unit"** means the individual dwelling unit within the Project to be constructed and operated by the Developer on the Site, in accordance with the terms and conditions of this Agreement.

#### 1.2. Singular and Plural Terms

Any defined term used in the plural herein shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class.

#### 1.3. Accounting Principles

Any accounting term used and not specifically defined herein shall be construed in conformity with, and all financial data required to be submitted herein shall be prepared in conformity with, generally accepted accounting principles applied on a consistent basis or in accordance with such other principles or methods as are reasonably acceptable to the Executive Director.

#### 1.4. References and Other Terms

Any reference to any document shall include such document both as originally executed and as it may from time to time be modified. References herein to Sections and Attachments shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The term “document” is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms “including” and “include” mean “including (include), without limitation.”

#### 1.5. Attachments Incorporated

All attachments to this Agreement, as now existing and as the same may from time to time be modified, are incorporated herein by this reference.

## 2. **REPRESENTATIONS AND TRANSFERS**

#### 2.1. Representations by the Developer

The Developer hereby represents and warrants to the City and Authority as follows:

##### 2.1.1. Organization

Developer is a duly organized, validly existing limited partnership in good standing under the laws of the State of California and has the power and authority to own and lease property and carry on its business as now being conducted. The copies of the documents evidencing the organization of Developer delivered to the City and Authority are true and correct copies of the originals as of the Effective Date.

##### 2.1.2. Authority

The Developer has the legal power, right and authority to execute, deliver and enter into this Agreement and any and all other agreements and documents required to be executed and delivered by the Developer in order to carry out, give effect to, and consummate the transactions contemplated by this Agreement, and to perform and observe the terms and provisions of all of the above. The parties who have executed this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement are authorized to execute and deliver the same on behalf of the Developer and all actions required under Developer’s organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered pursuant hereto, have been duly taken.

##### 2.1.3. Valid Binding Agreements

This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will constitute when so executed and delivered, legal, valid and binding obligations of Developer enforceable against it in accordance with their respective terms.

#### 2.1.4. Contingent Obligations

The Developer does not have any material contingent obligations or any material contractual agreements (other than in connection with the development of the Project) which could materially adversely affect the ability of the Developer to carry out its obligations hereunder.

#### 2.1.5. Litigation

To the Developer's best knowledge, no action, suit or proceedings are pending or threatened before any governmental department, commission, board, bureau, agency or instrumentality to which the Developer is or may be made a party or to which any of its property is or may become subject, which has not been disclosed to the City and Authority which could materially adversely affect the ability of the Developer to carry out its obligations hereunder.

#### 2.1.6. No Conflict

Developer's execution and delivery of this Agreement and any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, and the performance of any provision, condition, covenant or other term hereof or thereof, do not or will not conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Developer, or any provision of the organizational documents of Developer, or will conflict with or constitute a breach of or a default under any agreement to which Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of Developer, other than liens established pursuant hereto.

#### 2.1.7. No Developer Bankruptcy

No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, receivership or other proceedings are pending or, to the best of Developer's knowledge, threatened against the Developer or any parties affiliated with Developer, nor are any of such proceedings contemplated by Developer or any parties affiliated with Developer.

Each of the foregoing representations shall be deemed to be an ongoing representation and warranty. The Developer shall advise the City and Authority in writing if there is any change pertaining to any matters set forth or referenced in the foregoing representations.

### 2.2. Limitation Upon Change in Ownership, Management and Control of Developer

#### 2.2.1. Prohibition

The identity and qualifications of Developer's general partner as an experienced and successful developer and operator/manager of affordable housing are of particular concern to the City and Authority. It is because of this identity and these qualifications that the City and Authority has entered into this Agreement with the Developer. Prior to the expiration of the Affordability Period, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement by assignment or otherwise, nor shall Developer make any total or partial sale, transfer, conveyance, encumbrance to secure financing (including, without limitation, the grant of a deed of trust to secure funds necessary for construction

and permanent financing of the Project), distribution, assignment or lease of the whole or any part of the Site or any material change in the management or control of Developer without the prior written approval of City and Authority, except as expressly set forth herein. Any purported transfer, voluntary or by operation of law, in violation of this Section 2.2 shall constitute a default hereunder and shall be void and City and Authority shall have the cumulative options to terminate this Agreement and to seek all remedies available at law or equity.

#### 2.2.2. Permitted Transfers by Developer

Notwithstanding any other provision of this Agreement to the contrary, City and Authority approval of an assignment of this Agreement or conveyance of the Site or any part thereof shall not be required in connection with any of the following:

- i. the conveyance or dedication of any portion of the Site to the City or other appropriate governmental agencies, or the granting of easements or permits to public utilities to facilitate the development of the Project;
- ii. subject to the restrictions of Section 6.3 hereof and as set forth in the City and Authority Regulatory Agreement, the rental of the Affordable Unit to Qualified Household;
- iii. any requested assignment for financing purposes (subject to such financing being considered and approved by the City and Authority pursuant to Section 2.2 herein), including the deed of trust to secure funds necessary for construction and permanent financing of the Project; and
- iv. any transfer to a limited partnership in which Developer or an entity controlled by Developer, is the managing general partner. The term “control” as used in the immediately preceding sentence, means, with respect to an entity that is a corporation, the right to the exercise, directly or indirectly, of more than 50% of the voting rights attributable to the shares of the controlled corporation, and, with respect to an entity that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person;

#### 2.2.3. City and Authority Consideration of Requested Transfer

Except for a transfer permitted pursuant to Section 2.2.2, Developer shall provide City and Authority with thirty (30) calendar days’ prior written notice of its intent to assign or transfer and shall request any approval sought for such assignment or transfer described in Section 2.2.1 above. Such notice shall be accompanied by evidence regarding the proposed assignee’s or purchaser’s development, operation and management qualifications and experience and its financial commitments and resources sufficient to enable the City and Authority to evaluate the proposed assignee or purchaser is qualified and capable to perform the Developer’s obligations pursuant to this Agreement.

Within thirty (30) calendar days, or, if board or council approval is required, forty-five (45) calendar days, after the receipt of Developer’s written request for City and Authority approval of an assignment or transfer pursuant to this Section 2.2.3, City and Authority shall respond in writing either approving the proposed assignee or transferee or requesting further information required by City and Authority in order to determine whether or not to grant the

requested approval. Upon receipt of such a request for further information, Developer shall promptly furnish to City and Authority such requested information.

An assignment or transfer approved by the City and Authority pursuant to this Section 2.2.3 shall not be effective unless and until the proposed assignee or transferee executes and delivers to the City and Authority an agreement in form reasonably satisfactory to City's and Authority's legal counsel assuming the obligations of Developer under the City and Authority Loan Documents. Thereafter, the assignor shall remain responsible to City and Authority for performance of the obligations assumed by the assignee unless the City and Authority releases the assignor in writing.

#### 2.2.4. Successors and Assigns

All of the terms, covenants and conditions of this Agreement shall be binding upon Developer and the permitted successors and assigns of Developer.

### **3. FINANCING OF THE PROJECT**

#### 3.1. Sources of Financing

As set forth in the Project Budget, the parties anticipate that Project costs shall be financed with a combination of funds from the proceeds of the Authority Loan and the City HOME Loan.

#### 3.2. Construction Contract

At least fifteen (15) days prior to the closing of the City HOME and Authority Loans, Developer agrees to deliver to City and Authority, for its review and approval, a fixed price or guaranteed maximum cost construction contract(s) ("Construction Contract") for all of the improvements necessary to complete the Project, which Construction Contract shall obligate a reputable and financially responsible general contractor(s) ("General Contractor"), capable of being bonded and licensed in California and with experience in completing the type of Project contemplated by this Agreement, to commence and complete the construction of those improvements in accordance with this Agreement and under the terms provided therein. The Construction Contract shall contain a schedule of values in such form as is reasonably satisfactory to the City and Authority. City and Authority shall not unreasonably withhold its approval of the Construction Contract provided that such contract conforms to the requirements of this Agreement.

Each Construction Contract shall give the City and Authority the right, but not the obligation, to cure defaults thereunder and to assume Developer's obligations and rights under the contract; provided that such right to cure and assume that contract shall be subject to the right, if any, of the Construction Loan lender. In addition, each Construction Contract shall provide, among other matters, that all change orders in excess of Fifty Thousand Dollars (\$50,000) must be approved by the City Manager and Executive Director within five (5) Business Days. Further, each Construction Contract shall set forth a reasonably detailed schedule for completion of each stage of construction.

City and Authority approval of the Construction Contract shall not constitute a waiver by the City and Authority of any breach or violation of this Agreement that is a result of acts that are or purport to be in compliance with or in furtherance of said Construction Contract.



In connection with delivery of the Construction Contract, Developer shall furnish to the City and Authority with a contractor's performance bond in an amount not less than one hundred percent (100%) of the costs for the applicable Project improvements and a payment bond guaranteeing contractor's completion of those improvements free from liens of material men, contractors, subcontractors, mechanics, laborers, and other similar liens. Said bonds shall be issued by a responsible surety company, licensed to do business in California and with a financial strength and credit rating reasonably acceptable to the City and Authority and shall remain in effect until the entire costs for such improvements shall have been paid in full. Any such bonds shall be in a form reasonably satisfactory to the City and Authority legal counsel. In lieu of the payment and performance bonds, Developer may provide (i) a guaranty, in such form as reasonably required by the City and Authority, to be executed by Developer's parent for the lien free completion of the Project in accordance with this Agreement; or (ii) a letter of credit issued to the City and Authority in the amount of not less than one hundred percent (100%) of the costs for the applicable improvements, in a form and from a financial institution approved by the City and Authority, which approval shall not be unreasonably withheld.

### 3.3. Authority Loan

Authority hereby agrees to loan to Developer and Developer hereby agrees to borrow the Authority Loan in an amount not to exceed One Hundred Eighty-Three Thousand Two Hundred Thirty-Eight Dollars (\$183,238) from Authority pursuant to the terms and conditions of the Authority Loan Documents.

#### 3.3.1. Funding

Authority shall make the Authority Loan to Developer from available funds allocated to the Authority pursuant to the Community Redevelopment Law and such other funds as reasonably determined by the Authority in its sole and absolute discretion. The Authority Loan shall be made in accordance with and subject to the terms and conditions set forth in the Authority Promissory Note, the Authority Deed of Trust and the Agreement.

#### 3.3.2. Security for Authority Loan; Nonrecourse Obligation After Completion of Construction

The Authority Loan shall be evidenced by the Authority Promissory Note and shall be secured by the Authority Deed of Trust. In addition, Developer shall assign certain documents and agreements to Authority as collateral for the Authority Loan by executing the Assignment of Plans, Reports and Data. Following the recordation of the Release of Construction Covenants, the Authority Loan shall constitute a nonrecourse obligation of Developer such that the Authority shall resort only to the Site for repayment in the Event of Default by Developer and Developer shall have no further liability for repayment in the event the Site or portion thereof is foreclosed upon.

To the extent permitted by laws, Developer shall utilize in good faith and as practicable, and shall require its contractors and subcontractors to utilize in good faith and as practicable, lower income persons residing in the redevelopment project areas lying within the City's municipal boundaries in their hiring programs, in the construction and development of the Project consistent with the hiring preference authorization and \$100,000 contract threshold set forth by Health & Safety Code Section 33422.3. The ultimate determination of employment or

contracting, however, shall remain with Developer and its contractors and subcontractors in their reasonable discretion.

### 3.4. City HOME Loan

City hereby agrees to loan to Developer and Developer hereby agrees to borrow the City in an amount not to exceed Two Hundred Fifty-Two Thousand Six Hundred Sixty-Two Dollars (\$252,662) from City pursuant to the terms and conditions of the City HOME Loan Documents.

#### 3.4.1. Funding

City shall make the City HOME Loan to Developer from available funds allocated to the City pursuant to the HOME Program as set forth in 24 CFR, Section 92.1, et seq. The City HOME Loan shall be made in accordance with and subject to the terms and conditions set forth in the City HOME Promissory Note, the City HOME Deed of Trust and the Agreement.

#### 3.4.2. Security for City HOME Loan; Nonrecourse Obligation After Completion of Construction

The City HOME Loan shall be evidenced by the City HOME Promissory Note and shall be secured by the City HOME Deed of Trust. In addition, Developer shall assign certain documents and agreements to City as collateral for the City HOME Loan by executing the Assignment of Plans, Reports and Data. Following the recordation of the Release of Construction Covenants, the City HOME Loan shall constitute a nonrecourse obligation of Developer such that the City shall resort only to the Site for repayment in the Event of Default by Developer and Developer shall have no further liability for repayment in the event the Site or portion thereof is foreclosed upon.

To the extent permitted by laws, Developer shall utilize in good faith and as practicable, and shall require its contractors and subcontractors to comply with Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, as amended.

### 3.5. Disbursement of the Authority and City HOME Loan Proceeds

The loan proceeds of the City HOME and Authority Loans shall be used for Project Costs in connection with the development of the Project.

Following the Closing, up to Two Hundred Fifty-Two Thousand Six Hundred Sixty-Two Dollars (\$252,662) of the City HOME Loan proceeds and One Hundred Eighty-Three Thousand Two Hundred Thirty-Eight Dollars (\$183,238) Authority Loan proceeds shall be made available for disbursement for Project Costs. Loan proceeds are provided on a reimbursable basis.

Upon satisfaction of the conditions precedent to the disbursement of the Loan Proceeds set forth in Section 3.7, the remaining Loan Proceeds shall be disbursed to Developer not later than thirty (30) days after receipt by the Housing Authority Manager of a written disbursement request from the Developer (each, a "Disbursement Request"). The Disbursement Request shall set forth the amount of the requested disbursement of Loan Proceeds and shall certify that (a) all conditions precedent to disbursement of the Loan Proceeds set forth in Section 3.7 have been and remain satisfied and (b) no Event of Default has occurred and is continuing under the City HOME and Authority Loan Documents. The City and Authority shall use their best

commercially reasonable efforts to wire transfer such disbursements when requested by Developer.

### 3.6. Retention

Except as provided herein, as to each Disbursement Request made to the City and Authority for Project Costs, disbursements of Loan Proceeds shall be made for such item in the amount of ninety percent (90%) of the costs for such item properly incurred and substantiated by Developer during the course of the Project. Upon satisfaction of the conditions set forth in Section 3.8, the City and Authority shall disburse Loan Proceeds in the amount of Ninety Percent (90%) of each Disbursement Request for Project Costs, provided, however, that the amounts so retained on account of rough grading, wet and dry utilities, concrete foundations, and framing shall be released on a trade by trade basis, so long as (a) the construction of the trade improvements has been completed substantially in accordance with the Plans and has been fully paid for and is lien free, and (b) all work requiring inspection or certification by any governmental agency has been completed and all requisite certificates, approvals and other necessary authorizations have been obtained.

Notwithstanding the foregoing, as to each Disbursement Request made to the City and Authority for Project Costs that constitute payment of City permits and development impact fees related to the Project or the payment of “soft costs,” disbursements of Loan Proceeds shall be made for such item in the amount of one-hundred percent (100%) of the costs for such item properly incurred and substantiated by Developer during the course of the Project.

Upon satisfaction of the conditions precedent to the disbursement of the Retention set forth in Section 3.8, the proceeds shall be disbursed to Developer not later than thirty (30) days after receipt by the Housing Authority Manager of a written disbursement request from the Developer (the “Final Disbursement Request”). The Final Disbursement Request shall set forth the amount of the requested disbursement of Loan Proceeds and shall certify that (a) all conditions precedent to disbursement of the Loan Proceeds set forth in Section 3.7 have been and remain satisfied and (b) all conditions precedent to disbursement of the Retention set forth in Section 3.8 have been and remain satisfied. The City and Authority shall use their best commercially reasonable efforts to wire transfer such disbursement when requested by Developer.

### 3.7. Conditions Precedent to Disbursement of the Loan Proceeds

All disbursements of Loan Proceeds shall be recorded by the Housing Authority Manager and acknowledged by the Developer on “Exhibit ‘A’” to the City and Authority Promissory Note. The City and Authority shall authorize the disbursement of Loan Proceeds to or on behalf of Developer for Project Costs only upon satisfaction of the conditions precedent set forth in this Section 3.7.

#### 3.7.1. Execution and Delivery of City HOME and Authority Loan Documents

Developer shall have executed and delivered to the City: this Agreement, the City HOME Regulatory Agreement, the City HOME Promissory Note, the City HOME Deed of Trust, and the Assignment of Plans, Reports and Data, and to the Authority: this Agreement, the Authority Regulatory Agreement, the Authority Promissory Note, the Authority Deed of Trust, and the Assignment of Plans, Reports and Data.

3.7.2. Evidence of Financing

The City Manager and Executive Director has approved the Evidence of Financing in accordance with Section 3.1.

3.7.3. Evidence of Insurance

Developer shall have furnished to the City and Authority with proper evidence of insurance as required by Section 7.2.

3.7.4. Title to Land

Developer shall have good and marketable fee title to the Site and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens for current real property taxes and assessments not yet due and payable, the deeds of trust approved by the City and Authority and any other matters approved in writing by the City and Authority.

3.7.5. Recordation and Priority of the City HOME and Authority Regulatory Agreement

The City HOME Regulatory Agreement will be executed and recorded as a lien against the Site before the liens of the City Loan. The Authority Regulatory Agreement will be executed and recorded as a lien against the Site before the liens of the Authority Loan.

3.7.6. Recordation of the City HOME and Authority Deed of Trusts

The City HOME and Authority Deed of Trusts shall have been recorded as a lien against the Site.

3.7.7. Title Policy

Concurrently with the recordation of the City HOME and Authority Deed of Trusts, the Title Company shall issue and deliver to the City and Authority an extended ALTA lender's policies of title insurance in an amount equal to the City HOME and Authority Loans, together with such endorsements as requested by the City and Authority, insuring that fee simple title to the Site is vested in Developer and that the priority of the City HOME and Authority Deed of Trusts and the City HOME and Authority Regulatory Agreements are consistent with Section 4.1.12. The Title Company shall provide Developer with copies of such title policy. The Title Company shall, if requested by either the City or Authority, provide any extended coverage and any endorsements reasonably requested by the City or Authority (collectively, the "Additional Endorsements"). The Developer shall pay the cost of such title policies.

3.7.8. Construction Contracts

Developer shall have submitted to the City and Authority and City and Authority shall have approved the Construction Contract entered into in connection with the development of the Project.

#### 3.7.9. Construction Bonds; Completion Guaranty

Developer shall furnish to the City and Authority with a completion bond guaranteeing General Contractor's completion of the improvements for the Project free from liens of material men, contractors, subcontractors, mechanics, laborers, and other similar liens. Said bonds shall be issued by a responsible surety company, licensed to do business in California, and with a financial strength and credit rating reasonably acceptable to the City and Authority and shall remain in effect until the entire costs for such Improvements shall have been paid in full. Any such bonds shall be in a form reasonably satisfactory to the City and Authority's legal counsel and the City Risk Manager. In lieu of the performance bonds, Developer may provide a letter of credit issued to the City and Authority in the amount of not less than one hundred percent (100%) of the costs for the applicable Improvements, in a form and from a financial institution approved by Authority, which approval shall not be unreasonably withheld.

#### 3.7.10. Environmental Compliance

All federal, state and local environmental requirements applicable to the Project, including without limitation, the National Environmental Policy Act of 1969, Public Law 91-190 as amended, 42 U.S.C. Sections 4321-4347 and the California Environmental Quality Act California Public Resources Code Section 21000, et seq., have been satisfied.

#### 3.7.11. Evidence of Eligible Project Costs

Developer shall have submitted to the City and Authority paid invoices, receipts, canceled checks or other written documentation reasonably satisfactory to the City Manager and Executive Director evidencing Developer's expenditure for Project Costs.

#### 3.7.12 No Default

There shall exist no condition, event or act which would constitute an Event of Default by Developer (as defined in Section 8.1) hereunder or which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default by Developer.

#### 3.7.13 Representations and Warranties

All representations and warranties of Developer herein contained shall be true and correct in all material respects.

#### 3.8. Conditions Precedent to Disbursement of Retention

Upon satisfaction or waiver of the conditions precedent set forth below, as reasonably determined by the City Manager and Executive Director, the City and Authority shall disburse the Retention.

No disbursement of the Loan Proceeds shall be made for the Retention until all of the following conditions precedent have been satisfied (as determined by the City and Authority in its discretion) or waived:

##### 3.8.1. Compliance with Previous Conditions

Developer shall be in compliance with the conditions precedent to disbursement of the Loan Proceeds set forth in Section 3.7.

### 3.8.2. Completion of Construction

a. The construction of the Project shall be complete. The construction of the Project shall be considered complete for purposes of this Agreement only when (a) the construction of the Site has been completed substantially in accordance with the Plans and has been fully paid for, or will be fully paid for upon reimbursement of the retention and is lien free, (b) all work requiring inspection or certification by any governmental agency has been completed and all requisite certificates, approvals and other necessary authorizations have been obtained (including, without limitation, temporary certificate(s) of occupancy for the Improvements which shall be subject only to conditions reasonably acceptable to the City and Authority), and (c) streets and offsite utilities located within or pertaining to the Project have been completed to the satisfaction of all applicable authorities.

b. Any portion of the Project requiring inspection or certification by any governmental agency shall have been inspected and certified as complete, a final certificate of occupancy shall have been issued covering the Project and all other necessary approvals, licenses, exemptions and other authorizations of governmental agencies shall have been duly obtained.

c. At least one of the following shall have occurred:

(i) 35 days shall have passed since the recording of a valid notice of completion for the construction of the Project and no mechanic's or materialman's lien shall be outstanding; or

(ii) 95 days shall have passed since actual completion of the construction of the Project and no mechanic's or materialman's lien shall be outstanding; or

(iii) City and Authority shall be satisfied that no mechanic's or materialman's lien will impair its interest in the Site, Authority hereby agrees to consider that a CLTA Form No. 101.1 Endorsement to the Title Policy, in form and substance reasonably satisfactory to Authority, may satisfy the requirement of this subparagraph (iii).

d. City and Authority shall be reasonably satisfied that the Project was completed in accordance with all applicable Governmental Regulations in all material respects, including, without limitation, all laws described in any Prevailing Wage Clause.

e. All requirements for release of retention set forth in this Agreement have been met.

f. City and Authority has issued and Developer has recorded a Release of Construction Covenants.

### 3.9. Other Sources of Financing

#### 3.9.1. Construction and Permanent Loan

The City HOME and Authority Loans shall be used to cover the cost to purchase the property from the Successor Agency and to develop the Site.

### 3.9.2. Developer Financing

Developer may provide financing to the Project. In the event that such developer financing is utilized, interest and fees shall not exceed reasonable and customary interest and fees for similar commercial loans.

### 3.9.3. Additional Sources of Financing

The Developer, City and Authority agree to work together to obtain additional sources of financing for unfunded budgeted project costs, if any, and/or reduce the total amount of the Authority Loan. Developer agrees to exercise diligent efforts to identify and obtain additional sources of financing. If and to the extent that the Parties successfully obtain additional sources of financing, such funds shall be allocated first to fund Project Costs, if any, in excess of the costs identified in the final Project Budget, and second 50% to payment of any deferred developer fee and 50% to reduce the amount of the Authority Loan.

### 3.9.4. Rights of Termination in the Event of Insufficiency of Funds

If at any time prior to the funding of the Construction Loan and recordation of the Construction Loan Documents, the Parties estimate that the aggregate amount of the sources of funds set forth in Section 3, *et seq.*, is less than the Project Costs necessary to complete the Project, the Parties shall meet to identify potential supplemental funding sources and shall diligently pursue such additional funds.

So long as the Developer demonstrates to the satisfaction of the City Manager and Executive Director that the Developer is diligently pursuing additional funds to complete the Project, times for performance as set forth in the Schedule of Performance shall automatically extend up to twelve (12) months (the "Extension Period"). During the Extension Period, the Developer shall continue to maintain the Site in accordance with the requirements of this Agreement.

In the event the Parties are unsuccessful in securing additional funds necessary for the Project, the Parties shall meet and confer in good faith to modify the Project to allow partial completion with available funding sources. If the Parties reasonably determine that modification and partial completion of the Project renders the Project financially infeasible, Developer may request that the City or Authority provide additional funding for completion of the Project.

The City and Authority shall have 45 days to consider and act upon such additional funding request. In the event that the City and Authority declines to provide a firm commitment by way of formal resolution to commit the necessary additional funds, Developer may terminate this Agreement.

In the event that Developer desires to terminate the Agreement, Developer shall promptly notify the City and Authority in writing of its intent. Notwithstanding the foregoing, Developer's indemnification obligations under this Agreement shall remain in force following such termination with respect to any events occurring or claims accruing prior to the date of termination.

After the funding of the City HOME Loan and the Authority Loan and recordation of the liens thereto, Developer shall be solely responsible for all remaining Project Costs and shall be obligated to complete the Project substantially in accordance with this Agreement.

3.10. Obligation to Update Project Budget

Developer shall update the Project Budget in the event of a proposed material change to the Project Budget. In the event of a proposed material change to the Project Budget, Developer shall notify the City and Authority in writing of the nature of the proposed change, including a detailed description of the effect of such change, and submit a revised, pro forma Project Budget reflecting such change to the City and Authority. The City and Authority shall have the right to approve such change prior to Developer taking any action in furtherance of such change.

4. **ESCROW**

4.1. Escrow

Within the time specified in the Schedule of Performance, the Parties shall open escrow ("Escrow") for the City HOME and Authority Loans with Escrow Company.

4.1.1. Escrow Instructions

This Agreement constitutes the joint escrow instructions of the Developer, City and Authority for the City HOME and Authority Loans, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. Any amendment of these escrow instructions shall be in writing and signed by Developer, the City and Authority. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment. All communications from the Escrow Agent to Developer, City or Authority shall be directed to the addresses and in the manner established in Section 9.1 for Notice between the Developer, City and Authority.

4.1.2. General Provisions Applicable to Escrow Agent

The following general provisions shall be applicable to the Escrow Agent.

a. All disbursements shall be made by check or wire transfer of the Escrow Agent. All funds received in the Escrow shall be deposited in a separate interest-earning escrow account with any bank doing business in the State of California and approved by Developer.

b. The Parties to the Escrow jointly and severally agree to pay all costs, damages, judgments and expenses, including reasonable attorneys' fees, suffered or incurred by the Escrow Agent in connection with, or arising out of the Escrow, including, but without limiting the generality of the foregoing, a suit in interpleader brought by the Escrow Agent. In the event that the Escrow Agent files a suit in interpleader, the Escrow Agent shall be fully released and discharged from all obligations imposed upon the Escrow Agent in the Escrow.



c. All prorations and/or adjustments called for in the Escrow shall be made on the basis of a thirty (30) day month unless the Escrow Agent is otherwise instructed in writing.

#### 4.1.3. Authority of Escrow Agent

The Escrow Agent is authorized to, and shall:

a. pay and charge Developer, City and Authority for any Escrow Costs payable under Section 4.1.4;

b. pay and charge Developer for the premium of the City and Authority Title Policy as set forth in Section 4.1.5 and 4.1.6;

c. insert appropriate amounts and the date of the Closing in documents deposited by the Parties in the Escrow;

d. do such other actions as necessary to fulfill the Escrow Agent's obligations under this Agreement, including, if applicable, obtaining the City and Authority Title Report recording any instrument delivered through Escrow if necessary and proper in the issuance of such title policies;

e. within the discretion of the Escrow Agent, direct Developer and Authority to execute and deliver any instrument, affidavit or statement, and to perform any act reasonably necessary to comply with the provisions of FIRPTA and any similar state act or regulation promulgated thereunder. Authority agree to execute a Certificate of Non-Foreign Status by individual transferor, a Certificate of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act and/or a California Franchise Tax Board Form 590 or similar form to assure Developer that there exist no withholding requirements imposed by application of law as may be required by the Escrow Agent, on forms supplied by the Escrow Agent;

f. prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms, including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms and/or withholding are provided for or required by law; and

g. prepare and deliver to Developer, the City and Authority for their review and approval prior to the Closing a settlement statement.

#### 4.1.4. Escrow Costs

Developer shall pay all recording charges, all other customary and usual Escrow fees, charges and costs which arise from the Escrow. Upon request by Developer, Authority shall disburse Authority Loan proceeds to Escrow for the purpose of paying the documentary transfer tax, if applicable, and such tax shall constitute a Project Cost.

#### 4.1.5. Authority Title Insurance

Authority Title Insurance. Concurrently with the recordation of the Authority Deed of Trust as a lien against the Site, the Title Company shall issue and deliver to Authority, respectively, at Developer's cost, an ALTA standard form lender's policy of title insurance,

together with the Approved Endorsements (the “Authority Title Policy”), insuring that (i) fee simple title to the Site is vested in Developer in the Condition of Title, and (ii) the Authority Regulatory Agreement and the Authority Deed of Trust are liens against the fee estates held by Developer. The Title Company shall provide Developer with a copy of the Authority Title Policy. The Authority Title Policy shall be in the amount of the Authority Loan and shall be issued at the exact date and time of Closing; provided, however, that the Title Company shall, if requested by Authority, provide any extended coverage and any endorsements reasonably requested by Authority (collectively, the “Additional Endorsements”).

#### 4.1.6. City Title Insurance

City Title Insurance. Concurrently with the recordation of the City HOME Deed of Trust as a lien against the Site, the Title Company shall issue and deliver to the City, respectively, at Developer’s cost, an ALTA standard form lender’s policy of title insurance, together with the Approved Endorsements (the “City Title Policy”), insuring that (i) fee simple title to the Site is vested in Developer in the Condition of Title, and (ii) the City HOME Regulatory Agreement and the City HOME Deed of Trust are liens against the fee estates held by Developer. The Title Company shall provide Developer with a copy of the City Title Policy. The City Title Policy shall be in the amount of the City HOME Loan and shall be issued at the exact date and time of Closing; provided, however, that the Title Company shall, if requested by City, provide any extended coverage and any endorsements reasonably requested by City (collectively, the “Additional Endorsements”).

#### 4.1.7. Authority’s Conditions Precedent to Closing

Authority’s obligation to close Escrow is conditioned upon the satisfaction or written waiver by Authority of each and every one of the conditions precedent a. through m., inclusive, described below (the “Authority’s Conditions Precedent to Closing”), which are solely for the benefit of Authority, and which shall be satisfied or waived by the time periods provided for herein:

a. Authority Loan Documents. Developer shall have executed and delivered into Escrow the Authority Loan Documents and such other documents as may be reasonably requested by Authority in connection therewith and all of which shall be in a form acceptable to Authority.

b. Notice to Proceed. Developer shall have timely issued the Notice to Proceed.

c. Escrow Costs. Developer shall have deposited into Escrow the Developer’s share of Escrow Costs along with any other required costs of Closing.

d. Lenders’ Title Policy. The Title Company shall, upon payment of the Title Company’s regularly scheduled premium, be irrevocably committed to issue the Lenders’ Title Policy upon the Closing, in accordance with Section 4.1.5.

e. Financing. The Executive Director has approved Evidence of Financing in accordance with Section 3.3.

f. Project Budget. Developer has submitted and the Executive Director has approved a Project Budget dated as of Closing.

g. Schedule of Performance. Developer has submitted and Authority has approved a Schedule of Performance dated as of Closing.

h. Construction Contract. Developer shall have submitted to the Authority and the Authority shall have approved Construction Contracts with a duly licensed, insured and bonded contractor or contractors providing for the development of the Project in conformance with the terms of this Agreement.

i. Performance Bond. Developer shall have delivered the contractor's performance bond or other suitable security as provided in Section 3.2.

j. Insurance. Developer, at its cost, shall procure or have procured and be maintaining in full force and effect insurance consistent with the requirements of Section 7.2 and in the amounts specified therein. Developer shall have submitted to Authority an insurance certificate or other acceptable written evidence demonstrating compliance with the foregoing requirement.

k. Project Entitlements. Developer shall have obtained all entitlements necessary to commence construction of the Project in the manner contemplated by this Agreement (which shall be final and not subject to further appeal).

l. No Litigation. No litigation shall be pending or threatened by any third parties which seek to enjoin the transactions contemplated herein.

m. No Default. Developer is not in default of any of its material obligations under the terms of this Agreement and all representations and warranties of Developer contained herein shall be true and correct in all material respects.

#### 4.1.8. City's Conditions Precedent to Closing

City's obligation to close Escrow is conditioned upon the satisfaction or written waiver by City of each and every one of the conditions precedent a. through m., inclusive, described below (the "City's Conditions Precedent to Closing"), which are solely for the benefit of City, and which shall be satisfied or waived by the time periods provided for herein:

a. City Loan Documents. Developer shall have executed and delivered into Escrow the City Loan Documents and such other documents as may be reasonably requested by City in connection therewith and all of which shall be in a form acceptable to City.

b. Notice to Proceed. Developer shall have timely issued the Notice to Proceed.

c. Escrow Costs. Developer shall have deposited into Escrow the Developer's share of Escrow Costs along with any other required costs of Closing.

d. Lenders' Title Policy. The Title Company shall, upon payment of the Title Company's regularly scheduled premium, be irrevocably committed to issue the Lenders' Title Policy upon the Closing, in accordance with Section 4.1.5.

e. Financing. The City Manager has approved Evidence of Financing in accordance with Section 3.1 and 3.4.

f. Project Budget. Developer has submitted and the City Manager has approved a Project Budget dated as of Closing.

g. Schedule of Performance. Developer has submitted and City has approved a Schedule of Performance dated as of Closing.

h. Construction Contract. Developer shall have submitted to the City and the City shall have approved Construction Contracts with a duly licensed, insured and bonded contractor or contractors providing for the development of the Project in conformance with the terms of this Agreement.

i. Performance Bond. Developer shall have delivered the contractor's performance bond or other suitable security as provided in Section 3.2.

j. Insurance. Developer, at its cost, shall procure or have procured and be maintaining in full force and effect insurance consistent with the requirements of Section 7.2 and in the amounts specified therein. Developer shall have submitted to City an insurance certificate or other acceptable written evidence demonstrating compliance with the foregoing requirement.

k. Project Entitlements. Developer shall have obtained all entitlements necessary to commence construction of the Project in the manner contemplated by this Agreement (which shall be final and not subject to further appeal).

l. No Litigation. No litigation shall be pending or threatened by any third parties which seek to enjoin the transactions contemplated herein.

m. No Default. Developer is not in default of any of its material obligations under the terms of this Agreement and all representations and warranties of Developer contained herein shall be true and correct in all material respects.

#### 4.1.9. Developer's Conditions to Closing

Developer's obligation to close Escrow is conditioned upon the satisfaction or written waiver by Developer of each and every one of the conditions precedent a. through f., inclusive, described below (the "Developer's Conditions Precedent to Closing"), which are solely for the benefit of Developer, and which shall be satisfied or waived by the time periods provided for herein:

a. Financing. Developer has obtained all of the financing described in Section 3.3 and 3.4 and the City Manager and the Executive Director have approved Evidence of Financing in accordance with Section 3.1.

b. Project Budget. The City Manager and Executive Director has approved a Project Budget timely submitted by Developer and dated as of Closing.

c. Schedule of Performance. The City Manager and Executive Director has approved a Schedule of Performance timely submitted by the Developer and dated as of Closing.

d. Project Entitlements. Developer shall have obtained all entitlements necessary to commence construction of the Project in the manner contemplated by this Agreement (which shall be final and not subject to further appeal).

e. No Litigation. No litigation shall be pending or threatened by any third parties which seek to enjoin the transaction contemplated herein or to obtain damages in connection with this Agreement.

f. No Default. Authority is not in default of any of its obligations under the terms of this Agreement and all representations and warranties of City and Authority contained herein shall be true and correct in all material respects.

#### 4.1.10. Termination of Escrow

If the Escrow is not in a condition to close by the Outside Closing Date, as the same may be extended pursuant to this Agreement, then either Party which has fully performed under this Agreement may, in writing, demand the return of money, documents or property and terminate the Escrow and this Agreement. If either Party makes a written demand for the return of its money, documents or property, this Agreement shall not terminate until twenty (20) days after the Escrow Agent shall have delivered copies of such demand to the other Party at the respective addresses set forth in Section 9.1 hereof. If any objections are raised by written Notice within such twenty (20) day period, the Escrow Agent is authorized to hold all money, documents or property until instructed by a court of competent jurisdiction or by mutual written instructions of the Parties. If no such objections are timely made, the Escrow Agent shall immediately return the demanded money and/or documents, and the escrow cancellation charges shall be paid by the undemanding Party. Termination of the Escrow shall be without prejudice as to whatever legal rights, if any, either Party may have against the other arising from this Agreement. If no demands are made, the Escrow Agent shall proceed with the Closing as soon as possible consistent with the terms of this Agreement. Nothing in this Section shall be construed to impair or affect the rights of Developer to specific performance.

#### 4.1.11. Closing of Escrow

The Closing shall occur at the Escrow and no later than the Outside Closing Date. The Close or Closing shall mean the time and day that the Grant Deeds are recorded in the Official Records. The Closing Date shall mean the day on which the Closing occurs.

#### 4.1.12. Closing Procedure

The Escrow Agent shall Close the Escrow as follows:

a. record the Authority Regulatory Agreement with instruction to the County Recorder to deliver Authority Regulatory Agreement to the Authority and a conforming copy thereof to Developer;

b. record the Notice of Affordability Restrictions with instruction to the County Recorder to deliver Notice of Affordability Restrictions to the Authority and a conforming copy thereof to Developer;

c. record the Authority Deed of Trust with instruction to the County Recorder to deliver of the Authority Deed of Trust to the Authority and a conforming copy thereof to Developer;

d. record the City HOME Regulatory Agreement with instruction to the County Recorder to deliver of the City HOME Deed of Trust to the City and a conforming copy thereof to Developer;

e. record the City HOME Deed of Trust with instruction to the County Recorder to deliver of the City HOME Deed of Trust to the City and a conforming copy thereof to Developer;

f. record the Request for Notice of Default with instruction to the County Recorder to deliver of the Request for Notice of Default to the City and Authority and a conforming copy thereof to Developer;

g. deliver the Authority Title Policy issued by the Title Company to Authority;

h. deliver the City Title Policy issued by the Title Company to City;

i. file any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;

j. deliver the FIRPTA Certificate, if any, to Developer, and

k. forward to Developer, City and Authority a separate accounting of all funds received and disbursed for each Party and copies of all executed, recorded, or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon.

## **5. DEVELOPMENT OF THE SITE**

### **5.1. Scope of Work**

The Developer shall construct a single-family house in accordance with the attached Project Development (Attachment No. 3), applicable Governmental Regulations, including (without limitation) all applicable zoning, planning and design review requirements of the City and all permits and entitlements issued for the Project. Subject to Section 5.6, the Developer shall, by the respective times established therefor in the Schedule of Performance, obtain the necessary permits, or permit ready letter, and commence and complete (or cause to be commenced and completed) the improvements on the Site and construction of the Project.

### **5.2. Permits and Entitlements**

Before commencement of the Project or other works of improvement upon the Site, the Developer shall, at its own expense, secure or cause to be secured any and all permits, entitlements or approvals which may be required by the City in accordance with its Municipal

Code and land use entitlement process and by any other governmental entity with jurisdiction over the Site and/or the Project in accordance with applicable Governmental Regulations. Such expenses shall be deemed Project Costs. The City and Authority shall reasonably cooperate and assist Developer's efforts to comply with this Section 5.2, provided, however that the execution of this Agreement does not constitute the granting of or a commitment to obtain any required land use entitlements or approvals required by the Authority or the City.

### 5.3. Defects in Plans

Neither the City or the Authority shall be responsible to the Developer or to third parties in any way for any defects in the design of the Project, nor for any structural or other defects in any work done according to the approved design of the Project, nor for any delays reasonably caused by the review and approval processes established by this Section 5.3. The Developer shall hold harmless, indemnify and defend the City and the Authority and their respective officers, employees, agents and representatives from and against any claims, suits for damages to property or injuries to persons arising out of or in any way relating to defects in the design of the Project, including (without limitation) the violation of any laws, and for defects in any work.

### 5.4. Construction of the Project

The cost of planning, designing, and developing the Project, and Site preparation costs, shall be borne solely by the Developer.

Developer may act as the general contractor. Developer shall have submitted to the City and Authority, and City and Authority shall have approved the proposed contractor/subcontractor bidding procedures and the proposed form of the contract to be entered into with the contractor and/or subcontractors. All such contracts shall be entered into with a duly licensed and insured contractor or subcontractors, and Developer shall comply, to the extent practicable subject to the availability of labor of comparable quality and skill, and the availability of materials of comparable cost and quality, with Health and Safety Code Section 33422.1 and 33422.3.

Developer shall comply with the HOME Program Property Standards as identified under 24 CFR 92.251. New construction projects must comply with State and local codes, ordinances, and zoning requirements. HOME-assisted new construction projects must meet State or local residential and building codes. The housing must meet the applicable requirements upon project completion.

Developer shall also comply with the following HOME Program Property Standards.

5.4.1. Accessibility. The housing must meet the accessibility requirements of 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619).

5.4.2. Disaster mitigation. Where relevant, the housing must be constructed to mitigate the impact of potential disasters (e.g., earthquakes, hurricanes, flooding, and wildfires),

in accordance with State and local codes, ordinances, or other State and local requirements, or such other requirements as HUD may establish.

5.4.3. Written cost estimates, construction contracts and construction documents. The Developer must ensure the construction contract(s) and construction documents describe the work to be undertaken in adequate detail so that inspections can be conducted. The City must review and approve written cost estimates for construction and determining that costs are reasonable.

5.4.4 Construction progress inspections. The City must conduct progress and final inspections of construction to ensure that work is done in accordance with the applicable codes, the construction contract, and construction documents.

## 5.5. Design

The Developer assumes the responsibility for the design and construction of, and shall let contracts for (or cause contracts to be let for) the Project. All additional costs incurred for any reason in rehabilitating the Project shall be at the sole cost and expense of the Developer. The Developer assumes all obligation for ensuring conformity with all applicable Federal, State and local nondiscrimination, labor standards, prevailing wage rate requirements and competitive bidding requirements with respect to the Project.

## 5.6. Construction Schedule

Subject to Section 9.8, the Developer shall commence and complete all development activities within the times established therefor in the Schedule of Performance.

## 5.7. Bodily Injury and Property Damage Insurance; Indemnity

### 5.7.1. Insurance

The Developer shall maintain or shall cause its contractor(s) to maintain until the completion of the Project as determined by the City and Authority pursuant to Section 7.2 insurance in accordance with the City's and Authority's uniform insurance requirements or as otherwise approved in writing by the City Manager and Executive Director.

The obligations set forth in this Section 5.7.1 shall remain in effect only until a Release of Construction Covenants has been furnished to the Developer as provided in Section 5.15.

### 5.7.2. Developer's Indemnity

To the full extent permitted by law, Developer shall indemnify, defend and hold harmless the City and Authority, and any and all of its employees, officials and agents (the Indemnitees) from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, compliance with applicable federal and state labor standards, regulatory proceedings, losses, expenses or cost of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest or defense costs, including expert witness fees), where the same arise out of, are a consequence of, or are in any attributable to, in whole or in part, the performance of this Agreement by Developer, or by any individual or



entity that Developer shall bear the legal liability thereof including but not limited to officers, agents, employees or contractors of Developer.

Without affecting the rights of Indemnitees under any provisions of this Agreement, Developer shall not be required to indemnify and hold harmless Indemnitees for liability attributable to the active negligence of Indemnitees, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where Indemnitees are shown to have been actively negligent and where Indemnitees' active negligence accounts for only a percentage of the liability involved, the obligation of Developer will be for that entire portion or percentage of liability not attributable to the active negligence of Indemnitees.

Developer agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every contractor or any other person or entity involved by, for, with or on behalf of Developer in the performance of this Agreement. In the event Developer fails to obtain such indemnity obligations from others as required here, Developer agrees to be fully responsible according to the terms of this Section 5.7.2.

Failure of Indemnitees to monitor compliance with these requirements imposes no additional obligations on Indemnitees and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend Indemnitees as set forth here is binding on the successors, assigns or heirs of Developer and shall survive the termination of this Agreement or this Section 5.7.2.

#### 5.8. Other Governmental Authority Permits and Environmental Compliance

Before commencement of construction or other works of improvement upon the Site, the Developer shall, at its own expense, secure or cause to be secured any and all land use and other entitlements or approvals, if any, which may be required by any other governmental agency affected by such construction or work.

The parties acknowledge and agree the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.*, ("CEQA") and National Environmental Policy Act of 1969, Public Law 91-190 as amended, 42 U.S.C. Sections 4321-4347 ("NEPA") may become applicable to the Project as a result of processing Developer's entitlement requests. Pursuant to CEQA and NEPA, certain environmental documents may be required to be prepared. The Developer agrees to cooperate with the City in obtaining information to determine environmental impact associated with such entitlements. The Developer shall be responsible to pay all costs incurred by the City to prepare or cause to be prepared such environmental documents with respect to any land use entitlements affecting the Site and to comply with any required mitigation measures imposed pursuant thereto.

Should the CEQA or NEPA reviews reveal environmental impacts from the Project which cannot be sufficiently mitigated, Developer, City and Authority shall then negotiate in good faith to restructure the Project in a manner that may reduce the environmental impacts of the projects.

No HOME funds will be advanced, and no costs can be incurred, until the City has conducted an environmental review of the proposed project site as required under 24 CFR Part 58.

Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of an environmental review.

#### 5.9. Rights of Access

Prior to the issuance of a Release of Construction Covenants (as specified in Section 5.15), for purposes of assuring compliance with this Agreement, representatives of the City and Authority shall have the right of access to the Site, without charges or fees, at normal construction hours and upon at least 48 hours advance notice during the period of construction for the purposes of this Agreement, including but not limited to, the inspection of the work being performed in constructing the Project so long as Authority representatives comply with all safety rules. City and Authority representatives shall, except in emergency situations, notify the Developer prior to exercising its rights pursuant to this Section 5.9.

#### 5.10. Federal, State and Local Laws

##### 5.10.1. Labor Standards

Developer shall carry out the Project in conformance with all applicable laws, including any and all applicable federal and state labor standards.

##### 5.10.2. General

Developer shall comply with all applicable Governmental Regulations in the construction, use and operation of the Project, including all applicable federal, state and local statutes, ordinances, regulations and laws, including without limitation, all applicable federal, state, and local labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Riverside Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. § 12101, *et seq.*, Government Code § 4450, *et seq.*, and Government Code § 11135, *et seq.*

#### 5.11. Nondiscrimination During Construction

The Developer, for itself and its successors and assigns, agrees that, in the construction of the Project provided for in this Agreement, the Developer will not discriminate against any employee or applicant for employment because of race, color, creed, religion, gender, gender identity, gender expression, sex, marital status, disability, national origin or ancestry.

#### 5.12. Taxes and Assessments

The Developer shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Site during Developer's ownership thereof, subject to the Developer's right to contest in good faith any such taxes. The Developer shall remove or have removed any levy or attachment made on the Site or any part thereof, or assures the satisfaction thereof within a reasonable time.

#### 5.13. Liens and Stop Notices

The Developer shall not allow to be placed on the Site or any part thereof any lien or stop notice. If a claim of a lien or stop notice is given or recorded affecting the Project, the Developer shall within thirty (30) days of such recording or service or within five (5) days of the City's and Authority's demand, whichever last occurs:

- a. pay and discharge the same; or
- b. effect the release thereof by recording and delivering to the City and Authority a surety bond in sufficient form and amount, or otherwise; or
- c. provide such other assurances which the City and Authority deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of the City and Authority from the effect of such lien or bonded stop notice.

#### 5.14. Mortgage Deed of Trust, Sale and Lease-Back Financing; Rights of Holders

##### 5.14.1. No Encumbrances Except Mortgages, Deeds of Trust

Construction Mortgages, deeds of trust, sales and leases-back shall be permitted before completion of the Project with the City's and Authority's prior written approval, which shall not be unreasonably withheld or delayed, but only for the purpose of securing loans of funds to be used for financing the Project, and any other purposes necessary for the construction of the Project, and necessary and appropriate under this Agreement. The Developer shall notify the City and Authority in advance of any mortgage, deed of trust or sale and lease-back financing, if the Developer proposes to enter into the same before completion of the Project. The Developer shall not enter into any such conveyance for financing without the prior written approval of the City and Authority, which approval the City and Authority shall not unreasonably withhold provided that (i) such conveyance for financing is given to a responsible financial or lending institution, person or entity, and (ii) the Developer has commenced or is prepared to commence construction of the Project. The City's and Authority's approval shall not be required for any financing after the issuance of a Release of Construction Covenants for the Project as specified in Section 5.17.

##### 5.14.2. Holder Not Obligated to Construct Improvements

The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

##### 5.14.3. Notice of Default to Mortgagee or Deed of Trust Holders, Right to Cure

Whenever the City and Authority delivers any notice or demand to Developer with respect to any breach or default by the Developer in completion of the Project and the Developer fails to cure or commence to cure to the City's and Authority's satisfaction within sixty (60) days from the date of such notice, the City and Authority shall at the same time deliver

to each holder of record of any mortgage or deed of trust authorized by this Agreement and granted by Developer, a copy of such notice or demand. Except as otherwise agreed to in the Subordination Agreement with a senior lender, each such holder shall (insofar as the rights granted by the City and Authority are concerned) have the right, at its option, within sixty (60) days after the receipt of the notice, to cure or remedy or commence to cure or remedy and diligently prosecute such cure or remedy to completion any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Written notice of such holder's intention to cure Developer's default shall be deemed to be commencement of cure. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations under this Agreement by written agreement satisfactory to the City and Authority. The holder, in that event, must agree to complete, in the manner provided in this Agreement, the Project to which the lien or title of such holder relates, and submit evidence satisfactory to the City and Authority that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing the Project shall be entitled, upon compliance with the requirements of this Agreement, to a Release of Construction Covenants as specified in Section 5.15.

#### 5.14.4. Right of the Authority to Cure Mortgage or Deed of Trust Default

In the event of a mortgage or deed of trust default or breach by the Developer past any applicable notice and cure period and prior to the issuance by the Authority of the Release of Construction Covenants in accordance with Section 5.15, the Developer shall immediately deliver to the Authority a copy of any mortgage holder's notice of default. If the holder of any mortgage or deed of trust has not exercised its option to construct, the Authority shall have the right, but not the obligation to cure the default. In such event, the Authority shall be entitled to reimbursement from the Developer of all proper costs and expenses incurred by the Authority in curing such default. Such costs and expenses incurred by the Authority shall accrue interest until paid by the Developer at the rate of ten percent (10%) per annum or the maximum allowable interest rate permitted by applicable law, whichever is lower. Such costs and expenses and any interest accrued thereon shall be secured as additional advances by and pursuant to the Deed of Trust and the Assignment of Rents.

#### 5.14.5. Right of the Authority to Satisfy Other Liens on the Site After Title Passes

Subject to the rights of any senior lender, prior to the issuance by the Authority of the Release of Construction Covenants in accordance with Section 5.15 and after the Developer has had written notice and has failed after a reasonable time (but in any event not less than thirty (30) days) to challenge, cure, adequately bond against, or satisfy any liens or encumbrances on the Site which are not otherwise permitted under this Agreement, the Authority shall have the right (but not the obligation) to satisfy any such liens or encumbrances. The costs and expenses of such cure shall accrue interest until paid by the Developer at the rate of ten percent (10%) per annum or the maximum allowable interest rate provided by applicable law, whichever is lower. Such costs and expenses and any interest accrued thereon shall be secured as additional advances by and pursuant to the Deed of Trust and the Assignment of Rents.

#### 5.15. Release of Construction Covenants

Promptly after completion of the Project in conformity with this Agreement, the City and Authority shall furnish the Developer with a “Release of Construction Covenants” upon written request therefor by the Developer. The City and Authority shall not unreasonably withhold such Release of Construction Covenants. The Release of Construction Covenants shall be substantially in the form of the “Release of Construction Covenants” (Attachment No. 13). The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the Project and the Release of Construction Covenants shall so state. Except as provided in the City Regulatory Agreement and Authority Regulatory Agreement, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement except for those continuing covenants as set forth in Section 6, *et seq.*

If the Authority refuses or fails to furnish the Release of Construction Covenants, after written request from the Developer, the Authority shall, within thirty (30) days of written request therefor, provide the Developer with a written statement of the reasons the Authority refused or failed to furnish the Release of Construction Covenants. The statement shall also contain the Authority’s opinion of the actions the Developer must take to obtain the Release of Construction Covenants. If the Authority shall have failed to provide such written statement within said thirty (30) day period, and on the condition that the City has issued a certificate of occupancy or equivalent document for the Project, the Project shall thereafter be deemed approved by the Authority and the Authority shall promptly issue the Release of Construction Covenants.

The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Project, or any part thereof. The Release of Construction Covenants is not a notice of completion as referred to in Section 3093 of the California Civil Code.

### **6. COVENANTS AND RESTRICTIONS**

#### 6.1. Use Covenants

Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Site or any part thereof, that upon the acquisition of the Site comprising the Site and during construction and thereafter, the Developer shall devote the Site to the uses specified in the City HOME and Authority Regulatory Agreements. All uses conducted on the Site, including, without limitation, all activities undertaken by the Developer pursuant to this Agreement, shall conform to all applicable provisions of the Riverside Municipal Code.

#### 6.2. Affordable Housing Requirements

##### 6.2.1. Number of Units

Developer agrees to make available one rental unit at an Affordable Rent to a Qualified Low Income Household.

#### 6.2.2. Duration of Affordability Requirements

The Affordable Unit shall be subject to the requirements of Section 6.3 throughout the Affordability Period.

#### 6.2.3. Selection of Tenants

Developer shall be responsible for the selection of the tenant for the Affordable Unit in compliance with lawful and reasonable criteria, and in accordance with the procedures set forth in the Management Plan which shall be submitted to the City and Authority for approval pursuant to Section 6.7. To the extent permitted by law, preference shall be given to tenant applicants who have been displaced by redevelopment activities of the Authority in connection with this Project and in the implementation of the former Agency's Redevelopment Plans.

#### 6.2.4. Household Income Requirements

In order to assure compliance with the rent and occupancy restrictions set forth in this Agreement and the City HOME and Authority Regulatory Agreements, the Developer shall, prior to the initial leasing of the Affordable Unit and on an annual basis thereafter throughout the Affordability Period, obtain and cause to be submitted to the City and Authority, at Developer's expense, a verification of all household sources of income demonstrating that such household is a Qualified Low Income Household and meets the eligibility requirements established for the Unit. Such income verification shall be submitted on such form as prepared by the City and Authority.

#### 6.2.5. Annual Reporting Requirement

In order to satisfy the monitoring requirements of the City, Authority and the Developer under Section 33418 of the Community Redevelopment Law, as the same may be amended from time to time, the Developer shall, following the issuance of the Release of Construction Covenants, and on or before June 30 of each year, submit to the City and Authority a certification of compliance with the terms and conditions of this Agreement and the City HOME and Authority Regulatory Agreements and such other reports as required thereby on forms prescribed by the City and Authority. Each annual report shall cover the immediately preceding fiscal year. Developer further agrees to provide true and accurate copies of all reports, audits and compliance forms.

Additionally, Developer shall complete and submit a report to the City and Authority showing the proposed Affordable Rent amount for the Affordable Unit for the preceding 12 months with supporting documentation comparing the methods for calculating Affordable Rent as set forth in Section 1.1.

#### 6.2.6. Relationship to Other Affordability Covenants

Satisfaction of any other affordability covenants applicable to the Project shall not constitute substitute satisfaction of the requirements set forth in the City HOME and Authority Regulatory Agreements.

### 6.3. Lease Requirements

Prior to rental of the Affordable Unit, the Developer shall submit a standard lease form to the City and Authority for the City and Authority's approval, which approval shall not unreasonably be withheld or delayed. The Developer shall enter into a lease, in the form approved by the City and Authority for the Affordable Unit for a minimum of 12 months.

### 6.4. Capital Replacement Reserve

The Developer shall, or shall cause the Property Manager to, set aside the greater of an amount equal to Three Hundred Dollars (\$300.00) per Unit per year and shall increase at the rate determined by the City. The initial reserve contribution to be placed into the Capital Replacement Reserve is \$3,000. Funds in the Capital Replacement Reserve shall be used for capital replacements to the Project fixtures and equipment which are normally capitalized under generally accepted accounting principles. Interest on funds in the Capital Replacement Reserve shall remain in the Capital Replacement Reserve. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve the Developer of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Project in the manner prescribed herein. Not less than once per year, Developer, at its expense, shall submit to the City and Authority an accounting for the Capital Replacement Reserve. The City and Authority approval is not required for withdrawals from the Capital Replacement Reserve in accordance with this Agreement.

### 6.5. Operating Reserve

Developer shall, or shall cause the Property Manager to, set aside at the time the Release of Construction Covenants is recorded in a separate interest-bearing trust account held by the Developer with an initial amount equal to three (3) months of the projected annual Operating Expenses for the Development (the "Operating Reserve"). Interest earned on funds in the Operating Reserve shall remain in the Operating Reserve. Developer may withdraw from the Operating Reserve those amounts exceeding the current year budget for operating expenses. City and Authority approval is not necessary for withdrawals made in accordance with this Agreement. Funds may be disbursed from the Operating Reserve to cover shortfalls between the income and actual Operating Expenses and Debt Service of the Development. Upon making disbursements to cover operating shortfalls, the Operating Reserve shall be replenished to the level prior to the disbursement from available Project cash flow.

#### 6.6. Marketing Plan

By the time specified therefor in the Schedule of Performance, Developer shall submit for the approval of the City and Authority, which approval shall not unreasonably be withheld, a plan for marketing the rental of the Affordable Unit (the "Marketing Plan"). The Marketing Plan shall include affirmative marketing procedures and requirements consistent with the provisions of Section 5.A. of the City HOME and Authority Regulatory Agreements. The Marketing Plan shall include a plan for publicizing the availability of the Affordable Unit within the City in a manner which gives notice to existing residents, such as notices in any City sponsored newsletter, newspaper advertising in local newspapers and notices in City offices and community centers. The Marketing Plan shall require Developer to obtain from the City and Authority the names of Qualified Households who have been displaced by the Project and other persons who have indicated to the City and Authority their interest in the Affordable Unit, and to notify persons on such list of availability of units in the Project prior to undertaking other forms of marketing. The Marketing Plan shall provide that the persons on such list be given not fewer than ten (10) days after receipt of such notice to respond by completing application forms for rental of the Affordable Unit, as applicable. Priority shall be given to Riverside Arts Museum selected artists in residence who meet the income qualifications.

#### 6.7. Long Term Management

The parties acknowledge that the City and Authority is interested in the long-term management and operation of the Project and in the qualifications of any person or entity retained by the Developer for that purpose (the "Property Manager"). Prior to the issuance of a Release of Construction Covenants by the Authority and the initial rental of the Affordable Unit in accordance with this Agreement, the Developer shall submit for the reasonable approval of the City and Authority a detailed "Management Plan" which sets forth in detail the duties of the Property Manager, the tenant selection process, a security system and compliance with the City's Crime-Free Multi-Family Housing Program, the procedures for determining Affordable Rent and for the collection of rent, occupancy limits and the procedures for monitoring of occupancy levels, the procedures for eviction of tenants, the rules and regulations of the Project and manner of enforcement, a standard lease form, and other matters relevant to the management of the Project. The Developer may from time to time submit amendments and modifications to the Management Plan for the reasonable approval of the Authority. The management of the Project shall be in compliance with the Management Plan which is approved by the Authority.

The Developer shall, prior to the rental of the Affordable Unit, contract with a Property Manager, subject to the reasonable approval of the City and Authority. During the term of the Affordability Period, such Property Manager may subcontract for property management services with an experienced and qualified property management entity (based upon the criteria set forth hereinbelow) only upon prior written approval by the City and Authority which approval shall not be unreasonably withheld.

During the Affordability Period, the City and Authority may from time to time review and evaluate the identity and performance of the Property Manager of the Project as it deems appropriate in its reasonable judgment. If the City and Authority reasonably determines that the performance of the Property Manager is deficient based upon the standards and requirements set forth in this Agreement, the City and Authority shall provide notice to the Developer of such deficiencies and the Developer shall use its best efforts to correct such



deficiencies within 60 days. Upon default of the terms of this Agreement by the Property Manager, the Authority shall have the right to require the Developer to immediately remove and replace the Property Manager with another property manager or property management company who is reasonably acceptable to the City and Authority, and who has not less than five (5) years' experience in property management, including experience managing multifamily residential developments of the size, quality and scope of the Project. If the entity removed is related to or affiliated with the Developer, the City and Authority may replace the Property Manager with another entity that is not related to or affiliated with the Developer.

In addition, during the term of the Affordability Period, the Developer shall annually submit to the City and Authority for its reasonable approval a budget for the operation of the Project. The fee paid to Property Manager shall be shall not exceed the reasonable and customary fees paid to such property managers for similar rental properties in Riverside County. Other fees and payments shall be consistent with prevailing market rates for the services performed and goods provided in consideration for such fees and payments. The Developer shall ensure that the reasonably foreseeable expenses of operating the Project do not materially exceed the budget which has been approved by the City and Authority. The Developer shall annually provide to the City and Authority a detailed accounting of operating expenses and shall make available its books and records to the City and Authority for inspection and copying, upon reasonable advance notice during its normal hours of business.

6.8. Authority Regulatory Agreement

The Developer shall execute, acknowledge, and deliver to Authority the Authority Regulatory Agreement to be recorded with respect to the Site in the official records of Riverside County. The Authority Regulatory Agreement shall contain those portions of this Agreement relating to affordable housing requirements, and other provisions which are intended to survive the completion of construction of the Project.

6.9. City HOME Regulatory Agreement

The Developer shall execute, acknowledge, and deliver to City the City HOME Regulatory Agreement to be recorded with respect to the Site in the official records of Riverside County. The City HOME Regulatory Agreement shall contain those portions of this Agreement relating to affordable housing requirements, and other provisions which are intended to survive the completion of construction of the Project.

6.10. Maintenance of Site

During construction of the Project and throughout the Affordability Period, the Developer shall maintain the Site and the improvements thereon in conformity with the City HOME and Authority Regulatory Agreements in all material respects.

6.11. Nondiscrimination Covenants

Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer,

use, occupancy, tenure, or enjoyment of the Site, or any part of it, nor shall the Developer or any person claiming under or through it, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Site, including the Unit, or any portion thereof. The foregoing covenants shall run with the land.

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

Developer shall refrain from restricting the sale of the Site, including the Unit, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. All such deeds, leases, contracts or subcontracts shall contain or be subject to substantially the following nondiscrimination and nonsegregation clauses:

a. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

b. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee

himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

c. In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in connection with the performance of this contract nor shall the contracting party himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, contractors, subcontractors or vendees with respect to the premises.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

#### 6.12. Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction

The City and Authority is deemed the beneficiaries of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided, without regard to whether the City and Authority has been, remains or is an owner of any land or interest therein in the Site. The City and Authority shall have the right, if this Agreement or any covenants in any agreement pursuant to this Agreement, including the City HOME and Authority Regulatory Agreements, are breached, following notice and expiration of all applicable cure periods, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and such covenants may be entitled.

## **7. INDEMNITY AND INSURANCE**

### **7.1. Developer's Indemnity**

To the full extent permitted by law, Developer shall indemnify, defend and hold harmless the City and Authority, and any and all of its employees, officials and agents ("Indemnitees") from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or cost of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, interest or defense costs, including expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, to: (i) Developer's failure to comply with all applicable laws; (ii) defects in the design of the Project as to all or any portion of the Project developed or caused to be developed by Developer, or (iii) any negligent performance or act or negligent failure to perform or act pursuant to this Agreement by Developer, or by any individual or entity that Developer shall bear the legal liability thereof including but not limited to officers, agents, employees or contractors of Developer.

Without affecting the rights of Indemnitees under any provisions of this Agreement, Developer shall not be required to indemnify and hold harmless Indemnitees for liability attributable to the active negligence of Indemnitees, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction.

Failure of Indemnitees to monitor compliance with these requirements imposes no additional obligations on Indemnitees and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend Indemnitees as set forth here is binding on the successors, assigns or heirs of Developer and shall survive the termination of this Agreement.

This indemnification provision supplements and in no way limits the scope of the indemnification set out elsewhere in this Agreement. The indemnity obligation of Developer under this Section shall survive the expiration or termination, for any reason, of this Agreement.

### **7.2. Insurance**

Prior to the commencement of any work of improvement upon the Site and without limiting Developer's indemnity obligations set forth in the Agreement, Developer shall procure and maintain in full force during the term of this Agreement, the following forms of insurance coverage:

a. Workers' Compensation insurance which complies with all applicable state laws and requirements.

b. Comprehensive General Liability insurance with limits not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate for bodily injury and property damage, including coverages for contractual liability, personal injury, broad form property damage, products and completed operations with a rating of at least A and a financial class of at least VII.

c. Property insurance covering all real and personal (non-expendable) property leased or purchased in connection with the completion of the Project in a form appropriate for the nature of such property, covering all risks of loss, excluding earthquake and flood, for 100%

of the replacement value, with deductible, if any, acceptable to the City and Authority, naming the Authority as loss payee.

d. Developer shall cause the general contractor to maintain insurance of the types and in at least the minimum amounts described in subsections a and b above, and shall require that such insurance shall meet all of the general requirements of subsections e, f, and g below. Unless waived by the City and Authority, liability insurance to be maintained by the general contractors pursuant to this subsection shall name as additional insured the City and Authority, and its officers, agents, employees and representatives.

e. The required insurance shall be provided under an occurrence form, and Developer shall maintain such coverage continuously throughout the term of this Agreement. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

f. Each insurance policy required by this Agreement shall contain the following clauses:

(1) "This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days prior written notice has been given to the City of Riverside and Housing Authority of the City of Riverside."

(2) "It is agreed that the City of Riverside and Housing Authority of the City of Riverside are self-insured and any insurance maintained by them shall apply in excess of and not contribute with insurance provided by this policy."

(3) "The City of Riverside and Housing Authority of the City of Riverside and its officers, agents, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured, performed under contract with the City of Riverside and Housing Authority of the City of Riverside."

g. Prior to the disbursement of any portion of the Loan Proceeds, Developer shall deliver to the City and Authority insurance endorsements evidencing the existence of the insurance policies required by this Agreement, and including the applicable clauses referenced above. Also, the City and Authority has the right to demand, and to receive within a reasonable time period, copies of any insurance policies required under this Agreement.

h. In addition to any other remedies the Authority may have if Developer fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City and Authority may at its sole option:

(1) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from the Loan Proceeds.

(2) Withhold any disbursement of the Loan Proceeds until Developer demonstrates compliance with the requirements hereof.

(3) In the event Developer has failed to commence curing such default within thirty (30) days of notice or thereafter fails to diligently pursue such cure, declare Developer

to be in default, terminate this Agreement and declare that reimbursement of the Loan Proceeds is due and payable.

Exercise of any of the above remedies, however, is an alternative to other remedies Authority may have and is not the exclusive remedy for Developer's failure to maintain insurance or secure appropriate endorsements. Nothing herein contained shall be construed as limiting in any way the extent to which Developer may be held responsible for payments of damages to persons or property resulting from Developer's performance of the work covered under this Agreement.

## **8. DEFAULTS, REMEDIES AND TERMINATION**

### **8.1. Defaults - General**

Subject to the extensions of time set forth in Section 9.8, failure or delay by either party to perform, comply with or observe any of the conditions, provisions, terms, covenants or representations of this Agreement, including any of the Attachments hereto, constitutes a default under this Agreement. As provided herein below, the party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with diligence. 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 date of default.

Except as required to protect against further damages, the injured party may not institute legal proceedings against the party in default until an "Event of Default" (as such term is hereinafter defined) has occurred. For purposes of this Agreement, an "Event of Default" for purposes of instituting legal proceedings by a non-defaulting party against the defaulting party shall mean a failure to satisfy, perform, comply with or observe any of the conditions, provisions, terms, covenants or representations contained in this Agreement, including any Attachment hereto, and such failure having continued uncured or without the defaulting party commencing to diligently cure for thirty (30) days after notice thereof in writing is mailed by the injured party to the defaulting party; provided, however, that if such event of default cannot be cured within such thirty (30) day period and Developer has diligently commenced efforts to cure, the Developer shall have such reasonable time to diligently prosecute such cure to completion. If a different period or notice requirement is specified for any particular default under any other provision of this Agreement, including any of the Attachments hereto, the specific provision shall control.

### **8.2. Legal Actions**

#### **8.2.1. Institution of Legal Actions**

In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to cure, correct or remedy any Event of Default, to recover damages as provided herein for any Event of Default, or to obtain any other remedy consistent with the purpose of this Agreement, subject to the nonrecourse nature of the loans after recordation of the Release of Construction Covenants. Such legal actions may be instituted in the Superior Court of the County of Riverside, State of California, in an appropriate municipal court in that County, or in the Federal District Court in the Central District of California.

#### 8.2.2. Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

#### 8.2.3. Acceptance of Service of Process

In the event that any legal action is commenced by Developer against the City and Authority, service of process on City and Authority shall be made by personal service upon the City's City Clerk and Authority's Secretary, or in such other manner as may be provided by law.

In the event that any legal action is commenced by the City and Authority against Developer, service of process on Developer shall be made by personal service upon any owner, general partner, officer or manager of Developer or in such other manner as may be provided by law, whether made within or without the State of California.

#### 8.3. Rights and Remedies are Cumulative

To the extent permitted by law and 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 time or different times, of any other rights or remedies for the same Event of Default or any other Event of Default by the other party.

#### 8.4. Inaction Not a Waiver of Default

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, or deprive either such 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.

#### 8.5. Specific Performance

Upon an Event of Default, the non-defaulting party, at its option, may thereafter (but not before) commence an action seeking specific performance and/or other equitable relief to enforce the terms of this Agreement pertaining to such default.

#### 8.6. Rights of Termination and Damages

##### 8.6.1. Termination by Developer

Provided the Developer is not in default of any of the terms and conditions of this Agreement, then in the Event of Default by the City or Authority, the Developer shall have the right to terminate this Agreement by written notice to the City and Authority in accordance with the provisions of Section 9.1. Upon termination by the Developer pursuant to this Section 8.6.1, the City and Authority may enter into a new agreement with respect to the development of the Site and, except as expressly provided to the contrary herein with respect to obligations that survive the termination of this Agreement, there shall be no further rights or obligations between the City, Authority and the Developer.

#### 8.6.2. Termination by City or Authority

Provided the City or Authority is not in default of any of the terms and conditions of this Agreement, then upon an Event of Default by the Developer, the City and Authority shall have the right to terminate this Agreement by written notice to the Developer in accordance with the provisions of Section 9.1. In addition, the City and Authority may exercise its rights under the City HOME and Authority Deed of Trusts and/or apply to a court of competent jurisdiction for relief at law or in equity as may be appropriate and permissible.

#### 8.7. Conveyance of Title in the Authority Prior to Completion of Construction

The Authority has the additional right, at its election, to take possession of the Site (or any part thereof), with all improvements thereon, and require conveyance of the Site to the Authority if prior to the issuance of the Release of Construction Covenants, the Developer (or its successors in interest) shall:

- a. subject to the extensions of time set forth in Section 9.8, fail to start the construction of the Project as required by this Agreement for a period of forty-five (45) days after written notice of default thereof from the City or Authority; or
- b. subject to the extensions of time set forth in Section 9.8, abandon or substantially suspend construction of the Project as required by this Agreement for a period of thirty (30) days after written notice thereof from the City or Authority;
- c. contrary to the provisions of Section 2.2, transfer or suffer any involuntary transfer of the Site or any part thereof in violation of this Agreement; or
- d. it is determined that the development of the Project is infeasible.

The periods set forth in paragraphs a., b., and c. above shall be extended if, within forty-five (45) days after notice is delivered by the City or Authority, the Developer delivers to the City and Authority notice that it has elected to submit a plan to cure such default or defaults within one hundred eighty (180) days of the Developer's notice to the City and Authority.

Such right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit: (i) any mortgage or deed of trust or other security interest permitted by this Agreement; or (ii) any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust or other security interests.

Upon issuance of a Release of Construction Covenants for the Project, the Authority's right to conveyance of the Site shall terminate.

Upon the revesting in the Authority of title to the Site or portion thereof as provided in this Section 8.7, the Authority shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Site or portions thereof as soon and in such manner as the Authority shall find feasible and consistent with the objectives of such law to a qualified and responsible party or parties as determined by the Authority, who will assume the obligation of making or completing the Project, or such improvements in their stead as shall be satisfactory to the Authority and in accordance with the uses specified for such parcel or part thereof. Such party shall be required to pay for a pro rata share of the cost of construction, maintenance and operation of the common area improvements upon the Site. Upon such resale of the Site or portions thereof, the



net proceeds thereof after repayment of any mortgage or deed of trust encumbering such parcel which is permitted by this Agreement, shall be applied:

1. First, to reimburse the Authority, all reasonable costs and expenses incurred by the Authority, excluding Authority staff costs, but specifically including (but not limited to) any expenditures by the Authority in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by the Authority from the Site or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Site or part thereof which the Developer has not paid; any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site or part thereof at the time or reversion of title thereto in the Authority, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Project or any part thereof on the Site; and any amounts otherwise owing the Authority, and in the event additional proceeds are thereafter available.

2. Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the sum of (a) the costs incurred for the acquisition and development of the Site or part thereof and for the Project existing on such Site at the time of the reentry and possession, less (b) any net gains or income withdrawn or made by the Developer from such Site or the improvements thereon.

3. Any balance remaining after such reimbursements shall be retained by the City as its property.

The rights established in this Section 8.7 are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity.

#### 8.8. Limitation on Damages.

Without limiting the generality of the foregoing, the Parties shall not in any event be entitled to, and the Parties hereby waive, any right to seek consequential damages of any kind or nature from any other Party or Parties arising out of or in connection with this Agreement, and in connection with such waiver, the Parties are familiar with and hereby waive the provision of Section 1542 of the California Civil Code which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

### 9. **GENERAL PROVISIONS**

#### 9.1. Notices, Demands and Communications Between the Parties

Unless otherwise specified in this Agreement, it shall be sufficient service or giving of any notice, request, certificate, demand or other communication if the same is sent by (and all

notices required to be given by mail will be given by) first-class registered or certified mail, postage prepaid, return receipt requested, or by private courier service which provides evidence of delivery. Unless a different address is given by any party as provided in this Section, all such communications will be addressed as follows:

To Developer:	Riverside Housing Development Corporation Attn: Bruce Kulpa, President/CEO 4250 Brockton Avenue Riverside, CA 92501
To City:	City of Riverside Attn: City Manager 3900 Main Street, 7 <sup>th</sup> Floor Riverside, California 92522
To Authority:	Housing Authority of the City of Riverside Attn: Executive Director 3900 Main Street Riverside, California 92522
Copies to:	City of Riverside Attn: Community & Economic Development Director 3900 Main Street Riverside, California 92522
	City of Riverside Attn: City Attorney 3900 Main Street Riverside, California 92522

Any Notice shall be deemed received immediately if delivered by hand and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail.

#### 9.2. Subordination of Indebtedness

Any indebtedness of the Authority to the Developer created by this Agreement is subordinate to any pledge of tax increments to the bondholders of any tax increment bonds which have been or may hereafter be issued by the Authority. The Parties hereby agree to execute any and all ancillary documents as may reasonably be requested by any bondholder or other purchaser of bonds, notes or other forms of indebtedness of the Authority entitled to receive the tax increment revenues for the repayment of any other indebtedness of the Authority for which the tax increment revenues have been or may hereafter be pledged.

#### 9.3. Conflicts of Interest

No member, official or employee of the City and Authority shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

9.4. Warranty Against Payment of Consideration for Agreement

Developer warrants that it has not paid or given and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as project managers, architects, engineers, attorneys, and public relations consultants.

9.5. Nonliability of City and Authority Officials and Employees

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

9.6. Approval by City, Authority and Developer

Approvals required of the Parties shall be given within the time set forth in the Schedule of Performance or, if no time is given, within a reasonable time. Wherever this Agreement requires the City, Authority or Developer to approve any contract, document, plan, proposal, specification, drawing or other matter, such approval shall not be unreasonably withheld or delayed. In the event that a Party declines to approve any contract, document, plan, proposal, specification, drawing or other matter, such denial shall be in writing and shall include the reasons for such denial. The Party considering the request for such approval shall use commercially reasonable efforts to respond to such request for approval within fifteen (15) days of receipt unless expressly provided to the contrary herein.

9.7. Plans and Data

If this Agreement is terminated by the Developer pursuant to Section 3.8.6, the City and Authority shall have the right but not the obligation to purchase from Developer all plans, drawings, studies and related documents concerning the Project within Developer's possession and control, without representation or warranty. The purchase price for all or any part of such materials shall be their cost to Developer, less amounts already disbursed to the Developer from the Loan Proceeds for such purposes.

If this Agreement is terminated by City or Authority pursuant to Section 3.8.6, then, pursuant to the exercise of City's and Authority's rights under the Assignment of Plans, Reports and Data, Developer shall deliver to the City and Authority any and all plans, drawings, studies and related documents concerning the Project within Developer's possession and control, without representation or warranty. Upon delivery to the City or Authority, the City or Authority shall have the right to use such materials as it deems necessary and appropriate to fulfill the purposes of this Agreement without obligation to Developer.

9.8. Force Majeure

In addition to specific provisions of this Agreement, performance by any 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 or any other deity; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation including litigation challenging the validity of this

transaction or any element thereof including the acquisition of the Site, or any portion thereof, unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, or suppliers; acts of the other party; acts or failure to act of the City or any other public or governmental agency or entity (other than that acts or failure to act of the City and Authority shall not excuse performance by the City and Authority); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform or relief from default, including without limitation the allocation of Authority revenues to the State of California by a legislative act to fund deficits in the state budget. 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 of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by mutual agreement among the Authority and the Developer. That notwithstanding, if said prevention or delay extends for one (1) year, any party, by notice in writing to the other, may terminate this Agreement.

9.9. Applicable Law; Interpretation

The laws of the State of California shall govern the interpretation and enforcement of this Agreement. This Agreement shall be construed as a whole and in accordance with its fair meaning and as though both of the parties participated equally in its drafting. Captions and organizations are for convenience only and shall not be used in construing meaning.

9.10. Inspection of Books and Records, Reports

The City, Authority or its designee has the right at all reasonable times, and upon reasonable advance notice of not less than 48 hours, to inspect the books and records and other related documents of the Developer pertaining to the satisfaction of their obligations hereunder as reasonably necessary for purposes of enforcing the provisions of this Agreement. Such books, records and related documents shall be maintained by the Developer at locations as agreed by the parties. Throughout the term of this Agreement, the Developer shall submit to the City and Authority reasonable written progress reports as and when reasonably requested by the City and Authority on all matters pertaining to the Project of the Site.

9.11. Administration

This Agreement shall be administered by the City Manager and Executive Director following approval of this Agreement by the City and Authority. Whenever a reference is made in this Agreement to an action, finding or approval to be undertaken by the City and Authority, the City Manager and Executive Director is authorized to act on behalf of the City and Authority unless specifically provided otherwise or the context should require otherwise. The City Manager and Executive Director shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City and Authority so long as such actions do not substantially change the uses or development permitted on the Site, or add to the costs of the City and Authority as specified herein or as agreed to by the City Council and Authority Board. Notwithstanding the foregoing, the City Manager and Executive Director may in his/her sole and absolute discretion refer any matter to the City Council and Authority Board for action, direction or approval.

9.12. Mutual Cooperation

Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful or appropriate to carry out the purposes and intent of this Agreement. To the extent that any lender to, or equity investor in the Project requires modifications to this Agreement or any attachment hereto, the Authority agrees to make such modification within a reasonable time on the condition that such modification does not materially change the rights and obligations of the Parties as set forth herein.

9.13. Ground Breaking and Grand Openings

To insure proper protocol and recognition of the City Council and Authority Board, the Developer shall cooperate with the City and Authority staff in the organization of any Project-related ground breaking, grand openings or any other such inaugural events/ceremonies sponsored by the Developer and celebrating the development which is the subject of this Agreement providing City and Authority staff with at least two (2) weeks prior notice of any such event.

9.14. Independent Contractor

The parties agree that the Developer, in the performance of this Agreement shall act as and be an independent contractor and shall not act in the capacity of an agent, employee or partner of the Authority.

**10. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS**

This Agreement includes fifty-four (54) pages and Attachment Nos. 1 through 15 which constitute the entire understanding and agreement of the Parties. Three (3) duplicate originals of this Agreement shall be executed each of which shall be deemed to be an original. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

Except as otherwise provided herein, this Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of City, Authority or Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of City, Authority and Developer.

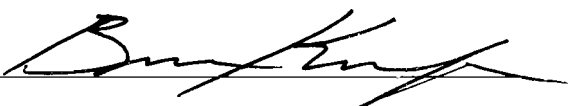
(Signatures on following page)

IN WITNESS WHEREOF, Authority and Developer have signed this Agreement as of the date set opposite their signatures.

**“DEVELOPER”**

RIVERSIDE HOUSING DEVELOPMENT  
CORPORATION, a California non-profit  
corporation

Dated: \_\_\_\_\_

By: 

Name: BRUCE KULPA  
Its: CEO

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**“AUTHORITY”**

HOUSING AUTHORITY OF THE CITY OF  
RIVERSIDE, a public body, corporate and politic

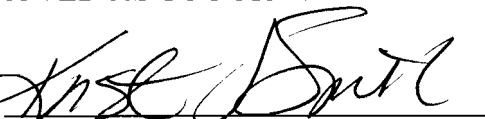
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Executive Director

ATTEST:

By: \_\_\_\_\_  
Authority Secretary

APPROVED AS TO FORM:

By:   
Authority General Counsel

**"CITY"**

CITY OF RIVERSIDE, a California charter city  
and municipal corporation

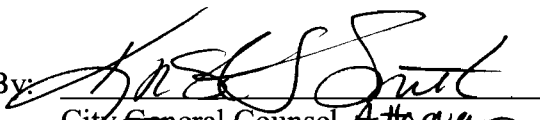
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
City Manager

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By:   
~~City General Counsel~~ Attorney

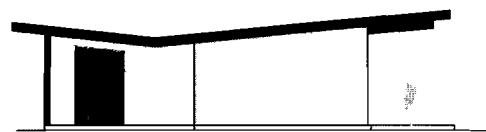
CERTIFIED AS TO FUNDS AVAILABILITY:

BY:  ~~Asst~~ CFO, for:  
Chief Financial Officer/ City Treasurer

**ATTACHMENT NO. 1**

**SITE PLAN**





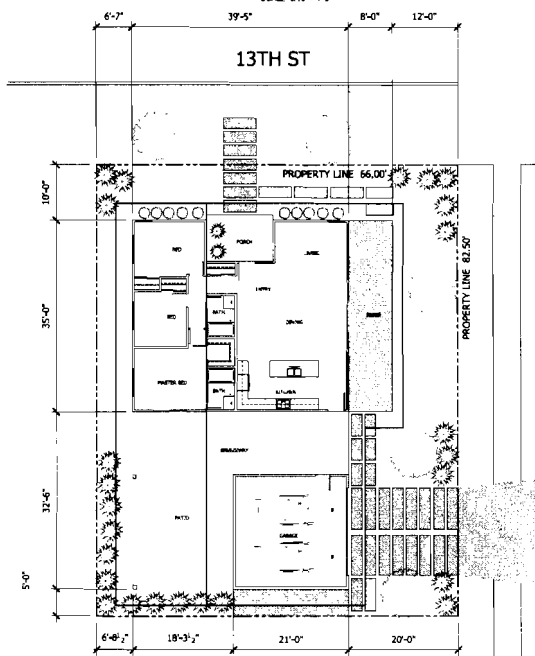
SOUTH ELEVATION

SCALE 3/16" = 1'-0"



NORTH ELEVATION

SCALE 3/16" = 1'-0"



SITE PLAN

SCALE 1/8" = 1'-0"

1300 SQ. FT. HOME

PARK



EAST ELEVATION

SCALE 3/16" = 1'-0"



WEST ELEVATION

SCALE 3/16" = 1'-0"

XAVIER  
DESIGN  
GROUP

4481 Pondmoot Dr  
Riverside, CA 92506  
951-830-2018

*Xavier Hernandez*

Xavier Hernandez  
Project Manager

PROJECT  
**RHDC**  
4307 Park Ave.  
Riverside, CA 92506

Revision \_\_\_\_\_ Date \_\_\_\_\_

Building Elevations  
+ Site Plan

**A1**

**ATTACHMENT NO. 2**  
**SITE LEGAL DESCRIPTION**

Project: 13<sup>th</sup> Street & Park Avenue  
APN: 211-233-001  
Address: 4307 Park Avenue

That certain real property in the City of Riverside, County of Riverside, State of California, described as follows:

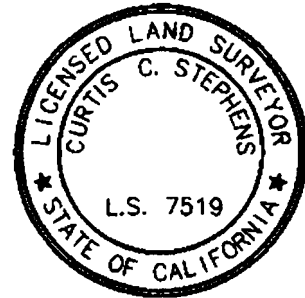
Lot 1 in Block 13 of Santa Fe Tract as shown by map on file in Book 6, Page 14 of Maps, Records of San Bernardino County;

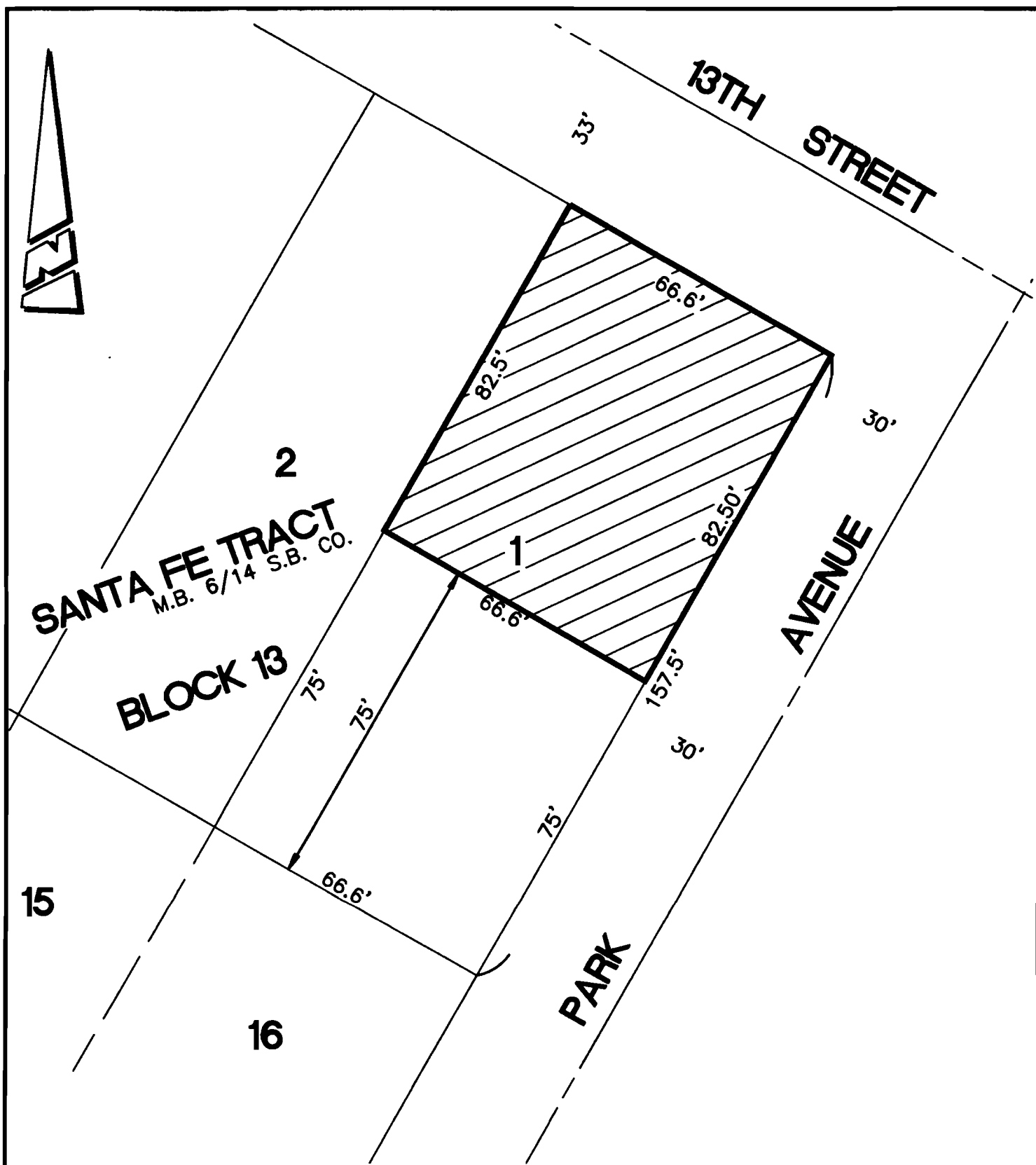
EXCEPTING THERFROM the Southwesterly 75 feet thereof.

Area – 5,494.5 S.F. (0.126 Ac.) more or less

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyors Act.

Curtis C. Stephens 10/17/16 Prep. (Signature)  
Curtis C. Stephens, L.S. 7519 Date





• CITY OF RIVERSIDE, CALIFORNIA •

THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE ATTACHED DOCUMENT. IT IS NOT A PART OF THE WRITTEN DESCRIPTION THEREIN.

SHEET 1 OF 1

SCALE: 1"=30'

DRAWN BY: CURT

DATE: 10/19/16

SUBJECT: 211-233-001 - 4307 PARK AVE STREET

## **ATTACHMENT NO. 3**

### **PROJECT DEVELOPMENT**

#### **PROJECT OVERVIEW**

Riverside Housing Development Corporation will develop a single-family house to be rented to a low-income household (60% AMI or below – “Qualified Low Income Household”) which shall have a rent consistent with the affordability requirements of the various funding sources, and thereafter, operate and maintain the Site to provide quality affordable housing to a Qualified Low Income Household.

This rental unit will provide an affordable rental opportunity to an income qualified artist. RHDC was developed a partnership with the Riverside Art Museum who will have an artist engage with their neighbors and lead art programming with the goal to engage, inspire, and build community through the arts. The programming will cultivate individual skills, foster social interactions and promote neighborhood development. UCR’s Master Gardner program has committed to creating a passive demonstration garden, showcasing how an underutilized front-yard area can be transformed into an active, water-wise garden that produces food for residents and neighbors.

Artist residences will vary in duration, but are expected to last approximately 12 months. As a social-practice residency, artists will be charged with developing art-based projects that will resonate with the community. RAM’s selection of artists will ensure that they have the skills to activate partners and the public in their work, that they have a keen understanding of their role in the community and that they have the ability to engage and communicate with residents. Artists will get-to-know their neighbors, hear their stories, and respond with programming that is relevant and substantive.

**ATTACHMENT NO. 4**

**SCHEDULE OF PERFORMANCE**

<b>Milestone</b>	<b>Date</b>
Execute Development Agreement	June 30, 2017
Submit Building Permit	September 30, 2017
Begin Construction	October 1, 2017
Complete Construction	April 1, 2018
Tenant to Occupy Unit	October 1, 2018

**ATTACHMENT NO. 5**

**PROJECT BUDGET**

## ATTACHMENT NO. 6

### AUTHORITY PROMISSORY NOTE

Loan Amount: **\$183,238**

\_\_\_\_\_, 2017  
Riverside, California

**FOR VALUE RECEIVED, RIVERSIDE HOUSING DEVELOPMENT CORPORATION**, a California non-profit corporation ("Borrower") promises to pay to the **HOUSING AUTHORITY OF THE CITY OF RIVERSIDE**, a public body corporate and politic ("Authority"), or order, the principal sum of One Hundred Eighty-Three Thousand Two Hundred Thirty-Eight Dollars (\$183,238), or so much of such principal as may be disbursed pursuant hereto and in accordance with Section 3 of that certain Development Agreement by and between the Authority and Borrower dated for identification purposes only as of \_\_\_\_\_, 2017 ("Agreement"). The record of such disbursements shall be recorded on Exhibit "A" to this Promissory Note by Authority and acknowledged by the Borrower. This Note evidences the obligation of Borrower to Authority for the repayment of certain funds ("Authority Loan") loaned to Borrower by Authority and required to be paid by Borrower pursuant to the Agreement, in connection with the acquisition of certain real property, predevelopment activities and for construction of the Project and appurtenant improvements thereon located at 4307 Park Avenue, all located in the City of Riverside, California and further identified as Assessor Parcel No. (APN) 211-233-001 ("Property"). All capitalized terms unless otherwise defined herein shall have the same meaning as set forth in the Agreement.

1. Source of Funds.

The Authority contemplates that it shall utilize funds set aside by the Authority for affordable housing to fund the Authority Loan.

2. Interest.

2.1 Basic Interest. Except as provided in section 2.2 below, the disbursed and unpaid principal balance of the Authority Loan shall bear interest for the period of time commencing on the date on which the Authority Loan proceeds are first disbursed for the account of Borrower and ending on the date upon which the Authority Loan is repaid in full at the rate of zero percent (0 %) per annum, simple interest. Interest shall be computed on the basis of actual number of days elapsed and a 360-day year.

2.2 Default Rate. Any amounts (including but not limited to amounts of principal and interest on the Authority Loan) which Borrower does not pay when otherwise due under the terms of this Note, shall bear interest at the rate of ten percent (10%) per annum ("Default Rate"), simple interest, from the date which is ten (10) days after such amount would otherwise be due until the date paid.

3. Payment Dates and Amounts.

Except as otherwise provided in this Authority Promissory Note, this note shall accrue with interest in the annual amount of 0% per year. So long as Borrower complies with all terms, conditions and obligations of the Authority Regulatory Agreement, this loan is forgivable in fifty-



five (55) years. Should Borrower default on the Regulatory Agreement Promissory Note, this will not be immediately due and payable.

3.1 Definition of Annual Project Revenue. “Annual Project Revenue” shall mean all gross income and all revenues of any kind from the Development in a fiscal year, including without limitation, Development rents, Section 8 housing assistance payments, if any, late charges, vending machine income, and any other revenues of whatever kind or nature from the Development, except that interest on security deposits, required reserves, capital contributions, insurance proceeds, and, condemnation proceeds, shall not be considered Annual Project Revenue.

3.2 Definition of Operating Expenses. “Operating Expenses” shall mean actual, reasonable and customary costs, fees and expenses directly incurred, paid, and attributable to the operation, maintenance and management of the Project in a fiscal year, including, without limitation: painting, cleaning, repairs, alterations, landscaping, utilities, refuse removal, certificates, permits and licenses, sewer charges, real and personal property taxes, assessments, insurance, security, advertising and promotion, janitorial services, cleaning and building supplies, purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings which are not paid from the capital replacement reserve, fees and expenses of property management, fees and expenses of accountants, attorneys and other professionals, and other actual, reasonable and customary operating costs and capital costs which are directly incurred and paid by the Borrower, but which are not paid from the operating reserve or other reserve accounts. The Operating Expenses shall not in any event include expenses not related to the Development’s operations, including without limitation, depreciation, amortization, non-cash expenses, and accrued principal and interest expense on deferred payment debt.

3.3 Interest accrued on items set forth in Section 2.1 and in Section 6 shall not exceed a reasonable and customary rate of interest accrued on similar debt associated with similar affordable housing projects in Southern California.

#### 4. Annual Financial Statement.

Not later than May 1, 2017 and each May 1st thereafter throughout the term, Borrower shall submit to Authority its Annual Financial Statement for the preceding year together with payments, if any, pursuant to Section 3 hereof. Residual Receipts shall be calculated by Borrower (and certified by an authorized officer of Borrower) and reported by Borrower to Authority annually for each calendar year no later than May 1st of the following calendar year on forms specified and provided by Authority from time to time but no later than June 30th of each year. All calculations and records shall be based upon Borrower’s Annual Financial Statement and shall be subject to audit by Authority. In connection with any audit, Borrower shall provide to Authority for inspection and copying any records, receipts, account books, ledgers, checks, or other documents or other evidence requested by Authority for the purpose of verifying Borrower’s calculation of Residual Receipts, and shall promptly pay to Authority any further amount due but not paid as a result of any miscalculation by Borrower. Authority shall promptly pay Borrower any overpayments made by Borrower as shown by such audit.

#### 5. Forgivable Loan Date.

Notwithstanding any other provision hereof, unless due sooner by virtue of the acceleration of the balance hereof in accordance with Section 7, the outstanding principal balance together with any accrued and unpaid interest due thereon and any other sums payable under this Note shall be

fully forgiven on the date which is fifty-five (55) years from the date of the recording of the Release of Construction Covenants (the "Forgivable Loan Date").

6. Acceleration.

Upon the occurrence of any "Event of Default" as set forth in Section 14 below, the entire outstanding principal balance of the Note, together with any outstanding interest and other amounts payable thereunder, shall, at the election of Authority and upon notice to Borrower thereof, become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by Borrower.

7. Prepayment; Application of Payments.

At any time after the disbursement of the Authority Loan proceeds, Borrower may prepay all or a portion of the unpaid principal amount of the Authority Loan and any other sums outstanding without penalty. All payments, including any prepayments or funds received upon acceleration pursuant to Section 7 above, shall be applied first toward any outstanding costs of collection or other amounts (excluding Authority Loan principal or interest thereon) due under this Note or the Agreement, then toward outstanding interest accrued at the Default Rate, if any, then toward outstanding interest accrued at the basic interest rate of three percent (3%) per annum (simple interest), if any, then toward any deferred principal, and finally toward the remaining principal balance under the Note.

8. Security for Note.

Borrower's obligations under this Note and the Agreement shall, at all times during which any amount remains outstanding, be secured by that certain deed of trust, fixture filing and assignment of rents ("Authority Deed of Trust") of even date herewith, and of which Authority is the beneficiary, recorded against Borrower's fee interest in the Property and the Project (collectively, the "Property").

9. Obligation of Borrower Unconditional.

The obligation of Borrower to repay the Authority Loan and all accrued interest thereon shall be absolute and unconditional, and until such time as all of the outstanding principal of and interest on this Note shall have been fully paid, Borrower agrees that it: (a) will use the funds solely for the purposes set forth herein; and (b) will not terminate or suspend any payment or obligations under this Note, the Agreement, or any other document executed hereunder or in connection herewith for any cause, including without limitation, any acts or circumstances that may constitute failure of consideration, commercial frustration of purpose, or any duty, liability or obligation arising out of or in connection with this Note, the Agreement or any document executed hereunder or in connection herewith.

10. Purpose of Authority Loan.

The Authority Loan proceeds shall be used by Borrower only to pay for the acquisition of property located at 4307 Park Avenue, Riverside, CA 92507, Project Costs and such other uses previously approved in writing by Authority in accordance with the Agreement. In no event shall Borrower use or otherwise invest the proceeds of the Authority Loan except as expressly provided in this Note and the Agreement.

11. Covenants of Borrower.

As additional consideration for the making of the Authority Loan by Authority, Borrower covenants as follows:

11.1 Compliance with Agreement, the Regulatory Agreement and Deed of Trust. Borrower shall comply with all of its obligations under the Agreement, the Regulatory Agreement and the Deed of Trust. Any amounts payable by Borrower under the Agreement, the Regulatory Agreement or the Deed of Trust (other than amounts also payable hereunder) shall be deemed added to the principal amount of the Authority Loan payable hereunder.

11.2 Other Loans. Borrower shall comply with all monetary and non-monetary covenants associated with any loan secured by an interest in the Property or the Project. Borrower shall provide to Authority a copy of any notice of default within five business days after receiving any notice of a default or alleged default of such covenants by Borrower, and Borrower shall promptly cure any such default and cooperate in permitting Authority, to the extent Authority in its sole discretion elects to do so, to cure or assist in curing the default. Any cost or expenditure incurred by Authority in providing or assisting in such a cure shall be deemed added to the outstanding principal amount of the Authority Loan.

12. Events of Default and Remedies.

12.1 Borrower Events of Default. The occurrence of any of the circumstances described in this Section 12.1 shall constitute an event of default by Borrower hereunder ("Event of Default"). Notwithstanding anything herein to the contrary, the herein described notice requirements and cure periods shall not apply to any Event of Default described in Sections 12.1(c) through 12.1(h) below. Where notice is required, Authority shall notify the Investor concurrently with the notice delivered to the Borrower.

(a) The failure of Borrower to pay or perform any monetary covenant or obligation hereunder or under the terms of the Deed of Trust or the Agreement, without curing such failure within ten (10) days after receipt of written notice of such default from Authority (or from any party authorized by Authority to deliver such notice as identified by Authority in writing to Borrower).

(b) The failure of Borrower to perform any non-monetary covenant or obligation hereunder, or under the Deed of Trust or the Agreement, without curing such failure within thirty (30) days after receipt of written notice of such default from Authority (or from any party authorized by Authority to deliver such notice as identified by Authority in writing to Borrower) specifying the nature of the event or deficiency giving rise to the default and the action required to cure such deficiency. Provided, however, that if any default with respect to a non-monetary obligation is such that it cannot be cured within a 30-day period, it shall be deemed cured if Borrower commences the cure within said 30-day period and diligently prosecutes such cure to completion thereafter.

(c) The material falsity, when made, of any representation or breach of any material warranty or covenant made by Borrower under the terms of this Note, the Agreement or the Deed of Trust;

(d) Borrower or any constituent member or partner, or majority shareholder, of Borrower shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian or the like of its property, (ii) fail to pay or admit in writing its inability to pay its debts generally as they become due, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent, or (v) commence a voluntary petition that is not withdrawn within ninety (90) days of the filing thereof or answer seeking an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or file an answer admitting the material allegations of a petition filed against it in any bankruptcy or insolvency proceeding;

(e) If without the application, approval or consent of Borrower, a proceeding shall be instituted in any court of competent jurisdiction, under any law relating to bankruptcy, in respect of Borrower or any constituent member or partner or majority shareholder of Borrower, for an order for relief or an adjudication in bankruptcy, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like of Borrower or of all or any substantial part of Borrower's assets, or other like relief in respect thereof under any bankruptcy or insolvency law, and, if such proceeding is being contested by Borrower, in good faith, the same shall (i) result in the entry of an order for relief or any such adjudication or appointment, or (ii) continue undismissed, or pending and unstayed, for any period of ninety (90) consecutive days;

(f) Following completion of the construction of the Project, voluntary cessation of the operation of the Project for a continuous period of more than thirty (30) days or the involuntary cessation of the operation of the Project in accordance with this Note, the Regulatory Agreement and/or the Agreement for a continuous period of more than sixty (60) days;

(g) A transfer, in violation of Section 2.2.2 of the Agreement;

(h) If Borrower is in default under the terms of the Regulatory Agreement, Senior Financing or other financing, or any other secured or unsecured obligation relating to the Project, unless such default is cured within the cure period, if any, applicable thereto under the terms and obligation which is in default.

**12.2 Authority Remedies.** Upon the occurrence of an Event of Default hereunder, and subject to the rights of any senior lenders Authority may, in its sole discretion, take any one or more of the following actions:

(a) By notice to Borrower, except in the case of a default by Borrower under Section 12.1(d) or Section 12.1(e) in which event no notice shall be required, declare the entire then unpaid principal balance of the Authority Loan immediately due and payable, and the same shall become due and payable without further demand, protest or further notice of any kind, all of which are expressly waived. Upon such declaration, outstanding principal and (to the extent permitted by law) interest and any other sums outstanding in connection with the Authority Loan shall thereafter bear interest at the Default Rate, payable from the date of such declaration until paid in full;

(b) Subject to the nonrecourse provisions of Section 23 below, take any and all actions and do any and all things which are allowed, permitted or provided by law, in equity or by statute, in the sole discretion of Authority, to collect the amounts then due and thereafter to become due hereunder, to exercise its rights under the Deed of Trust, and to enforce performance and

observance of any obligation, agreement or covenant of the Borrower under this Note, the Agreement or under any other document executed in connection herewith;

(c) Subject to the nonrecourse provision of Section 23 below, upon the occurrence of an Event of Default which is occasioned by Borrower's failure to pay money, Authority may, but shall not be obligated to, make such payment. If such payment is made by Authority, Borrower shall deposit with Authority, upon written demand therefor, such sum plus interest at the Default Rate. In either case, the Event of Default with respect to which any such payment has been made by Authority shall not be deemed cured until such repayment (as the case may be) has been made by Borrower. Until repaid, such amounts shall have the security afforded disbursements under this Note;

(d) Subject to the nonrecourse provisions of Section 23 below, upon the occurrence of an Event of Default described in Section 12.1(d) or 12.1(e) hereof, Authority shall be entitled and empowered by intervention in such proceedings or otherwise to file and prove a claim for the whole amount owing and unpaid on the Authority Loan and, in the case of commencement of any judicial proceedings, to file such proof of claim and other papers or documents as may be necessary or advisable in the judgment of Authority and its counsel to protect the interests of Authority and to collect and receive any monies or other property in satisfaction of its claim.

12.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to Authority intended to be exclusive of any other available remedy or remedies, but each such remedy shall be cumulative and shall be in addition to every other remedy given under this Note or now existing at law or in equity or by statute; and may be exercised in such number, at such times and in such order as Authority may determine in its sole discretion. No delay or omission to exercise any right or power upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient by Authority. In order to entitle Authority to exercise any right or remedy reserved to it under this Note, no notice shall be required except as expressly provided herein.

12.4 Authority Default and Borrower Remedies. Upon fault or failure of Authority to meet any of its obligations under this Note without curing such failure within thirty (30) days after receipt of written notice of such failure from Borrower specifying the nature of the event or deficiency giving rise to the default and the action required to cure such deficiency, Borrower may, as its sole and exclusive remedies:

- (a) Demand and obtain payment from Authority of any sums due to or for the benefit of Borrower pursuant to the express terms of this Note;
- (b) Bring an action in equitable relief seeking the specific performance by Authority of the terms and conditions of this Note or seeking to enjoin any act by Authority which is prohibited hereunder; and/or
- (c) Bring an action for declaratory relief seeking judicial determination of the meaning of any provision of this Note.

Without limiting the generality of the foregoing, Borrower shall in no event be entitled to, and hereby waives, any right to seek consequential damages of any kind or nature from

Authority arising out of or in connection with this Note, and in connection with such waiver Borrower is familiar with and hereby waives the provision of Section 1542 of the California Civil Code which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

13. Agreement to Pay Attorneys' Fees and Expenses.

In the event that either party hereto brings any action or files any proceeding in connection with the enforcement of its respective rights under this Note or any of the Authority Loan Documents, defined as the Agreement, this Note, the Deed of Trust, the Regulatory Agreement, the Request for Notice of Default and all other documents contemplated by the Agreement, as a consequence of any breach by the other party of its obligations thereunder, the prevailing party in such action or proceeding shall be entitled to have its reasonable attorneys' fees and out-of-pocket expenditures paid by the losing party. The attorneys' fees so recovered shall include fees for prosecuting or defending any appeal and shall be awarded for any supplemental proceedings until the final judgment is satisfied in full. In addition to the foregoing award of attorneys' fees, the prevailing party in any lawsuit on this Note or any other Authority Loan Document shall also be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. In addition to the foregoing, Borrower agrees to pay or reimburse Authority, upon demand by Authority, for all costs incurred by Authority in connection with enforcement of this Note, and any other Authority Loan Document, including without limitation, reasonable attorneys' fees and costs, if there shall be filed by or against Borrower any proceedings under any federal or state bankruptcy or insolvency laws, whether Authority is a creditor in such proceedings or otherwise.

14. Conflict of Interest; No Individual Liability.

No official or employee of Authority shall have any personal interest, direct or indirect, in this Note, nor shall any official or employee of Authority participate in any decision relating to this Note which affects such official's or employee's pecuniary interest in any corporation, partnership or association in which such official or employee is directly or indirectly interested. No official or employee of Authority shall be personally liable in the event of a breach of this Note by Authority.

15. Amendments, Changes and Modifications.

This Note may not be amended, changed, modified, altered or terminated without the prior written consent of the parties hereto.

16.           Notices.

All notices, demands, requests, elections, approvals, disapprovals, consents or other communications given under this Note shall be in writing and shall be sent by first-class registered or certified mail, postage prepaid, return receipt requested, or by private courier service which provides evidence of delivery. Unless a different address is given by any party as provided in this Section, all such communications will be addressed as follows:

To Borrower:           Riverside Housing Development Corporation  
                                Attn: Bruce Kulpa, President/CEO  
                                4250 Brockton Avenue  
                                Riverside, CA 92501

To Authority:           Housing Authority of the City of Riverside  
                                Attn: Executive Director  
                                3900 Main Street, 7<sup>th</sup> Floor  
                                Riverside, California 92522

Copies to:              City of Riverside  
                                Attn: Community & Economic Development Director  
                                3900 Main Street, 5<sup>th</sup> Floor  
                                Riverside, California 92522

                                City of Riverside  
                                Attn: City Attorney  
                                3900 Main Street, 7<sup>th</sup> Floor  
                                Riverside, California 92522

Any Notice shall be deemed received immediately if delivered by hand and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail. Each party shall promptly notify the other party of any change(s) of address to which notice shall be sent pursuant to this Note. Any address for service of notice on any party may be changed by that party serving a notice upon the other of the new address, except that any change of address to a post office box shall not be effective unless a street address is also specified for use in effectuating personal service.

17.           Severability.

The invalidity or unenforceability of any one or more provisions of this Note will in no way affect any other provisions.

18.           Interpretation.

Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the paragraphs of this Note are for convenience only and do not define or limit any terms or provisions. Time is of the essence in the performance of this Note by Borrower. Each party hereto has been represented by counsel in the negotiation of this Note, and it shall not be interpreted in favor of or against any party on account of relative responsibilities in drafting. Notwithstanding

any other provision of this Note, nothing herein or in this Note shall be deemed to require Borrower to pay interest in an amount in excess of any applicable usury law or other legal limitation on interest, and the terms of this Note shall be interpreted to require in each instance the lesser of (a) the amount stated in this Note, and (b) the maximum applicable legal limit.

19. No Waiver; Consents.

Any waiver by Authority must be in writing and will not be construed as a continuing waiver. No waiver will be implied from any delay or failure by Authority to take action on account of any default of Borrower. Consent by Authority to any act or omission by Borrower will not be construed to be a consent to any other or subsequent act or omission or to waive the requirements for Authority's consent to be obtained in any future or other instance.

20. Governing Law.

This Note shall be governed by the laws of the State of California.

21. Nonrecourse Obligation After Completion of Construction.

This Note shall constitute a recourse obligation of the Borrower until recordation of the Release of Construction Covenants in the official records of the County of Riverside. Upon completion of construction of the Project as evidenced by the recordation of a Release of Construction Covenants, this Note shall be nonrecourse and neither Borrower nor any member, officer, partner or employee of Borrower shall have any personal liability for repayment of the sums evidenced hereby, and the Authority must resort only to the Property for repayment should the Borrower fail to repay the sums evidenced hereby.

Nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement against all such security for this Note of all the rights and remedies of the Authority, or (b) be deemed in any way to impair the right of the Authority to assert the unpaid principal amount of this Note as a demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on this Note; nothing contained therein is intended to relieve the Borrower and, if Borrower is a partnership, any general partner of Borrower of liability for (i) fraud or willful misrepresentation of the Borrower; (ii) the failure to pay taxes, assessments or other charges which may create liens on the real property described in the Authority Loan Documents that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the retention of any rental income or other income arising with respect to the Project collected by Borrower after the Authority has given any notice that Borrower is in default to the full extent of the rental income or other income retained and collected by Borrower after the giving of any such notice; (iv) the fair market value as of the time of the giving of any notice referred to in subparagraph (iii) above of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Authority Loan Documents after the giving of any notice referred to above; and (v) the misapplication of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Project; and (vi) breach of any environmental covenant or representation made by the Borrower relating to the Project.



22. Approvals.

Except with respect to those matters set forth hereinabove providing for Authority's approval, consent or determination to be at Authority's "sole discretion" or "sole and absolute discretion," Authority hereby agrees to act reasonably with regard to any approval, consent, or other determination given by Authority hereunder. Authority agrees to give Borrower written notice of its approval or disapproval following submission of items to Authority for approval, including, in the case of any disapproved item, the reasons for such disapproval.

Any review or approval of any matter by the Authority or any Authority official or employee under this Note shall be solely for the benefit of Authority, and neither Borrower nor any other person shall rely upon such review or approval as an indication of the wisdom, soundness, safety, appropriateness, or presence or absence of any matter. Without limiting the generality of the foregoing, Borrower and not Authority shall be solely responsible for assuring compliance with laws, the suitability of the Property for the Project, the adequacy of the plans, and the safety of the Project construction site, the completed Project, and the operation thereof.

23. Waiver.

Borrower agrees that it will still be liable for repayment of this Note, even if the holder hereof does not follow the procedures of presentment, protest, demand, diligence, notice of dishonor and of nonpayment, which requirements are hereby waived. Failure of Authority or other holder hereof to exercise any right or remedy hereunder shall not constitute a waiver of any future or other default. No acceptance of a past due installment or indulgence granted from time to time shall be construed to be a waiver of, or to preclude the exercise of, the right to insist upon prompt payment thereafter or to impose late charges retroactively or prospectively, or to waive or preclude the exercise of, the right to insist upon prompt payment thereafter or to impose late charges retroactively or prospectively, or to waive or preclude the exercise of any other rights which Authority may have.

(Signatures on following page)

IN WITNESS WHEREOF, Borrower has executed this Note as of the date and year first above written.

**BORROWER:**

RIVERSIDE HOUSING DEVELOPMENT  
CORPORATION, a California non-profit  
corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

## EXHIBIT “A”

### DISBURSEMENT RECORD

	Disbursement Amount	Disbursement Date	Borrower's Acknowledgment of Receipt
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

**ATTACHMENT NO. 7**

**AUTHORITY DEED OF TRUST**

**RECORDING REQUESTED BY** )  
**AND WHEN RECORDED MAIL TO:** )

)  
)  
)  
)  
Housing Authority of the City of Riverside )  
3900 Main Street )  
Riverside, CA 92522 )  
Attn: Executive Director )  
)  
)  
Project: 4307 Park Avenue )

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(Space above for Recorder's Use Only)

This document is exempt from the payment of a recording fee  
pursuant to Government Code Section 27383.

**DEED OF TRUST, FIXTURE FILING AND ASSIGNMENT OF RENTS**

**THIS DEED OF TRUST, FIXTURE FILING AND ASSIGNMENT OF RENTS** ("Deed of Trust") is made as of \_\_\_\_\_, 2017, by **RIVERSIDE HOUSING DEVELOPMENT CORPORATION**, a California non-profit corporation ("**Trustor**"), whose address is \_\_\_\_\_, to Stewart Title of California – Inland Empire Division, located at 7065 Indiana Avenue, Suite 100, Riverside, CA 92506, ("**Trustee**"), for the benefit of the **HOUSING AUTHORITY OF THE CITY OF RIVERSIDE**, a public body, corporate and politic ("**Beneficiary**").

**THIS DEED OF TRUST** is given, inter alia, for the purpose of securing the obligation of Trustor to repay Beneficiary all principal and interest due under that certain loan in the amount One Hundred Eighty Three Thousand Two Hundred Thirty Eight Dollars (\$183,238) made by Beneficiary for the benefit of Trustor ("Authority Loan") evidenced by that certain Authority Promissory Note of even date herewith ("Note") and made in accordance with that certain Development Agreement dated for identification purposes only as of \_\_\_\_\_, 2017 by and between Beneficiary and Trustor ("Agreement") and the performance of Trustor's obligations thereunder and under this Deed of Trust and the Regulatory Agreement as hereinafter defined. The Authority Loan shall be made in connection with the acquisition of certain real property, predevelopment and construction of an Affordable Unit at 4307 Park Avenue, located in the City of Riverside, California and further identified as Assessor Parcel No. (APN) 211-233-001, as more particularly described in Exhibit "A" attached hereto and by this reference incorporated herein ("Property").

**FOR GOOD AND VALUABLE CONSIDERATION**, including the financial assistance herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, the Property;

**TOGETHER WITH** any and all buildings and improvements now or hereafter erected on the Property including, without limitation, Trustor's interest in fixtures, tenements, attachments, appliances, equipment, building systems, machinery, and other articles now or hereafter attached to the buildings and improvements (collectively, the "Improvements"), all of which shall be deemed and construed to be a part of the real property;

**TOGETHER WITH** all earnings, rents, issues, profits, revenue, royalties, income, proceeds and other benefits, including without limitation prepaid rents and security deposits (collectively, the "Rents") derived from any lease, sublease, license, franchise or concession or other agreement (collectively, the "Leases") now or hereafter affecting all or any portion of the Property or the Improvements or the use or occupancy thereof;

**TOGETHER WITH** all interests, estates or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Property or the Improvements, including without limitation, all right, title and interest now owned or hereafter acquired by Trustor in and to any greater estate in the Property or the Improvements;

**TOGETHER WITH** all easements, tenements, hereditaments, appurtenances, rights-of-way and rights now owned or hereafter acquired by Trustor used or useful in connection with the Property or as a means of access thereto, including, without limiting the generality of the foregoing, all rights pursuant to any trackage agreement and all rights to the nonexclusive use of common drive entries, all oil and gas and other hydrocarbons and all other minerals and water and water rights and shares of stock evidencing the same;

**TOGETHER WITH** all leasehold estate, right, title and interest of Trustor in and to all leases, subleases, subtenancies, licenses, franchises, occupancy agreements and other agreements covering the Property, the Improvements or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Trustor thereunder, including, without limitation, all cash or security deposits, prepaid or advance rentals, and deposits or payments of similar nature;

**TOGETHER WITH** all right, title and interest of Trustor, now owned or hereafter acquired in and to any Property lying within the right-of-way of any street, open or proposed, adjoining the Property and any and all sidewalks, vaults, alloys and strips and gores of property adjacent to or used in connection with the Property;

**TOGETHER WITH** all the estate, interest, right, title, other claim or demand, both in law and in equity, including claims or demands with respect to the proceeds of insurance in effect with respect to the Property, which Trustor now has or may hereafter acquire in the Property or the Improvements and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the interests described in this Deed of Trust, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages.

The entire estate, property and interest hereby conveyed to Trustee may hereafter be collectively referred to as the "Trust Estate".

**FOR THE PURPOSE OF SECURING:**

(a) the payment of the sum of One Hundred Eighty-Three Thousand Two Hundred Thirty-Eight Dollars (\$183,238), or so much of such principal as may be disbursed pursuant to the Note, according to the terms of the Note, and any and all additions, modifications or extensions thereof;

(b) performance of every obligation, covenant and agreement of Trustor contained in the Agreement, the Note, and that certain Regulatory Agreement by and between Trustor and Beneficiary dated and recorded concurrently herewith ("Regulatory Agreement") which includes among other covenants and restrictions, covenants of affordability, maintenance of the Project and restrictions on transfer of ownership of the Project and all modifications, extensions, renewals, and replacements thereof or any other agreement now or hereafter executed by Trustor which recites that the obligations thereunder are secured by this Deed of Trust and the Notice of Default (collectively, "Loan Documents");

(c) payment of all sums advanced by Beneficiary or its successors and assigns, or Trustee, to enforce the Note, the Agreement, the Regulatory Agreement or this Deed of Trust to protect the Trust Estate upon an Event of Default, with interest thereon at the rate of ten percent (10%) per annum ("Default Rate") pursuant to the terms of the Note;

(d) payment and performance of all other obligations of Trustor arising from any and all existing and future agreements with Beneficiary, or its successors or assigns, when such agreement recites that the obligations thereunder are secured by this Deed of Trust.

All initially capitalized terms used herein which are defined in the Agreement shall have the same meaning herein unless the context otherwise requires.

**TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:**

**ARTICLE 1.  
COVENANTS AND AGREEMENTS OF TRUSTOR**

**1.1 Payment of Secured Obligations.** Trustor shall immediately pay when due all amounts secured hereby.

**1.2 Maintenance, Repair, Alterations.** Subject to normal wear and tear, Trustor (a) shall keep the Property and the Improvements thereon in good condition and repair in accordance with the Loan Documents, including without limitation the Regulatory Agreement; (b) shall not remove, demolish or substantially alter any of the Improvements except upon the prior written consent of Beneficiary; (c) shall complete promptly and in a good and workmanlike manner any Improvement which may be now or hereafter constructed on the Property and promptly restore in like manner any portion of the Improvements which may be damaged or destroyed thereon from any cause whatsoever, and pay when due all claims for labor performed and materials furnished therefore; (d) shall comply in all material respects with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Trust Estate or any part

thereof or requiring any alterations or improvements; (e) shall not commit or permit any waste or deterioration of the Property or the Improvements; (f) shall not allow changes in the use for which all or any part of the Property or the Improvements were intended; and (g) shall not initiate or acquiesce in a change in the zoning classification of the Property and the Improvements without Beneficiary's prior written consent.

### **1.3 Required Insurance.**

(a) Trustor shall at all times provide, maintain and keep in force or cause to be provided, maintained and kept in force, at no expense to Trustee or Beneficiary, policies of insurance in accordance with the terms of the Loan Documents in form and amounts, providing for deductibles, and issued by companies, associations or organizations covering such casualties, risks, perils, liabilities and other hazards as required by the Loan Documents or by Beneficiary pursuant thereto.

(b) Trustor shall not obtain separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Beneficiary is included thereon under a standard, non-contributory mortgagee clause or endorsement acceptable to Beneficiary. Trustor shall immediately notify Beneficiary whenever any such separate insurance is obtained and shall promptly deliver to Beneficiary the original policy or policies of such insurance.

(c) Within 90 days following the end of each fiscal year of Trustor, at the request of Beneficiary, Trustor at Trustor's expense shall furnish such evidence of replacement costs as the insurance carrier providing casualty insurance for the building(s) and other improvements on the Property may require to determine, or which such carrier may provide in determining, the then replacement cost of the building(s) and other improvements on the Property.

### **1.4 Delivery of Policies, Payment of Premiums.**

(a) At Beneficiary's option Trustor shall furnish Beneficiary with a copy of all policies of insurance required under Section 1.3 above or evidence of insurance issued by the applicable insurance company for each required policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number and the period of coverage, and otherwise in form and substance satisfactory to Beneficiary in all respects.

(b) In the event Trustor fails to provide, maintain, keep in force or deliver to Beneficiary the policies of insurance required by this Deed of Trust or by any Loan Documents, Beneficiary may (but shall have no obligation to) procure such insurance or single-interest insurance for such risks covering Beneficiary's interest and Trustor will pay all premiums thereon and reimburse Beneficiary for all amounts paid or incurred by it in connection therewith promptly upon demand by Beneficiary and, until such payment and reimbursement is made by Trustor, the amount of all such premiums and amounts paid or incurred by Beneficiary shall become indebtedness secured by this Deed of Trust and bear interest at the Default Rate. Following an Event of Default for failure to maintain insurance in accordance with this Section 1.4 and upon written request by Beneficiary, Trustor shall deposit with Beneficiary in monthly installments, an amount equal to 1/12 of the estimated aggregate annual insurance premiums on all policies of

insurance required by the Loan Documents or this Deed of Trust. In such event Trustor further agrees to cause all bills, statements or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements or other documents evidencing that a premium for a required policy is then payable, and providing Trustor has deposited sufficient funds with Beneficiary pursuant to this Section 1.4, Beneficiary shall timely pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If at any time and for any reason the funds deposited with Beneficiary are or will be insufficient to pay such amounts as may be then or subsequently due, Beneficiary shall notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of the funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this Section 1.4, nor shall anything contained herein modify the obligation of Trustor set forth in Section 1.3 hereof to maintain and keep such insurance in force at all times. Beneficiary may commingle the reserve with its own funds and Trustor shall be entitled to no interest thereon.

**1.5 Casualties; Insurance Proceeds.** Trustor shall give prompt written notice thereof to Beneficiary after the happening of any casualty to or in connection with the Property, the Improvements, or any part thereof, whether or not covered by insurance subject to the provisions of any senior liens, in the event of such casualty, all proceeds of insurance shall be payable to Beneficiary, whether required by the Loan Documents or otherwise, and Trustor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Beneficiary. If Trustor receives any proceeds of insurance resulting from such casualty, whether required by the Loan Documents or otherwise, Trustor shall promptly pay over such proceeds to Beneficiary. Beneficiary is hereby authorized and is empowered by Trustor to settle, adjust or compromise any and all claims for loss, damage or destruction under any policy or policies of insurance. In the event of any damage or destruction of the Property or the Improvements, Beneficiary shall apply all loss proceeds remaining after deduction of all expenses of collection and settlement thereof, including, without limitation, fees and expenses of attorneys and adjustors, to the restoration of the Improvements, but only as repairs or replacements are effected and continuing expenses become due and payable and provided all applicable conditions specified in the Loan Documents with respect thereto have been satisfied. If any one or more of such conditions in the Loan Documents has not been met, Beneficiary shall not be obligated to make any further disbursements pursuant to the Note and Beneficiary shall apply all loss proceeds, after deductions as herein provided, to the repayment of any indebtedness thereunder, together with all accrued interest thereon, notwithstanding that the outstanding balance may not be due and payable and the Agreement shall terminate. Nothing herein contained shall be deemed to excuse Trustor from repairing or maintaining the Property and the Improvements as provided in Section 1.2 hereof or restoring all damage or destruction to the Property or the Improvements, regardless of whether or not there are insurance proceeds available to Trustor or whether any such proceeds are sufficient in amount, and the application or release by Beneficiary of any insurance proceeds shall not cure or waive any Event of Default nor any notice of default under this Deed of Trust or invalidate any act done pursuant to such notice.



## **1.6 Indemnification; Subrogation; Waiver of Offset.**

(a) If Beneficiary is made a party to any litigation concerning this Deed of Trust or any of the Loan Documents, the Trust Estate or any part thereof or interest therein, or the occupancy of the Property or the Improvements by Trustor, then Trustor shall indemnify, defend and hold Beneficiary harmless from all liability by reason of that litigation, including reasonable attorneys' fees and expenses incurred by Beneficiary as a result of any such litigation, whether or not any such litigation is prosecuted to judgment, except to the extent that such liability is caused by the sole negligence or willful misconduct of Beneficiary. Beneficiary may employ an attorney or attorneys selected by it to protect its rights hereunder, and Trustor shall pay to Beneficiary reasonable attorneys' fees and costs incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of its breach.

(b) Trustor waives any and all right to claim or recover against Trustee, Beneficiary, and their respective officers, employees, agents and representatives, for loss of or damage to Trustor, the Trust Estate, Trustor's property or the property of others under Trustor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust.

(c) All sums payable by Trustor in accordance with the terms of this Deed of Trust, the Note or the Agreement shall be paid upon notice and demand and without counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Trust Estate or any part thereof; (ii) any restriction or prevention of or interference by any third party with any use of the Trust Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim which Trustor has or might have against Beneficiary, which does not relate to the Authority Loan; or (vi) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Trustor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein and subject to any limitation thereon provided by law, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Trustor.

## **1.7 Taxes and Impositions.**

(a) As used herein, "Impositions" shall mean all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including, without limitation, nongovernmental levies or assessments such as maintenance charges, levies or charges resulting from covenants, conditions and restrictions affecting the Trust Estate, which are assessed or imposed upon the Trust Estate or any portion of it, or become due and payable, and which create, may create or appear to create a lien upon the Trust Estate, or any part thereof, or upon any person, property, equipment or other facility used in

the operation or maintenance thereof, or any tax or assessment on the Trust Estate, or any part of it, in lieu thereof or in addition thereto, or any license fee, tax or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby. Trustor shall pay all Impositions prior to delinquency. Trustor shall deliver to Beneficiary proof of the payment of the Impositions within thirty (30) days after such Impositions are due.

(b) After an Event of Default by Trustor and upon written request by Beneficiary, Trustor shall pay to Beneficiary, unless the Property and Improvements have received an ad valorem property tax exemption pursuant to subdivision (f) or (g) of Section 214 of the California Revenue and Taxation Code, an initial cash reserve in an amount adequate to pay all Impositions for the ensuing tax fiscal year and shall thereafter continue to deposit with Beneficiary, in monthly installments, an amount equal to 1/12 of the sum of the annual Impositions reasonably estimated by Beneficiary, for the purpose of paying the installment of Impositions next due on the Property and the Improvements (funds deposited for this purpose shall hereinafter be referred to as "Impounds"). In such event Trustor further agrees to cause all bills, statements or other documents relating to Impositions to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements or other documents, and providing Trustor has deposited sufficient Impounds with Beneficiary pursuant to this Section 1.8(b), Beneficiary shall timely pay such amounts as may be due thereunder out of the Impounds so deposited with Beneficiary. If at any time and for any reason the Impounds deposited with Beneficiary are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary may notify Trustor and upon such notice Trustor shall deposit immediately an amount equal to such deficiency with Beneficiary. If after the payment of the Impositions there shall be an excess amount held by Beneficiary, such excess amount shall be refunded to Trustor in any manner and in such amount as Beneficiary may elect. Beneficiary may commingle Impounds with its own funds and shall not be obligated to pay or allow any interest on any Impounds held by Beneficiary pending disbursement or application hereunder. Beneficiary may reserve for future payment of Impositions such portion of the Impounds as Beneficiary may in its absolute discretion deem proper.

(c) Upon an Event of Default under any of the Loan Documents or this Deed of Trust, Beneficiary may apply the balance of the Impounds upon any indebtedness or obligation secured hereby in such order as Beneficiary may determine, notwithstanding that the indebtedness or the performance of the obligation may not yet be due according to the terms thereof. Should Trustor fail to deposit with Beneficiary (exclusive of that portion of the payments which has been applied by Beneficiary upon any indebtedness or obligation secured hereby) sums sufficient to fully pay such Impositions before delinquency thereof, Beneficiary may, at Beneficiary's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall bear interest at the Default Rate, shall be secured hereby and shall be repayable to Beneficiary as herein elsewhere provided, or at the option of Beneficiary the latter may, without making any advance whatever, apply any Impounds held by it upon any indebtedness or obligation secured hereby in such order as Beneficiary may determine, notwithstanding that the indebtedness or the performance of the obligation may not yet be due according to the terms thereof. Should any Event of Default occur or exist on the part of the Trustor in the payment or performance of any of Trustor's obligations under the terms of the Loan Documents, Beneficiary may, at any time at Beneficiary's option, apply any sums or amounts in its possession received pursuant to Sections 1.4(b) and 1.8(b) hereof, or as Rents of the Property or the Improvements, or

any portion thereof, or otherwise, to any indebtedness or obligation of the Trustor secured hereby in such manner and order as Beneficiary may elect, notwithstanding the indebtedness or the performance of the obligation may not yet be due according to the terms thereof. The receipt, use or application of any such Impounds paid by Trustor to Beneficiary hereunder shall not be construed to affect the maturity of any indebtedness secured by this Deed of Trust or any of the rights or powers of Beneficiary or Trustee under the terms of the Loan Documents or any of the obligations of Trustor or any guarantor under the Loan Documents.

(d) Trustor shall not suffer, permit or initiate the joint assessment of any real and personal property which may constitute any portion of the Trust Estate or suffer, permit or initiate any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Trust Estate, or any portion of it, as a single lien.

(e) If requested by Beneficiary, Trustor shall cause to be furnished to Beneficiary a tax reporting service covering the Property and the Improvements of the type, duration and with a company satisfactory to Beneficiary.

(f) If, by the laws of the United States of America, or of the State of California or any political subdivision thereof having jurisdiction over Trustor, Beneficiary or the Trust Estate or any portion thereof, any tax, assessment or other payment is due or becomes due in respect of the issuance of the Note or the recording of this Deed of Trust, Trustor covenants and agrees to pay each such tax, assessment or other payment in the manner required by any such law. Trustor further covenants to defend and hold harmless and agrees to indemnify Beneficiary, its successors or assigns, against any liability incurred by reason of the imposition of any tax, assessment or other payment on the issuance of the Note or the recording of this Deed of Trust.

**1.8 Utilities.** Trustor shall pay or shall cause to be paid when due all utility charges which are incurred by Trustor for the benefit of the Property or the Improvements and all other assessments or charges of a similar nature, whether or not such charges are or may become liens thereon.

**1.9 Actions Affecting Trust Estate.** Trustor shall promptly give Beneficiary written notice of and shall appear in and contest any action or proceeding purporting to affect any portion of the Trust Estate or the security hereof or the rights or powers of Beneficiary or Trustee; and shall pay all costs and expenses, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee may appear.

**1.10 Actions By Trustee or Beneficiary to Preserve Trust Estate.** During the continuation of an event of default, Beneficiary and/or Trustee, each in its own discretion, without obligation so to do, without releasing Trustor from any obligation, and without notice to or demand upon Trustor, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. In connection therewith (without limiting their general powers, whether conferred herein, in any other Loan Documents or by law), Beneficiary and Trustee shall have and are hereby given the right, but not the obligation, (a) to enter upon and take possession of the Property and the Improvements; (b) to make additions, alterations, repairs and improvements to the Property and the Improvements which they or either of them may consider

necessary or proper to keep the Property or the Improvements in good condition and repair; (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (d) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of either may affect or appears to affect the security of this Deed of Trust or be prior or superior hereto; and (e) in exercising such powers, to pay necessary expenses, including reasonable attorneys' fees and costs or other necessary or desirable consultants. Trustor shall, immediately upon demand therefor by Beneficiary and Trustee or either of them, pay to Beneficiary and Trustee an amount equal to all respective costs and expenses incurred by such party in connection with the exercise of the foregoing rights, including, without limitation, reasonable costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's and attorneys' fees, together with interest thereon from the date of such expenditures at the Default Rate.

**1.11 Transfer of Trust Estate by Trustor.** Subject to the provisions of the Agreement, in the event the Trust Estate or any part thereof, or any interest therein is sold, transferred or leased in violation of Section 2 of the Agreement, Beneficiary shall have the absolute right at its option, upon notice and demand in accordance with Section 9 of the Agreement, to declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. As a condition of the Authority Loan, Trustor agrees for itself, its successors and assigns that the use of the Property shall be subject to the restrictions on rent and occupancy and use of the Property set forth in the Loan Documents, including without limitation, the Regulatory Agreement.

**1.12 Survival of Warranties.** All representations, warranties and covenants of Trustor contained in the Loan Documents or incorporated by reference therein, shall survive the execution and delivery of this Deed of Trust and shall remain continuing obligations, warranties and representations of Trustor so long as any portion of the obligations secured by this Deed of Trust remains outstanding.

**1.13 Eminent Domain.**

(a) Subject to the provisions of any senior liens, in the event that any proceeding or action be commenced for the taking of the Trust Estate, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, condemnation or otherwise, or if the same be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should Trustor receive any notice or other information regarding such proceeding, action, taking or damage, Trustor shall give prompt written notice thereof to Beneficiary. Beneficiary shall be entitled at its option, without regard to the adequacy of its security, to commence, appear in and prosecute in its own name any such action or proceeding. Beneficiary shall also be entitled to make any compromise or settlement in connection with such taking or damage. All compensation, awards, damages, rights of action and proceeds awarded to Trustor by reason of any such taking or damage (the "Condemnation Proceeds") are hereby assigned to Beneficiary and Trustor agrees to execute such further assignments of the Condemnation Proceeds as Beneficiary or Trustee may require. After deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including reasonable attorneys' fees, incurred by it in connection with any such action or proceeding, subject to any applicable terms of the Agreement, Beneficiary

shall apply all such Condemnation Proceeds to the restoration of the Improvements, provided that (i) the taking or damage will not, in Beneficiary's reasonable judgment, materially and adversely affect the contemplated use and operation of Property and the Improvements; and (ii) all applicable conditions set forth in the Agreement are met. If all of the above conditions are met, Beneficiary shall disburse the Condemnation Proceeds only as repairs or replacements are effected and continuing expenses become due and payable.

(b) If any one or more of such conditions is not met, Beneficiary shall apply all of the Condemnation Proceeds, after deductions as herein provided, to the repayment of the outstanding balance of the Note, together with all accrued interest thereon, notwithstanding that the outstanding balance may not be due and payable; and Beneficiary shall have no further obligation to make disbursements pursuant to the Agreement or the other Loan Documents. If the Condemnation Proceeds are not sufficient to repay the Note in full, Trustor shall have no obligation to pay any remaining balance. Application or release of the Condemnation Proceeds as provided herein shall not cure or waive any Event of Default or notice of default hereunder or under any other Authority Document or invalidate any act done pursuant to such notice.

**1.14 Additional Security.** No other security now existing, or hereafter taken, to secure the obligations secured hereby shall be impaired or affected by the execution of this Deed of Trust and all additional security shall be taken, considered and held as cumulative. The taking of additional security, execution of partial releases of the security, or any extension of the time of payment of the indebtedness shall not diminish the force, effect or lien of this Deed of Trust and shall not affect or impair the liability of any Trustor, surety or endorser for the payment of the indebtedness. In the event Beneficiary at any time holds additional security for any of the obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently, or after a sale is made hereunder.

**1.15 Successors and Assigns.** This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Beneficiary" shall mean the owner and holder of the Note, whether or not named as Beneficiary herein. In exercising any rights hereunder or taking any actions provided for herein, Beneficiary may act through its employees, agents or independent contractors authorized by Beneficiary.

**1.16 Inspections.** Beneficiary, or its agents, representatives or employees, are authorized to enter upon or in any part of the Property and the Improvements at any reasonable time following reasonable written notice of no less than 48 hours in advance thereof for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform hereunder or under the terms of any of the Loan Documents. Without limiting the generality of the foregoing, Trustor agrees that Beneficiary will have the same right, power and authority to enter and inspect the Property and the Improvements as is granted to a secured lender under Section 2929.5 of the California Civil Code, and that Beneficiary will have the right to appoint a receiver to enforce this right to enter and inspect the Property and the Improvements to the extent such authority is provided under California law, including the authority given to a secured lender under Section 564(c) of the California Code of Civil Procedure.

**1.17 Liens.** Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Trust Estate, or any part thereof or interest therein, subject to Trustor's right to contest in good faith any such liens, encumbrances and charges. The Trustor shall remove or have removed any levy or attachment made on any of the Property or any part thereof, or assure the satisfaction thereof within a reasonable time. Despite the foregoing, Trustor shall not be required to prepay any consensual lien or encumbrance against the Trust Estate which has been consented to in writing by Beneficiary. If Trustor shall fail to remove and discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien, encumbrance or charge by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, together with interest thereon from the date of such expenditure at the Default Rate.

**1.18 Trustee's Powers.** At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Trust Estate, Trustee may (a) reconvey any part of the Trust Estate, (b) consent in writing to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

**1.19 Beneficiary's Powers.** Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Trust Estate not then or theretofore released as security for the full amount of all unpaid obligations, Beneficiary may, from time to time and without notice (a) release any person so liable, (b) extend the maturity or alter any of the terms of any such obligation, (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed at any time at Beneficiary's option any parcel, portion or all of the Trust Estate, (e) take or release any other or additional security for any obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto.

**1.20 Personal Liability.** The security interest in the Property granted to Beneficiary pursuant to this Deed of Trust shall be subordinate only to the senior financing to which Beneficiary has expressly subordinated and such exceptions to title shown in the title report for the Property which are approved in writing by Beneficiary. Neither the Trustor nor any partner or officer of the Trustor shall have any direct or indirect personal liability for payment of the principal of, or interest on, the Note. The Note constitutes a recourse obligation of Trustor until recordation of the Release of Construction Covenants in the official records of the County of Riverside, California.

Subsequent to the recordation of the Release of Construction Covenants in the official records of the County of Riverside, California, the sole recourse of the Beneficiary with respect to the principal of, or interest on, the Note shall be to the Property securing the indebtedness

evidenced by the Note. No judgment, or execution thereon, entered in any action, legal or equitable, on the Note or this Deed of Trust securing the Note shall be enforced personally against the Trustor or, if the Trustor shall be a partnership, any partner of the Trustor, but shall be enforced only against the Trustor and such other or further security as, from time to time, may be hypothecated for the Note; provided, however, that nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement against all such security for the Note of all the rights and remedies of the Beneficiary, or (b) be deemed in any way to impair the right of the Beneficiary to assert the unpaid principal amount of the Promissory Note as a demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Promissory Note; nothing contained therein is intended to relieve the Trustor and, if Trustor is a partnership, any general partner of Trustor of liability for (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the real property described in the Loan Documents that are payable or applicable prior to any foreclosure under this Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the retention of any rental income or other income arising with respect to the Project collected by Trustor after the Beneficiary has given any notice that Trustor is in default to the full extent of the rental income or other income retained and collected by Trustor after the giving of any such notice; (iv) the fair market value as of the time of the giving of any notice referred to in subparagraph (iii) above of any personal property or fixtures removed or disposed of by Trustor other than in accordance with the Loan Documents after the giving of any notice referred to above; and (v) the misapplication of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Project; and (vi) breach of any environmental covenant or representation made by the Trustor relating to the Project.

**1.21 Indemnity.** In addition to any other indemnities to Beneficiary specifically provided for in this Deed of Trust and/or in the Agreement, Trustor hereby indemnifies, and shall defend and save harmless, Beneficiary and its authorized representatives from and against any and all losses, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, architects', engineers' and attorneys' fees and all disbursements which may be imposed upon, incurred by or asserted against Beneficiary and its authorized representative by reason of: (a) the construction of any improvements on the Property, (b) any capital improvements, other work or things done in, on or about the Property or any part thereof, (c) any use, nonuse, misuse, possession, occupation, alteration, operation, maintenance or management of any portion of the Trust Estate or any part thereof or any street, drive, sidewalk, curb, passageway or space comprising a part thereof or adjacent thereto, (d) any negligence or willful act or omission on the part of Trustor and its agents, contractors, servants, employees, licensees or invitees, (e) any accident, injury (including death) or damage to any person or property occurring in, on or about the Property or any part thereof, (f) any lien or claim which may be alleged to have arisen on, against, or with respect to any portion of the Trust Estate under the laws of the local or state government or any other governmental or quasi-governmental authority or any liability asserted against Beneficiary with respect thereto, (g) any tax attributable to the execution, delivery, filing or recording of this Deed of Trust, the Note or the Agreement, (h) any contest due to Trustor's actions or failure to act, permitted pursuant to the provisions of this Deed of Trust, (i) subject to the nonrecourse provisions set forth in Section 1.20, any Event of Default under the

Note, the Regulatory Agreement, this Deed of Trust or the Agreement, or (j) any claim by or liability to any contractor or subcontractor performing work or any party supplying materials in connection with the Property or the Improvements, except to the extent caused by the Beneficiary's sole negligence or willful misconduct.

## **ARTICLE 2**

### **ASSIGNMENT OF RENTS, ISSUES AND PROFITS**

**2.1 Assignment.** Trustor hereby irrevocably, absolutely, presently and unconditionally assigns and transfers to Beneficiary all the Rents of or from any portion of the Trust Estate, and hereby gives to and confers upon Beneficiary the right, power and authority to collect such Rents. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at the option of Beneficiary at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Trustor, Trustee or Beneficiary, for all such Rents, and apply the same to the indebtedness secured hereby; provided, however, that so long as an Event of Default shall not have occurred hereunder and be continuing, Trustor shall have the right to collect such Rents. Upon the request of Beneficiary, Trustor shall execute and deliver to Beneficiary, in recordable form, a specific assignment of any leases now or hereafter affecting the Trust Estate or any portion thereof to evidence further the assignment hereby made. The Assignment of Rents in this Article 2 is intended to be an absolute assignment from Trustor to Beneficiary and not merely an assignment for security only.

**2.2 Election of Remedies.** Subject to Trustor's right to collect the Rents pursuant to Section 2.1, Beneficiary may, either in person, by agent or by a receiver appointed by a court, enter upon and take possession of all or any portion of the Property and the Improvements, enforce all Leases, in its own name sue for or collect all Rents, including those past due and unpaid, and apply the same to the costs and expenses of operation and collection, including, without limitation, attorneys' fees, and to any indebtedness then secured hereby, in such order as Beneficiary may determine. The collection of such Rents, or the entering upon and taking possession of the Property or the Improvements, or the application thereof as provided above, shall not cure or waive any Event of Default or notice of default hereunder or under any of the Loan Documents or invalidate any act done in response to such Event of Default or pursuant to such notice of default.



### **ARTICLE 3 REMEDIES UPON DEFAULT**

**3.1 Events of Default.** For all purposes hereof, the term “Event of Default” shall mean (a) at Beneficiary’s option, the failure of Trustor to pay any amount due hereunder or under the Note when the same is due and payable, whether by acceleration or otherwise; (b) the failure of Trustor to perform any non-monetary obligation hereunder, or the failure to be true in any material respect when made of any representation or warranty of Trustor contained herein, without curing such failure within ten (10) days after receipt of written notice from Authority (or from any party authorized by Authority to deliver such notice as identified by Authority in writing to Borrower), and the continuance of such failure for thirty (30) days after notice, provided that such default cannot reasonably be cured within thirty (30) days, Trustor shall have such additionally time as may be reasonably necessary if Trustor commences to cure such default within such thirty (30) day period and thereafter diligently prosecutes such cure to completion, or (c) the existence of any Event of Default under the Loan Documents.

**3.2 Acceleration Upon Default, Additional Remedies.** Upon the occurrence of an Event of Default, Beneficiary may, at its option, declare all indebtedness secured hereby to be immediately due and payable upon notice and demand. Thereafter Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property and the Improvements, or any part thereof, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of any portion of the Trust Estate, including, without limitation (i) taking possession of Trustor’s books and records with respect to the Property and Improvements, (ii) completing the construction of the Improvements, (iii) maintaining or repairing the Improvements or any other portion of the Trust Estate, (iv) increasing the income from the Trust Estate, with or without taking possession of the Property or the Improvements, (v) entering into, modifying, or enforcing Leases, (vi) suing for or otherwise collecting the Rents or other amounts owing to Trustor, including those past due and unpaid, and (vii) applying the same, less costs and expenses of operation and collection including, without limitation, attorneys’ fees, upon any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Property or the Improvements, the collection of such Rents and the application thereof as provided above, shall not cure or waive any Event of Default under the Loan Documents or this Deed of Trust or notice of default hereunder;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of default and demand for sale and a written notice of default and election to cause Trustor’s interest in the Trust Estate to be sold, which notice Trustee or Beneficiary shall cause to be duly filed of record in the Official Records of the county in which the Property is located; or

(d) Exercise all other rights and remedies provided herein, in any of the Loan Documents or other document now or hereafter securing all or any portion of the obligations secured hereby, or by law.

**3.3 Foreclosure by Power of Sale.** Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

(a) Beneficiary or Trustee shall give such notice of default and election to sell as is then required by applicable law. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such notice of default and after notice of sale having been given as required by law, sell the Trust Estate at the time and place of sale fixed by it in the notice of sale, either as a whole, or in separate lots or parcels or items as Beneficiary shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof a trustee's deed conveying the property so sold, which shall not contain any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale and Beneficiary shall be entitled to pay the purchase price by crediting the purchase price of the property against the obligations secured hereby. Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(b) After deducting all costs, fees and expenses of Trustee and of this Trust, including costs of evidence of title in connection with sale, Trustee shall apply the proceeds of sale in the following priority, to payment of: (i) first, all sums expended under the terms hereof, not then repaid, with accrued interest at the Default Rate; (ii) second, all other sums then secured hereby; and (iii) the remainder, if any, to the person or persons legally entitled thereto.

(c) Subject to California Civil Code ' 2924g, Trustee may postpone sale of all or any portion of the Trust Estate by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

**3.4 Appointment of Receiver.** Upon the occurrence of an Event of Default hereunder, Beneficiary, as a matter of right and without notice to Trustor or anyone claiming under Trustor, and without regard to the then value of the Trust Estate or the adequacy for any security for the obligations then secured hereby, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate, and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided herein.

**3.5 Remedies Not Exclusive.** Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby

and to exercise all rights and powers under this Deed of Trust or under any Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of the indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and either of them may pursue inconsistent remedies.

**3.6 Request for Notice.** Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in Section 4.3 of this Deed of Trust.

**3.7 Forbearance by Lender Not a Waiver.** Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Beneficiary of payment of any sum secured by this Deed of Trust after the due date of such payment shall not be a waiver of Beneficiary's right either to require prompt payment when due of all other sums so secured or to declare an Event of Default for failure to make prompt payment. The procurement of insurance or this payment of taxes or other liens or charges by Beneficiary shall not be a waiver of Beneficiary's right to accelerate the maturity of the indebtedness secured by this Deed of Trust nor shall Beneficiary's receipt of any awards, proceeds or damages under this Deed of Trust operate to cure or waive any Event of Default with respect to any payment secured by this Deed of Trust.

**3.8 Environmental Provisions.** Without limiting any of the remedies provided in the Loan Documents, Trustor acknowledges and agrees that portions of Section 4 of the Agreement and Section 1.2 of this Deed of Trust are environmental provisions (as defined in Section 736(f)(2) of the California Code of Civil Procedure) made by the Trustor relating to the real property security (the "Environmental Provisions"), and that Trustor's failure to comply with the Environmental Provisions is a breach of contract such that Beneficiary shall have the remedies provided under Section 736 of the California Code of Civil Procedure ("Section 736") for the recovery of damages and for the enforcement of the Environmental Provisions. Pursuant to Section 736, Beneficiary's action for recovery of damages or enforcement of the Environmental Provisions shall not constitute an action within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Sections 580a, 580b, 580d, or 726(b) of the California Code of Civil Procedure. Other than the remedy provided under Section 736, all remedies provided for by the Loan Documents are separate

and distinct causes of action that are not abrogated, modified, limited or otherwise affected by the remedies provided under Section 736(a) of the California Code of Civil Procedure.

## ARTICLE 4. MISCELLANEOUS

**4.1 Amendments.** This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

**4.2 Trustor Waiver of Rights.** Trustor waives to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the Trust Estate, (b) all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created, (c) all rights and remedies which Trustor may have or be able to assert by reason of the laws of the State of California pertaining to the rights and remedies of sureties, (d) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Deed of Trust or to any action brought to enforce the Agreement or any other obligation secured by this Deed of Trust, and (e) any rights, legal or equitable, to require marshalling of assets or to require upon foreclosure sales in a particular order, including any rights under California Civil Code Sections 2899 and 3433. Beneficiary shall have the right to determine the order in which any or all of the Trust Estate shall be subjected to the remedies provided herein. Beneficiary shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Nothing contained herein shall be deemed to be a waiver of Trustor's rights under Section 2924c of the California Civil Code.

**4.3 Notices.** All notices and demands given under the terms hereof shall be in writing and sent by first-class registered or certified mail, postage prepaid, return receipt requested, or by private courier service which provides evidence of delivery. Unless a different address is given by any party as provided in this Section, all such communication will be addressed as follows:

If to Trustor: Riverside Housing Development Corporation  
Attn: Bruce Kulpa, President/CEO  
4250 Brockton Avenue  
Riverside, California 92501

**If to Beneficiary:** Housing Authority of the City of Riverside  
Attn: Executive Director  
3900 Main Street  
Riverside, California 92522

Copies to: City of Riverside  
Attn: Community & Economic Development Director  
3900 Main Street  
Riverside, California 92522

City of Riverside  
Attn: City Attorney  
3900 Main Street  
Riverside, California 92522

Any Notice shall be deemed received immediately if delivered by hand and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail. Each party shall promptly notify the other party of any change(s) of address to which notice shall be sent. Any address for service of notice on any party may be changed by that party serving a notice upon the other of the new address, except that any change of address to a post office box shall not be effective unless a street address is also specified for use in effectuating personal service.

**4.4 Acceptance by Trustee.** Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

**4.5 Captions.** The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

**4.6 Invalidity of Certain Provisions.** Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

**4.7 Subrogation.** To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Trust Estate, such proceeds have been or will be advanced by Beneficiary at Trustor's request and Beneficiary shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether the liens, charges or encumbrances are released.

**4.8 Attorneys' Fees.** If any payment secured hereby is not paid when due, Trustor promises to pay all costs of enforcement and collection, including but not limited to, reasonable attorneys' fees, whether or not such enforcement and collection includes the filing of a lawsuit. As used herein, the terms "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the parties hereto (including, without limitation, in-house counsel employed by Beneficiary) which may include printing, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred.

**4.9 No Merger of Lease.** If both the lessor's and lessee's estate under any lease or any portion thereof which now or hereafter constitutes a part of the Trust Estate shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Beneficiary so elects as evidenced

by recording a written declaration so stating, and, unless and until Beneficiary so elects, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Trust Estate pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Trust Estate shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

**4.10 Governing Law.** This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

**4.11 Joint and Several Obligations.** Should this Deed of Trust be signed by more than one party, all obligations herein contained shall be deemed to be the joint and several obligations of each party executing this Deed of Trust. Any married person signing this Deed of Trust agrees that recourse may be had against community assets and against his or her separate property for the satisfaction of all obligations contained herein.

**4.12 Interpretation.** In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

**4.13 Completion of Construction.** This Deed of Trust is a construction deed of trust within the meaning of California Commercial Code Section 9313. For purposes of subdivision (6) of that statute, "completion of construction" shall not be deemed to occur prior to completion of all work, and installation or incorporation into the Improvements of all materials, for which sums secured hereby are disbursed by Beneficiary.

**4.14 Reconveyance by Trustee.** Upon written request of Beneficiary stating that all sums secured hereby have been paid or that all obligations under the Regulatory Agreement have been satisfied, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto." Such grantee shall pay Trustee a reasonable fee and Trustee's costs incurred in so reconveying the Trust Estate.

**4.15 Counterparts.** This document may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to physically form one document, which may be recorded.

**4.16 Nonforeign Entity.** Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code") and Sections 18805, 18815 and 26131, as applicable, of the California Revenue and Taxation Code ("CRTC") provide that a transferee of a U.S. real property interest

must withhold tax, in the case of the Code, if the transferor is a foreign person, or if, in the case of the CRTTC, the transferor is not a California resident. To inform Beneficiary that the withholding of tax will not be required in the event of the disposition of the Property or the Improvements, or any portion thereof or interest therein, pursuant to the terms of this Deed of Trust, Trustor hereby certifies, under penalty of perjury, that: (a) Trustor is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Code and the regulations promulgated thereunder; and (b) Trustor's U.S. employer identification number 90-1001541; and (c) Trustor's principal place of business is 1230 Columbia Street, San Diego, CA 92101. It is understood that Beneficiary may disclose the contents of this certification to the Internal Revenue Service and the California Franchise Tax Board, and that any false statement contained herein could be punished by fine, imprisonment or both. Trustor covenants and agrees to execute such further certificates, which shall be signed under penalty of perjury, as Beneficiary shall reasonably require. The covenant set forth herein shall survive the foreclosure of the lien of this Deed of Trust or acceptance of a deed in lieu thereof.

**4.17 Substitute Trustee.** Beneficiary at any time and from time to time, by instrument in writing, may substitute and appoint a successor Trustee (either corporate or individual) to any Trustee named herein or previously substituted hereunder, which instrument when executed, acknowledged, and recorded in the Official Records of the Office of the Recorder of the county or counties where the Property is located shall be conclusive proof of the proper substitution and appointment of each successor trustee or trustees, who shall then have all the title, powers, duties and rights of the predecessor Trustee, without the necessity of any conveyance from such predecessor. Trustee shall not be obligated to notify any party hereto of pending sale under any other Deed of Trust, or, unless brought by Trustee, or any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party.

**4.18 Fixture Filing.** This Deed of Trust constitutes a financing statement filed as a fixture filing in the Official Records of the 100 Recorder in the county in which the Property is located with respect to any and all fixtures included within the term "Trust Estate" as used herein and with respect to any goods or other personal property that may now be or hereafter become such fixtures.

**4.19 Waiver of Jury Trial.** TRUSTOR AND BENEFICIARY EACH HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENTS OR RELATING THERETO OR ARISING FROM THE RELATIONSHIP WHICH IS THE SUBJECT OF THE AGREEMENT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

TRUSTOR ACKNOWLEDGES RECEIPT OF A TRUE COPY OF THIS DEED OF TRUST WITHOUT CHARGE.

TRUSTOR PLEASE NOTE: UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, CALIFORNIA PROCEDURE PERMITS TRUSTEE TO SELL THE TRUST ESTATE AT A SALE HELD WITHOUT SUPERVISION BY ANY COURT AFTER

EXPIRATION OF A PERIOD PRESCRIBED BY LAW. UNLESS YOU PROVIDE AN ADDRESS FOR THE GIVING OF NOTICE, YOU MAY NOT BE ENTITLED TO NOTICE OF THE COMMENCEMENT OF ANY SALE PROCEEDINGS. BY EXECUTION OF THIS DEED OF TRUST, YOU CONSENT TO SUCH PROCEDURE. BENEFICIARY URGES YOU TO GIVE PROMPT NOTICE OF ANY CHANGE IN YOUR ADDRESS SO THAT YOU MAY RECEIVE PROMPTLY ANY NOTICE GIVEN PURSUANT TO THIS DEED OF TRUST.

**4.20 Request for Notice.** Pursuant to California Government Code Section 27321.4(b) Trustor hereby requests that a copy of any notice of default or notice of sale given under this Deed of Trust be mailed to Trustor at the address for Trustor set forth herein.

**4.21 Reconveyance.** Except upon the Event of Default by Trustor, Beneficiary shall reconvey this Deed of Trust upon termination of the Affordability Period as that term is defined in the Agreement.

**4.22 Subordination.** This Deed of Trust and the provisions contained herein shall be subordinate to any senior financing approved by Beneficiary in accordance with the Agreement.

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

**TRUSTOR:**

RIVERSIDE HOUSING DEVELOPMENT  
CORPORATION, a California non-profit  
corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_



**EXHIBIT “A”**

**LEGAL DESCRIPTION**

[Attached]

## ATTACHMENT NO. 8

### CITY HOME PROMISSORY NOTE

Loan Amount: **\$252,662**

\_\_\_\_\_, 2017  
Riverside, California

**FOR VALUE RECEIVED, RIVERSIDE HOUSING DEVELOPMENT CORPORATION**, a California non-profit corporation (“Borrower”) promises to pay to the **CITY OF RIVERSIDE**, a California charter city and municipal corporation (“City”), or order, the principal sum of Two Hundred Fifty Two Thousand Six Hundred Sixty Two Dollars (\$252,662), or so much of such principal as may be disbursed pursuant hereto and in accordance with Section 3 of that certain Development Agreement by and between the City and Borrower dated for identification purposes only as of \_\_\_\_\_, 2017 (“Agreement”). The record of such disbursements shall be recorded on Exhibit “A” to this Promissory Note by City and acknowledged by the Borrower. This Note evidences the obligation of Borrower to City for the repayment of City HOME Investment Partnership Program funds (“City HOME Loan”) loaned to Borrower by City and required to be paid by Borrower pursuant to the Agreement, in connection with the acquisition of certain real property, predevelopment activities and for construction of the Project and appurtenant improvements thereon located at 4307 Park Avenue, all located in the City of Riverside, California and further identified as Assessor Parcel No. (APN) 211-233-001 (“Property”). All capitalized terms unless otherwise defined herein shall have the same meaning as set forth in the Agreement.

1. Source of Funds.

The City receives funds from United States Department of Housing and Urban Development (“HUD”) pursuant to the federal HOME Investment Partnerships Act and HOME Investment Partnerships Program, 42 U.S.C. Section 12701, et seq., and the implementing regulations thereto set forth in 24 CFR, Section 92.1, et seq. (collectively, the “HOME Program”) for the purposes of strengthening public-private partnerships to provide decent, safe, sanitary, and affordable housing, with primary attention to housing, for very low income and low income households in the City. The City contemplates that it shall utilize funds set aside by the City for affordable housing to fund the City HOME Loan.

2. Interest.

2.1 Basic Interest. Except as provided in section 2.2 below, the disbursed and unpaid principal balance of the City HOME Loan shall bear interest for the period of time commencing on the date on which the City HOME Loan proceeds are first disbursed for the account of Borrower and ending on the date upon which the City HOME Loan is repaid in full at the rate of zero percent (0 %) per annum, simple interest. Interest shall be computed on the basis of actual number of days elapsed and a 360-day year.

2.2 Default Rate. Any amounts (including but not limited to amounts of principal on the City HOME Loan) which Borrower does not pay when otherwise due under the terms of this Note, shall bear interest at the rate of ten percent (10%) per annum (“Default Rate”), simple

interest, from the date which is ten (10) days after such amount would otherwise be due until the date paid.

3. Payment Dates and Amounts.

Except as otherwise provided in this City HOME Promissory Note, this note shall accrue with interest in the annual amount of 0% per year. So long as Borrower complies with all terms, conditions and obligations of the City HOME Promissory Note, this loan is forgivable in twenty (20) years. Should Borrower default on the City HOME Promissory Note, this will immediately be due and payable.

a. Definition of Annual Project Revenue. "Annual Project Revenue" shall mean all gross income and all revenues of any kind from the Development in a fiscal year, including without limitation, Development rents, Section 8 housing assistance payments, if any, late charges, vending machine income, and any other revenues of whatever kind or nature from the Development, except that interest on security deposits, required reserves, capital contributions, insurance proceeds, and, condemnation proceeds, shall not be considered Annual Project Revenue.

b. Definition of Operating Expenses. "Operating Expenses" shall mean actual, reasonable and customary costs, fees and expenses directly incurred, paid, and attributable to the operation, maintenance and management of the Project in a fiscal year, including, without limitation: painting, cleaning, repairs, alterations, landscaping, utilities, refuse removal, certificates, permits and licenses, sewer charges, real and personal property taxes, assessments, insurance, security, advertising and promotion, janitorial services, cleaning and building supplies, purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings which are not paid from the capital replacement reserve, fees and expenses of property management, fees and expenses of accountants, attorneys and other professionals, and other actual, reasonable and customary operating costs and capital costs which are directly incurred and paid by the Borrower, but which are not paid from the operating reserve or other reserve accounts. The Operating Expenses shall not in any event include expenses not related to the Development's operations, including without limitation, depreciation, amortization, non-cash expenses, and accrued principal and interest expense on deferred payment debt.

c. Interest accrued on items set forth in Section 2.1 and in Section 6 shall not exceed a reasonable and customary rate of interest accrued on similar debt associated with similar affordable housing projects in Southern California.

4. Annual Financial Statement.

Not later than May 1, 2018 and each May 1st thereafter throughout the term, Borrower shall submit to City its Annual Financial Statement for the preceding year together with payments, if any, pursuant to Section 3 hereof. Residual Receipts shall be calculated by Borrower (and certified by an authorized officer of Borrower) and reported by Borrower to City annually for each calendar year no later than May 1st of the following calendar year on forms specified and provided by City from time to time but no later than June 30th of each year. All calculations and records shall be based upon Borrower's Annual Financial Statement and shall be subject to audit by City. In connection with any audit, Borrower shall provide to City for inspection and copying any records, receipts, account books, ledgers, checks, or other documents or other evidence requested by City for the purpose of verifying Borrower's calculation of Residual Receipts, and shall promptly pay to City any further amount due but not paid as a result of any miscalculation by

Borrower. City shall promptly pay Borrower any overpayments made by Borrower as shown by such audit.

5. Forgivable Loan Date.

Notwithstanding any other provision hereof, unless due sooner by virtue of the acceleration of the balance hereof in accordance with Section 7, the outstanding principal balance together with any accrued and unpaid interest due thereon and any other sums payable under this Note shall be fully forgiven on the date which is twenty (20) years from the date of the recording of the Release of Construction Covenants (the "Forgivable Loan Date").

6. Acceleration.

Notwithstanding the payment terms set forth in Section 3 above, upon the occurrence of any "Event of Default" as set forth in Section 14 below, the entire outstanding principal balance of the Note, together with any outstanding interest and other amounts payable thereunder, shall, at the election of City and upon notice to Borrower thereof, become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by Borrower.

7. Prepayment; Application of Payments.

At any time after the disbursement of the City HOME Loan proceeds, Borrower may prepay all or a portion of the unpaid principal amount of the City HOME Loan and any other sums outstanding without penalty. All payments, including any prepayments or funds received upon acceleration pursuant to Section 7 above, shall be applied first toward any outstanding costs of collection or other amounts (excluding City HOME Loan principal or interest thereon) due under this Note or the Agreement, then toward outstanding interest accrued at the Default Rate), if any, then toward any deferred principal, and finally toward the remaining principal balance under the Note.

8. Security for Note.

Borrower's obligations under this Note and the Agreement shall, at all times during which any amount remains outstanding, be secured by that certain deed of trust, fixture filing and assignment of rents ("City HOME Deed of Trust") of even date herewith, and of which City is the beneficiary, recorded against Borrower's fee interest in the Property and the Project (collectively, the "Property").

9. Obligation of Borrower Unconditional.

The obligation of Borrower to repay the City HOME Loan and all accrued interest thereon shall be absolute and unconditional, and until such time as all of the outstanding principal on this Note shall have been fully paid, Borrower agrees that it: (a) will use the funds solely for the purposes set forth herein; and (b) will not terminate or suspend any payment or obligations under this Note, the Agreement, or any other document executed hereunder or in connection herewith for any cause, including without limitation, any acts or circumstances that may constitute failure of consideration, commercial frustration of purpose, or any duty, liability or obligation arising out of or in connection with this Note, the Agreement or any document executed hereunder or in connection herewith.

10. Purpose of City HOME Loan.

The City HOME Loan proceeds shall be used by Borrower only to pay for the acquisition of property located at 4307 Park Avenue, Riverside, CA 92507, Project Costs and such other uses previously approved in writing by City in accordance with the Agreement. In no event shall Borrower use or otherwise invest the proceeds of the City HOME Loan except as expressly provided in this Note and the Agreement.

11. Covenants of Borrower.

As additional consideration for the making of the City HOME Loan by City, Borrower covenants as follows:

a. Compliance with Agreement, the Regulatory Agreement and Deed of Trust. Borrower shall comply with all of its obligations under the Agreement, the Regulatory Agreement and the Deed of Trust. Any amounts payable by Borrower under the Agreement, the Regulatory Agreement or the Deed of Trust (other than amounts also payable hereunder) shall be deemed added to the principal amount of the City HOME Loan payable hereunder.

b. Other Loans. Borrower shall comply with all monetary and non-monetary covenants associated with any loan secured by an interest in the Property or the Project. Borrower shall provide to City a copy of any notice of default within five business days after receiving any notice of a default or alleged default of such covenants by Borrower, and Borrower shall promptly cure any such default and cooperate in permitting City, to the extent City in its sole discretion elects to do so, to cure or assist in curing the default. Any cost or expenditure incurred by City in providing or assisting in such a cure shall be deemed added to the outstanding principal amount of the City HOME Loan.

12. Events of Default and Remedies.

12.1 Borrower Events of Default. The occurrence of any of the circumstances described in this Section 12.1 shall constitute an event of default by Borrower hereunder ("Event of Default"). Notwithstanding anything herein to the contrary, the herein described notice requirements and cure periods shall not apply to any Event of Default described in Sections 12.1(c) through 12.1(h) below. Where notice is required, City shall notify the Investor concurrently with the notice delivered to the Borrower.

(a) The failure of Borrower to pay or perform any monetary covenant or obligation hereunder or under the terms of the Deed of Trust or the Agreement, without curing such failure within ten (10) days after receipt of written notice of such default from City (or from any party authorized by City to deliver such notice as identified by City in writing to Borrower).

(b) The failure of Borrower to perform any non-monetary covenant or obligation hereunder, or under the Deed of Trust or the Agreement, without curing such failure within thirty (30) days after receipt of written notice of such default from City (or from any party authorized by City to deliver such notice as identified by City in writing to Borrower) specifying the nature of the event or deficiency giving rise to the default and the action required to cure such deficiency. Provided, however, that if any default with respect to a non-monetary obligation is such that it cannot be cured within a 30-day period, it shall be deemed cured if Borrower

commences the cure within said 30-day period and diligently prosecutes such cure to completion thereafter.

(c) The material falsity, when made, of any representation or breach of any material warranty or covenant made by Borrower under the terms of this Note, the Agreement or the Deed of Trust;

(d) Borrower or any constituent member or partner, or majority shareholder, of Borrower shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian or the like of its property, (ii) fail to pay or admit in writing its inability to pay its debts generally as they become due, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent, or (v) commence a voluntary petition that is not withdrawn within ninety (90) days of the filing thereof or answer seeking an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or file an answer admitting the material allegations of a petition filed against it in any bankruptcy or insolvency proceeding;

(e) If without the application, approval or consent of Borrower, a proceeding shall be instituted in any court of competent jurisdiction, under any law relating to bankruptcy, in respect of Borrower or any constituent member or partner or majority shareholder of Borrower, for an order for relief or an adjudication in bankruptcy, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like of Borrower or of all or any substantial part of Borrower's assets, or other like relief in respect thereof under any bankruptcy or insolvency law, and, if such proceeding is being contested by Borrower, in good faith, the same shall (i) result in the entry of an order for relief or any such adjudication or appointment, or (ii) continue undismissed, or pending and unstayed, for any period of ninety (90) consecutive days;

(f) Following completion of the construction of the Project, voluntary cessation of the operation of the Project for a continuous period of more than thirty (30) days or the involuntary cessation of the operation of the Project in accordance with this Note, the Regulatory Agreement and/or the Agreement for a continuous period of more than sixty (60) days;

(g) A transfer, in violation of Section 2.2.2 of the Agreement;

(h) If Borrower is in default under the terms of the Regulatory Agreement, Senior Financing or other financing, or any other secured or unsecured obligation relating to the Project, unless such default is cured within the cure period, if any, applicable thereto under the terms and obligation which is in default.

12.2 City Remedies. Upon the occurrence of an Event of Default hereunder, and subject to the rights of any senior lenders City may, in its sole discretion, take any one or more of the following actions:

(a) By notice to Borrower, except in the case of a default by Borrower under Section 12.1(d) or Section 12.1(e) in which event no notice shall be required, declare the entire then unpaid principal balance of the City HOME Loan immediately due and payable, and the same shall become due and payable without further demand, protest or further notice of any kind, all of which are expressly waived. Upon such declaration, outstanding principal and (to the extent permitted by law) interest and any other sums outstanding in connection with the City HOME

Loan shall thereafter bear interest at the Default Rate, payable from the date of such declaration until paid in full;

(b) Subject to the nonrecourse provisions of Section 23 below, take any and all actions and do any and all things which are allowed, permitted or provided by law, in equity or by statute, in the sole discretion of City, to collect the amounts then due and thereafter to become due hereunder, to exercise its rights under the Deed of Trust, and to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Note, the Agreement or under any other document executed in connection herewith;

(c) Subject to the nonrecourse provision of Section 23 below, upon the occurrence of an Event of Default which is occasioned by Borrower's failure to pay money, City may, but shall not be obligated to, make such payment. If such payment is made by City, Borrower shall deposit with City, upon written demand therefor, such sum plus interest at the Default Rate. In either case, the Event of Default with respect to which any such payment has been made by City shall not be deemed cured until such repayment (as the case may be) has been made by Borrower. Until repaid, such amounts shall have the security afforded disbursements under this Note;

(d) Subject to the nonrecourse provisions of Section 23 below, upon the occurrence of an Event of Default described in Section 12.1(d) or 12.1(e) hereof, City shall be entitled and empowered by intervention in such proceedings or otherwise to file and prove a claim for the whole amount owing and unpaid on the City HOME Loan and, in the case of commencement of any judicial proceedings, to file such proof of claim and other papers or documents as may be necessary or advisable in the judgment of City and its counsel to protect the interests of City and to collect and receive any monies or other property in satisfaction of its claim.

12.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to City intended to be exclusive of any other available remedy or remedies, but each such remedy shall be cumulative and shall be in addition to every other remedy given under this Note or now existing at law or in equity or by statute; and may be exercised in such number, at such times and in such order as City may determine in its sole discretion. No delay or omission to exercise any right or power upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient by City. In order to entitle City to exercise any right or remedy reserved to it under this Note, no notice shall be required except as expressly provided herein.

12.4 City Default and Borrower Remedies. Upon fault or failure of City to meet any of its obligations under this Note without curing such failure within thirty (30) days after receipt of written notice of such failure from Borrower specifying the nature of the event or deficiency giving rise to the default and the action required to cure such deficiency, Borrower may, as its sole and exclusive remedies:

- (a) Demand and obtain payment from City of any sums due to or for the benefit of Borrower pursuant to the express terms of this Note;
- (b) Bring an action in equitable relief seeking the specific performance by City of the terms and conditions of this Note or seeking to enjoin any act by City which is prohibited hereunder; and/or

- (c) Bring an action for declaratory relief seeking judicial determination of the meaning of any provision of this Note.

Without limiting the generality of the foregoing, Borrower shall in no event be entitled to, and hereby waives, any right to seek consequential damages of any kind or nature from City arising out of or in connection with this Note, and in connection with such waiver Borrower is familiar with and hereby waives the provision of Section 1542 of the California Civil Code which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

13. Agreement to Pay Attorneys' Fees and Expenses.

In the event that either party hereto brings any action or files any proceeding in connection with the enforcement of its respective rights under this Note or any of the City HOME Loan Documents, defined as the Agreement, this Note, the Deed of Trust, the Regulatory Agreement, the Request for Notice of Default and all other documents contemplated by the Agreement, as a consequence of any breach by the other party of its obligations thereunder, the prevailing party in such action or proceeding shall be entitled to have its reasonable attorneys' fees and out-of-pocket expenditures paid by the losing party. The attorneys' fees so recovered shall include fees for prosecuting or defending any appeal and shall be awarded for any supplemental proceedings until the final judgment is satisfied in full. In addition to the foregoing award of attorneys' fees, the prevailing party in any lawsuit on this Note or any other City HOME Loan Document shall also be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. In addition to the foregoing, Borrower agrees to pay or reimburse City, upon demand by City, for all costs incurred by City in connection with enforcement of this Note, and any other City HOME Loan Document, including without limitation, reasonable attorneys' fees and costs, if there shall be filed by or against Borrower any proceedings under any federal or state bankruptcy or insolvency laws, whether City is a creditor in such proceedings or otherwise.

14. Conflict of Interest; No Individual Liability.

No official or employee of City shall have any personal interest, direct or indirect, in this Note, nor shall any official or employee of City participate in any decision relating to this Note which affects such official's or employee's pecuniary interest in any corporation, partnership or association in which such official or employee is directly or indirectly interested. No official or employee of City shall be personally liable in the event of a breach of this Note by City.

15. Amendments, Changes and Modifications.

This Note may not be amended, changed, modified, altered or terminated without the prior written consent of the parties hereto.



16. Notices.

All notices, demands, requests, elections, approvals, disapprovals, consents or other communications given under this Note shall be in writing and shall be sent by first-class registered or certified mail, postage prepaid, return receipt requested, or by private courier service which provides evidence of delivery. Unless a different address is given by any party as provided in this Section, all such communications will be addressed as follows:

To Borrower:	Riverside Housing Development Corporation Attn: Bruce Kulpa, President/CEO 4250 Brockton Avenue Riverside, California 92501
To City:	City of Riverside Attn: City Manager 3900 Main Street, 7 <sup>th</sup> Floor Riverside, California 92522
Copies to:	City of Riverside Attn: Community & Economic Development Deputy Director 3900 Main Street, 5 <sup>th</sup> Floor Riverside, California 92522
	City of Riverside Attn: City Attorney 3900 Main Street, 7 <sup>th</sup> Floor Riverside, California 92522

Any Notice shall be deemed received immediately if delivered by hand and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail. Each party shall promptly notify the other party of any change(s) of address to which notice shall be sent pursuant to this Note. Any address for service of notice on any party may be changed by that party serving a notice upon the other of the new address, except that any change of address to a post office box shall not be effective unless a street address is also specified for use in effectuating personal service.

17. Severability.

The invalidity or unenforceability of any one or more provisions of this Note will in no way affect any other provisions.

18. Interpretation.

Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the paragraphs of this Note are for convenience only and do not define or limit any terms or provisions. Time is of the essence in the performance of this Note by Borrower. Each party hereto has been represented by counsel in the negotiation of this Note, and it shall not be interpreted in

favor of or against any party on account of relative responsibilities in drafting. Notwithstanding any other provision of this Note, nothing herein or in this Note shall be deemed to require Borrower to pay interest in an amount in excess of any applicable usury law or other legal limitation on interest, and the terms of this Note shall be interpreted to require in each instance the lesser of (a) the amount stated in this Note, and (b) the maximum applicable legal limit.

19. No Waiver; Consents.

Any waiver by City must be in writing and will not be construed as a continuing waiver. No waiver will be implied from any delay or failure by City to take action on account of any default of Borrower. Consent by City to any act or omission by Borrower will not be construed to be a consent to any other or subsequent act or omission or to waive the requirements for City's consent to be obtained in any future or other instance.

20. Governing Law.

This Note shall be governed by the laws of the State of California.

21. Nonrecourse Obligation After Completion of Construction.

This Note shall constitute a recourse obligation of the Borrower until recordation of the Release of Construction Covenants in the official records of the County of Riverside. Upon completion of construction of the Project as evidenced by the recordation of a Release of Construction Covenants, this Note shall be nonrecourse and neither Borrower nor any member, officer, partner or employee of Borrower shall have any personal liability for repayment of the sums evidenced hereby, and the City must resort only to the Property for repayment should the Borrower fail to repay the sums evidenced hereby.

Nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement against all such security for this Note of all the rights and remedies of the City, or (b) be deemed in any way to impair the right of the City to assert the unpaid principal amount of this Note as a demand for money within the meaning and intendment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on this Note; nothing contained therein is intended to relieve the Borrower and, if Borrower is a partnership, any general partner of Borrower of liability for (i) fraud or willful misrepresentation of the Borrower; (ii) the failure to pay taxes, assessments or other charges which may create liens on the real property described in the City HOME Loan Documents that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the retention of any rental income or other income arising with respect to the Project collected by Borrower after the City has given any notice that Borrower is in default to the full extent of the rental income or other income retained and collected by Borrower after the giving of any such notice; (iv) the fair market value as of the time of the giving of any notice referred to in subparagraph (iii) above of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the City HOME Loan Documents after the giving of any notice referred to above; and (v) the misapplication of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Project; and (vi) breach of any environmental covenant or representation made by the Borrower relating to the Project.

22. Approvals.

Except with respect to those matters set forth hereinabove providing for City's approval, consent or determination to be at City's "sole discretion" or "sole and absolute discretion," City hereby agrees to act reasonably with regard to any approval, consent, or other determination given by City hereunder. City agrees to give Borrower written notice of its approval or disapproval following submission of items to City for approval, including, in the case of any disapproved item, the reasons for such disapproval.

Any review or approval of any matter by the City or any City official or employee under this Note shall be solely for the benefit of City, and neither Borrower nor any other person shall rely upon such review or approval as an indication of the wisdom, soundness, safety, appropriateness, or presence or absence of any matter. Without limiting the generality of the foregoing, Borrower and not City shall be solely responsible for assuring compliance with laws, the suitability of the Property for the Project, the adequacy of the plans, and the safety of the Project construction site, the completed Project, and the operation thereof.

23. Waiver.

Borrower agrees that it will still be liable for repayment of this Note, even if the holder hereof does not follow the procedures of presentment, protest, demand, diligence, notice of dishonor and of nonpayment, which requirements are hereby waived. Failure of City or other holder hereof to exercise any right or remedy hereunder shall not constitute a waiver of any future or other default. No acceptance of a past due installment or indulgence granted from time to time shall be construed to be a waiver of, or to preclude the exercise of, the right to insist upon prompt payment thereafter or to impose late charges retroactively or prospectively, or to waive or preclude the exercise of, the right to insist upon prompt payment thereafter or to impose late charges retroactively or prospectively, or to waive or preclude the exercise of any other rights which City may have.

(Signatures on following page)

IN WITNESS WHEREOF, Borrower has executed this Note as of the date and year first above written.

**BORROWER:**

RIVERSIDE HOUSING DEVELOPMENT  
CORPORATION, a California non-profit  
corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

## EXHIBIT "A"

### DISBURSEMENT RECORD

	Disbursement Amount	Disbursement Date	Borrower's Acknowledgment of Receipt
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

**ATTACHMENT NO. 9**

**CITY HOME DEED OF TRUST**

**RECORDING REQUESTED BY** )  
**AND WHEN RECORDED MAIL TO:** )  
 )  
 )  
City of Riverside )  
Community & Economic Development )  
3900 Main Street )  
Riverside, CA 92522 )  
Attn: Housing Authority Manager )  
 )  
Project: 4307 Park Avenue )

(Space above for Recorder's Use Only)

This document is exempt from the payment of a recording fee  
pursuant to Government Code Section 27383.

**DEED OF TRUST, FIXTURE FILING AND ASSIGNMENT OF RENTS**

**THIS DEED OF TRUST, FIXTURE FILING AND ASSIGNMENT OF RENTS** ("Deed of Trust") is made as of \_\_\_\_\_, 2017, by **RIVERSIDE HOUSING DEVELOPMENT CORPORATION**, a California non-profit corporation ("**Trustor**"), whose address is \_\_\_\_\_, to Stewart Title of California – Inland Empire Division, located at 7065 Indiana Avenue, Suite 100, Riverside, CA 92506, ("**Trustee**"), for the benefit of the **CITY OF RIVERSIDE**, a California charter city and municipal corporation ("**Beneficiary**").

**THIS DEED OF TRUST** is given, inter alia, for the purpose of securing the obligation of Trustor to repay Beneficiary all principal and interest due under that certain loan in the amount One Hundred Eighty Three Thousand Two Hundred Thirty Eight Dollars (\$252,662) made by Beneficiary for the benefit of Trustor ("City HOME Loan") evidenced by that certain City Promissory Note of even date herewith ("Note") and made in accordance with that certain Development Agreement dated for identification purposes only as of \_\_\_\_\_, 2017 by and between Beneficiary and Trustor ("Agreement") and the performance of Trustor's obligations thereunder and under this Deed of Trust and the Regulatory Agreement as hereinafter defined. The City HOME Loan shall be made in connection with the acquisition of certain real property, predevelopment and construction of an Affordable Unit at 4307 Park Avenue, located in the City of Riverside, California and further identified as Assessor Parcel No. (APN) 211-233-001, as more particularly described in Exhibit "A" attached hereto and by this reference incorporated herein ("Property").

**FOR GOOD AND VALUABLE CONSIDERATION**, including the financial assistance herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, the Property;

**TOGETHER WITH** any and all buildings and improvements now or hereafter erected on the Property including, without limitation, Trustor's interest in fixtures, tenements, attachments, appliances, equipment, building systems, machinery, and other articles now or hereafter attached to the buildings and improvements (collectively, the "Improvements"), all of which shall be deemed and construed to be a part of the real property;

**TOGETHER WITH** all earnings, rents, issues, profits, revenue, royalties, income, proceeds and other benefits, including without limitation prepaid rents and security deposits (collectively, the "Rents") derived from any lease, sublease, license, franchise or concession or other agreement (collectively, the "Leases") now or hereafter affecting all or any portion of the Property or the Improvements or the use or occupancy thereof;

**TOGETHER WITH** all interests, estates or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Property or the Improvements, including without limitation, all right, title and interest now owned or hereafter acquired by Trustor in and to any greater estate in the Property or the Improvements;

**TOGETHER WITH** all easements, tenements, hereditaments, appurtenances, rights-of-way and rights now owned or hereafter acquired by Trustor used or useful in connection with the Property or as a means of access thereto, including, without limiting the generality of the foregoing, all rights pursuant to any trackage agreement and all rights to the nonexclusive use of common drive entries, all oil and gas and other hydrocarbons and all other minerals and water and water rights and shares of stock evidencing the same;

**TOGETHER WITH** all leasehold estate, right, title and interest of Trustor in and to all leases, subleases, subtenancies, licenses, franchises, occupancy agreements and other agreements covering the Property, the Improvements or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Trustor thereunder, including, without limitation, all cash or security deposits, prepaid or advance rentals, and deposits or payments of similar nature;

**TOGETHER WITH** all right, title and interest of Trustor, now owned or hereafter acquired in and to any Property lying within the right-of-way of any street, open or proposed, adjoining the Property and any and all sidewalks, vaults, alloys and strips and gores of property adjacent to or used in connection with the Property;

**TOGETHER WITH** all the estate, interest, right, title, other claim or demand, both in law and in equity, including claims or demands with respect to the proceeds of insurance in effect with respect to the Property, which Trustor now has or may hereafter acquire in the Property or the Improvements and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the interests described in this Deed of Trust, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages.

The entire estate, property and interest hereby conveyed to Trustee may hereafter be collectively referred to as the "Trust Estate".

## **FOR THE PURPOSE OF SECURING:**

(e) the payment of the sum of One Hundred Eighty-Three Thousand Two Hundred Thirty-Eight Dollars (\$183,238), or so much of such principal as may be disbursed pursuant to the Note, according to the terms of the Note, and any and all additions, modifications or extensions thereof;

(b) performance of every obligation, covenant and agreement of Trustor contained in the Agreement, the Note, and that certain Regulatory Agreement by and between Trustor and Beneficiary dated and recorded concurrently herewith ("Regulatory Agreement") which includes among other covenants and restrictions, covenants of affordability, maintenance of the Project and restrictions on transfer of ownership of the Project and all modifications, extensions, renewals, and replacements thereof or any other agreement now or hereafter executed by Trustor which recites that the obligations thereunder are secured by this Deed of Trust and the Notice of Default (collectively, "Loan Documents");

(c) payment of all sums advanced by Beneficiary or its successors and assigns, or Trustee, to enforce the Note, the Agreement, the Regulatory Agreement or this Deed of Trust to protect the Trust Estate upon an Event of Default, with interest thereon at the rate of ten percent (10%) per annum ("Default Rate") pursuant to the terms of the Note;

(d) payment and performance of all other obligations of Trustor arising from any and all existing and future agreements with Beneficiary, or its successors or assigns, when such agreement recites that the obligations thereunder are secured by this Deed of Trust.

All initially capitalized terms used herein which are defined in the Agreement shall have the same meaning herein unless the context otherwise requires.

## **TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:**

### **ARTICLE 1. COVENANTS AND AGREEMENTS OF TRUSTOR**

**1.1 Payment of Secured Obligations.** Trustor shall immediately pay when due all amounts secured hereby.

**1.2 Maintenance, Repair, Alterations.** Subject to normal wear and tear, Trustor (a) shall keep the Property and the Improvements thereon in good condition and repair in accordance with the Loan Documents, including without limitation the Regulatory Agreement; (b) shall not remove, demolish or substantially alter any of the Improvements except upon the prior written consent of Beneficiary; (c) shall complete promptly and in a good and workmanlike manner any Improvement which may be now or hereafter constructed on the Property and promptly restore in like manner any portion of the Improvements which may be damaged or destroyed thereon from any cause whatsoever, and pay when due all claims for labor performed and materials furnished therefore; (d) shall comply in all material respects with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Trust Estate or any part



thereof or requiring any alterations or improvements; (e) shall not commit or permit any waste or deterioration of the Property or the Improvements; (f) shall not allow changes in the use for which all or any part of the Property or the Improvements were intended; and (g) shall not initiate or acquiesce in a change in the zoning classification of the Property and the Improvements without Beneficiary's prior written consent.

### **1.3 Required Insurance.**

(a) Trustor shall at all times provide, maintain and keep in force or cause to be provided, maintained and kept in force, at no expense to Trustee or Beneficiary, policies of insurance in accordance with the terms of the Loan Documents in form and amounts, providing for deductibles, and issued by companies, associations or organizations covering such casualties, risks, perils, liabilities and other hazards as required by the Loan Documents or by Beneficiary pursuant thereto.

(b) Trustor shall not obtain separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Beneficiary is included thereon under a standard, non-contributory mortgagee clause or endorsement acceptable to Beneficiary. Trustor shall immediately notify Beneficiary whenever any such separate insurance is obtained and shall promptly deliver to Beneficiary the original policy or policies of such insurance.

(c) Within 90 days following the end of each fiscal year of Trustor, at the request of Beneficiary, Trustor at Trustor's expense shall furnish such evidence of replacement costs as the insurance carrier providing casualty insurance for the building(s) and other improvements on the Property may require to determine, or which such carrier may provide in determining, the then replacement cost of the building(s) and other improvements on the Property.

### **1.4 Delivery of Policies, Payment of Premiums.**

(a) At Beneficiary's option Trustor shall furnish Beneficiary with a copy of all policies of insurance required under Section 1.3 above or evidence of insurance issued by the applicable insurance company for each required policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number and the period of coverage, and otherwise in form and substance satisfactory to Beneficiary in all respects.

(b) In the event Trustor fails to provide, maintain, keep in force or deliver to Beneficiary the policies of insurance required by this Deed of Trust or by any Loan Documents, Beneficiary may (but shall have no obligation to) procure such insurance or single-interest insurance for such risks covering Beneficiary's interest and Trustor will pay all premiums thereon and reimburse Beneficiary for all amounts paid or incurred by it in connection therewith promptly upon demand by Beneficiary and, until such payment and reimbursement is made by Trustor, the amount of all such premiums and amounts paid or incurred by Beneficiary shall become indebtedness secured by this Deed of Trust and bear interest at the Default Rate. Following an Event of Default for failure to maintain insurance in accordance with this Section 1.4 and upon written request by Beneficiary, Trustor shall deposit with Beneficiary in monthly installments, an amount equal to 1/12 of the estimated aggregate annual insurance premiums on all policies of

insurance required by the Loan Documents or this Deed of Trust. In such event Trustor further agrees to cause all bills, statements or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements or other documents evidencing that a premium for a required policy is then payable, and providing Trustor has deposited sufficient funds with Beneficiary pursuant to this Section 1.4, Beneficiary shall timely pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If at any time and for any reason the funds deposited with Beneficiary are or will be insufficient to pay such amounts as may be then or subsequently due, Beneficiary shall notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of the funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this Section 1.4, nor shall anything contained herein modify the obligation of Trustor set forth in Section 1.3 hereof to maintain and keep such insurance in force at all times. Beneficiary may commingle the reserve with its own funds and Trustor shall be entitled to no interest thereon.

**1.5 Casualties; Insurance Proceeds.** Trustor shall give prompt written notice thereof to Beneficiary after the happening of any casualty to or in connection with the Property, the Improvements, or any part thereof, whether or not covered by insurance subject to the provisions of any senior liens, in the event of such casualty, all proceeds of insurance shall be payable to Beneficiary, whether required by the Loan Documents or otherwise, and Trustor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Beneficiary. If Trustor receives any proceeds of insurance resulting from such casualty, whether required by the Loan Documents or otherwise, Trustor shall promptly pay over such proceeds to Beneficiary. Beneficiary is hereby authorized and is empowered by Trustor to settle, adjust or compromise any and all claims for loss, damage or destruction under any policy or policies of insurance. In the event of any damage or destruction of the Property or the Improvements, Beneficiary shall apply all loss proceeds remaining after deduction of all expenses of collection and settlement thereof, including, without limitation, fees and expenses of attorneys and adjustors, to the restoration of the Improvements, but only as repairs or replacements are effected and continuing expenses become due and payable and provided all applicable conditions specified in the Loan Documents with respect thereto have been satisfied. If any one or more of such conditions in the Loan Documents has not been met, Beneficiary shall not be obligated to make any further disbursements pursuant to the Note and Beneficiary shall apply all loss proceeds, after deductions as herein provided, to the repayment of any indebtedness thereunder, together with all accrued interest thereon, notwithstanding that the outstanding balance may not be due and payable and the Agreement shall terminate. Nothing herein contained shall be deemed to excuse Trustor from repairing or maintaining the Property and the Improvements as provided in Section 1.2 hereof or restoring all damage or destruction to the Property or the Improvements, regardless of whether or not there are insurance proceeds available to Trustor or whether any such proceeds are sufficient in amount, and the application or release by Beneficiary of any insurance proceeds shall not cure or waive any Event of Default nor any notice of default under this Deed of Trust or invalidate any act done pursuant to such notice.

## **1.6 Indemnification; Subrogation; Waiver of Offset.**

(a) If Beneficiary is made a party to any litigation concerning this Deed of Trust or any of the Loan Documents, the Trust Estate or any part thereof or interest therein, or the occupancy of the Property or the Improvements by Trustor, then Trustor shall indemnify, defend and hold Beneficiary harmless from all liability by reason of that litigation, including reasonable attorneys' fees and expenses incurred by Beneficiary as a result of any such litigation, whether or not any such litigation is prosecuted to judgment, except to the extent that such liability is caused by the sole negligence or willful misconduct of Beneficiary. Beneficiary may employ an attorney or attorneys selected by it to protect its rights hereunder, and Trustor shall pay to Beneficiary reasonable attorneys' fees and costs incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of its breach.

(b) Trustor waives any and all right to claim or recover against Trustee, Beneficiary, and their respective officers, employees, agents and representatives, for loss of or damage to Trustor, the Trust Estate, Trustor's property or the property of others under Trustor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust.

(c) All sums payable by Trustor in accordance with the terms of this Deed of Trust, the Note or the Agreement shall be paid upon notice and demand and without counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Trust Estate or any part thereof; (ii) any restriction or prevention of or interference by any third party with any use of the Trust Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim which Trustor has or might have against Beneficiary, which does not relate to the City Loan; or (vi) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Trustor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein and subject to any limitation thereon provided by law, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Trustor.

## **1.7 Taxes and Impositions.**

(a) As used herein, "Impositions" shall mean all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including, without limitation, nongovernmental levies or assessments such as maintenance charges, levies or charges resulting from covenants, conditions and restrictions affecting the Trust Estate, which are assessed or imposed upon the Trust Estate or any portion of it, or become due and payable, and which create, may create or appear to create a lien upon the Trust Estate, or any part thereof, or upon any person, property, equipment or other facility used in

the operation or maintenance thereof, or any tax or assessment on the Trust Estate, or any part of it, in lieu thereof or in addition thereto, or any license fee, tax or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby. Trustor shall pay all Impositions prior to delinquency. Trustor shall deliver to Beneficiary proof of the payment of the Impositions within thirty (30) days after such Impositions are due.

(b) After an Event of Default by Trustor and upon written request by Beneficiary, Trustor shall pay to Beneficiary, unless the Property and Improvements have received an ad valorem property tax exemption pursuant to subdivision (f) or (g) of Section 214 of the California Revenue and Taxation Code, an initial cash reserve in an amount adequate to pay all Impositions for the ensuing tax fiscal year and shall thereafter continue to deposit with Beneficiary, in monthly installments, an amount equal to 1/12 of the sum of the annual Impositions reasonably estimated by Beneficiary, for the purpose of paying the installment of Impositions next due on the Property and the Improvements (funds deposited for this purpose shall hereinafter be referred to as "Impounds"). In such event Trustor further agrees to cause all bills, statements or other documents relating to Impositions to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements or other documents, and providing Trustor has deposited sufficient Impounds with Beneficiary pursuant to this Section 1.8(b), Beneficiary shall timely pay such amounts as may be due thereunder out of the Impounds so deposited with Beneficiary. If at any time and for any reason the Impounds deposited with Beneficiary are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary may notify Trustor and upon such notice Trustor shall deposit immediately an amount equal to such deficiency with Beneficiary. If after the payment of the Impositions there shall be an excess amount held by Beneficiary, such excess amount shall be refunded to Trustor in any manner and in such amount as Beneficiary may elect. Beneficiary may commingle Impounds with its own funds and shall not be obligated to pay or allow any interest on any Impounds held by Beneficiary pending disbursement or application hereunder. Beneficiary may reserve for future payment of Impositions such portion of the Impounds as Beneficiary may in its absolute discretion deem proper.

(c) Upon an Event of Default under any of the Loan Documents or this Deed of Trust, Beneficiary may apply the balance of the Impounds upon any indebtedness or obligation secured hereby in such order as Beneficiary may determine, notwithstanding that the indebtedness or the performance of the obligation may not yet be due according to the terms thereof. Should Trustor fail to deposit with Beneficiary (exclusive of that portion of the payments which has been applied by Beneficiary upon any indebtedness or obligation secured hereby) sums sufficient to fully pay such Impositions before delinquency thereof, Beneficiary may, at Beneficiary's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall bear interest at the Default Rate, shall be secured hereby and shall be repayable to Beneficiary as herein elsewhere provided, or at the option of Beneficiary the latter may, without making any advance whatever, apply any Impounds held by it upon any indebtedness or obligation secured hereby in such order as Beneficiary may determine, notwithstanding that the indebtedness or the performance of the obligation may not yet be due according to the terms thereof. Should any Event of Default occur or exist on the part of the Trustor in the payment or performance of any of Trustor's obligations under the terms of the Loan Documents, Beneficiary may, at any time at Beneficiary's option, apply any sums or amounts in its possession received pursuant to Sections 1.4(b) and 1.8(b) hereof, or as Rents of the Property or the Improvements, or

any portion thereof, or otherwise, to any indebtedness or obligation of the Trustor secured hereby in such manner and order as Beneficiary may elect, notwithstanding the indebtedness or the performance of the obligation may not yet be due according to the terms thereof. The receipt, use or application of any such Impounds paid by Trustor to Beneficiary hereunder shall not be construed to affect the maturity of any indebtedness secured by this Deed of Trust or any of the rights or powers of Beneficiary or Trustee under the terms of the Loan Documents or any of the obligations of Trustor or any guarantor under the Loan Documents.

(d) Trustor shall not suffer, permit or initiate the joint assessment of any real and personal property which may constitute any portion of the Trust Estate or suffer, permit or initiate any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Trust Estate, or any portion of it, as a single lien.

(e) If requested by Beneficiary, Trustor shall cause to be furnished to Beneficiary a tax reporting service covering the Property and the Improvements of the type, duration and with a company satisfactory to Beneficiary.

(f) If, by the laws of the United States of America, or of the State of California or any political subdivision thereof having jurisdiction over Trustor, Beneficiary or the Trust Estate or any portion thereof, any tax, assessment or other payment is due or becomes due in respect of the issuance of the Note or the recording of this Deed of Trust, Trustor covenants and agrees to pay each such tax, assessment or other payment in the manner required by any such law. Trustor further covenants to defend and hold harmless and agrees to indemnify Beneficiary, its successors or assigns, against any liability incurred by reason of the imposition of any tax, assessment or other payment on the issuance of the Note or the recording of this Deed of Trust.

**1.8 Utilities.** Trustor shall pay or shall cause to be paid when due all utility charges which are incurred by Trustor for the benefit of the Property or the Improvements and all other assessments or charges of a similar nature, whether or not such charges are or may become liens thereon.

**1.9 Actions Affecting Trust Estate.** Trustor shall promptly give Beneficiary written notice of and shall appear in and contest any action or proceeding purporting to affect any portion of the Trust Estate or the security hereof or the rights or powers of Beneficiary or Trustee; and shall pay all costs and expenses, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee may appear.

**1.10 Actions by Trustee or Beneficiary to Preserve Trust Estate.** During the continuation of an event of default, Beneficiary and/or Trustee, each in its own discretion, without obligation so to do, without releasing Trustor from any obligation, and without notice to or demand upon Trustor, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. In connection therewith (without limiting their general powers, whether conferred herein, in any other Loan Documents or by law), Beneficiary and Trustee shall have and are hereby given the right, but not the obligation, (a) to enter upon and take possession of the Property and the Improvements; (b) to make additions, alterations, repairs and improvements to the Property and the Improvements which they or either of them may consider

necessary or proper to keep the Property or the Improvements in good condition and repair; (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (d) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of either may affect or appears to affect the security of this Deed of Trust or be prior or superior hereto; and (e) in exercising such powers, to pay necessary expenses, including reasonable attorneys' fees and costs or other necessary or desirable consultants. Trustor shall, immediately upon demand therefor by Beneficiary and Trustee or either of them, pay to Beneficiary and Trustee an amount equal to all respective costs and expenses incurred by such party in connection with the exercise of the foregoing rights, including, without limitation, reasonable costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's and attorneys' fees, together with interest thereon from the date of such expenditures at the Default Rate.

**1.11 Transfer of Trust Estate by Trustor.** Subject to the provisions of the Agreement, in the event the Trust Estate or any part thereof, or any interest therein is sold, transferred or leased in violation of Section 2 of the Agreement, Beneficiary shall have the absolute right at its option, upon notice and demand in accordance with Section 9 of the Agreement, to declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. As a condition of the City HOME Loan, Trustor agrees for itself, its successors and assigns that the use of the Property shall be subject to the restrictions on rent and occupancy and use of the Property set forth in the Loan Documents, including without limitation, the Regulatory Agreement.

**1.12 Survival of Warranties.** All representations, warranties and covenants of Trustor contained in the Loan Documents or incorporated by reference therein, shall survive the execution and delivery of this Deed of Trust and shall remain continuing obligations, warranties and representations of Trustor so long as any portion of the obligations secured by this Deed of Trust remains outstanding.

**1.13 Eminent Domain.**

(a) Subject to the provisions of any senior liens, in the event that any proceeding or action be commenced for the taking of the Trust Estate, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, condemnation or otherwise, or if the same be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should Trustor receive any notice or other information regarding such proceeding, action, taking or damage, Trustor shall give prompt written notice thereof to Beneficiary. Beneficiary shall be entitled at its option, without regard to the adequacy of its security, to commence, appear in and prosecute in its own name any such action or proceeding. Beneficiary shall also be entitled to make any compromise or settlement in connection with such taking or damage. All compensation, awards, damages, rights of action and proceeds awarded to Trustor by reason of any such taking or damage (the "Condemnation Proceeds") are hereby assigned to Beneficiary and Trustor agrees to execute such further assignments of the Condemnation Proceeds as Beneficiary or Trustee may require. After deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including reasonable attorneys' fees, incurred by it in connection with any such action or proceeding, subject to any applicable terms of the Agreement, Beneficiary

shall apply all such Condemnation Proceeds to the restoration of the Improvements, provided that (i) the taking or damage will not, in Beneficiary's reasonable judgment, materially and adversely affect the contemplated use and operation of Property and the Improvements; and (ii) all applicable conditions set forth in the Agreement are met. If all of the above conditions are met, Beneficiary shall disburse the Condemnation Proceeds only as repairs or replacements are effected and continuing expenses become due and payable.

(b) If any one or more of such conditions is not met, Beneficiary shall apply all of the Condemnation Proceeds, after deductions as herein provided, to the repayment of the outstanding balance of the Note, together with all accrued interest thereon, notwithstanding that the outstanding balance may not be due and payable; and Beneficiary shall have no further obligation to make disbursements pursuant to the Agreement or the other Loan Documents. If the Condemnation Proceeds are not sufficient to repay the Note in full, Trustor shall have no obligation to pay any remaining balance. Application or release of the Condemnation Proceeds as provided herein shall not cure or waive any Event of Default or notice of default hereunder or under any other City Document or invalidate any act done pursuant to such notice.

**1.14 Additional Security.** No other security now existing, or hereafter taken, to secure the obligations secured hereby shall be impaired or affected by the execution of this Deed of Trust and all additional security shall be taken, considered and held as cumulative. The taking of additional security, execution of partial releases of the security, or any extension of the time of payment of the indebtedness shall not diminish the force, effect or lien of this Deed of Trust and shall not affect or impair the liability of any Trustor, surety or endorser for the payment of the indebtedness. In the event Beneficiary at any time holds additional security for any of the obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently, or after a sale is made hereunder.

**1.15 Successors and Assigns.** This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Beneficiary" shall mean the owner and holder of the Note, whether or not named as Beneficiary herein. In exercising any rights hereunder or taking any actions provided for herein, Beneficiary may act through its employees, agents or independent contractors authorized by Beneficiary.

**1.16 Inspections.** Beneficiary, or its agents, representatives or employees, are authorized to enter upon or in any part of the Property and the Improvements at any reasonable time following reasonable written notice of no less than 48 hours in advance thereof for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform hereunder or under the terms of any of the Loan Documents. Without limiting the generality of the foregoing, Trustor agrees that Beneficiary will have the same right, power and authority to enter and inspect the Property and the Improvements as is granted to a secured lender under Section 2929.5 of the California Civil Code, and that Beneficiary will have the right to appoint a receiver to enforce this right to enter and inspect the Property and the Improvements to the extent such authority is provided under California law, including the authority given to a secured lender under Section 564(c) of the California Code of Civil Procedure.

**1.17 Liens.** Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Trust Estate, or any part thereof or interest therein, subject to Trustor's right to contest in good faith any such liens, encumbrances and charges. The Trustor shall remove or have removed any levy or attachment made on any of the Property or any part thereof, or assure the satisfaction thereof within a reasonable time. Despite the foregoing, Trustor shall not be required to prepay any consensual lien or encumbrance against the Trust Estate which has been consented to in writing by Beneficiary. If Trustor shall fail to remove and discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien, encumbrance or charge by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, together with interest thereon from the date of such expenditure at the Default Rate.

**1.18 Trustee's Powers.** At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Trust Estate, Trustee may (a) reconvey any part of the Trust Estate, (b) consent in writing to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

**1.19 Beneficiary's Powers.** Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Trust Estate not then or theretofore released as security for the full amount of all unpaid obligations, Beneficiary may, from time to time and without notice (a) release any person so liable, (b) extend the maturity or alter any of the terms of any such obligation, (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed at any time at Beneficiary's option any parcel, portion or all of the Trust Estate, (e) take or release any other or additional security for any obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto.

**1.20 Personal Liability.** The security interest in the Property granted to Beneficiary pursuant to this Deed of Trust shall be subordinate only to the senior financing to which Beneficiary has expressly subordinated and such exceptions to title shown in the title report for the Property which are approved in writing by Beneficiary. Neither the Trustor nor any partner or officer of the Trustor shall have any direct or indirect personal liability for payment of the principal of, or interest on, the Note. The Note constitutes a recourse obligation of Trustor until recordation of the Release of Construction Covenants in the official records of the County of Riverside, California.

Subsequent to the recordation of the Release of Construction Covenants in the official records of the County of Riverside, California, the sole recourse of the Beneficiary with respect to the principal of, or interest on, the Note shall be to the Property securing the indebtedness



evidenced by the Note. No judgment, or execution thereon, entered in any action, legal or equitable, on the Note or this Deed of Trust securing the Note shall be enforced personally against the Trustor or, if the Trustor shall be a partnership, any partner of the Trustor, but shall be enforced only against the Trustor and such other or further security as, from time to time, may be hypothecated for the Note; provided, however, that nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement against all such security for the Note of all the rights and remedies of the Beneficiary, or (b) be deemed in any way to impair the right of the Beneficiary to assert the unpaid principal amount of the Promissory Note as a demand for money within the meaning and intendment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Promissory Note; nothing contained therein is intended to relieve the Trustor and, if Trustor is a partnership, any general partner of Trustor of liability for (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the real property described in the Loan Documents that are payable or applicable prior to any foreclosure under this Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the retention of any rental income or other income arising with respect to the Project collected by Trustor after the Beneficiary has given any notice that Trustor is in default to the full extent of the rental income or other income retained and collected by Trustor after the giving of any such notice; (iv) the fair market value as of the time of the giving of any notice referred to in subparagraph (iii) above of any personal property or fixtures removed or disposed of by Trustor other than in accordance with the Loan Documents after the giving of any notice referred to above; and (v) the misapplication of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Project; and (vi) breach of any environmental covenant or representation made by the Trustor relating to the Project.

**1.21 Indemnity.** In addition to any other indemnities to Beneficiary specifically provided for in this Deed of Trust and/or in the Agreement, Trustor hereby indemnifies, and shall defend and save harmless, Beneficiary and its authorized representatives from and against any and all losses, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, architects', engineers' and attorneys' fees and all disbursements which may be imposed upon, incurred by or asserted against Beneficiary and its authorized representative by reason of: (a) the construction of any improvements on the Property, (b) any capital improvements, other work or things done in, on or about the Property or any part thereof, (c) any use, nonuse, misuse, possession, occupation, alteration, operation, maintenance or management of any portion of the Trust Estate or any part thereof or any street, drive, sidewalk, curb, passageway or space comprising a part thereof or adjacent thereto, (d) any negligence or willful act or omission on the part of Trustor and its agents, contractors, servants, employees, licensees or invitees, (e) any accident, injury (including death) or damage to any person or property occurring in, on or about the Property or any part thereof, (f) any lien or claim which may be alleged to have arisen on, against, or with respect to any portion of the Trust Estate under the laws of the local or state government or any other governmental or quasi-governmental authority or any liability asserted against Beneficiary with respect thereto, (g) any tax attributable to the execution, delivery, filing or recording of this Deed of Trust, the Note or the Agreement, (h) any contest due to Trustor's actions or failure to act, permitted pursuant to the provisions of this Deed of Trust, (i) subject to the nonrecourse provisions set forth in Section 1.20, any Event of Default under the

Note, the Regulatory Agreement, this Deed of Trust or the Agreement, or (j) any claim by or liability to any contractor or subcontractor performing work or any party supplying materials in connection with the Property or the Improvements, except to the extent caused by the Beneficiary's sole negligence or willful misconduct.

## **ARTICLE 2**

### **ASSIGNMENT OF RENTS, ISSUES AND PROFITS**

**2.1 Assignment.** Trustor hereby irrevocably, absolutely, presently and unconditionally assigns and transfers to Beneficiary all the Rents of or from any portion of the Trust Estate, and hereby gives to and confers upon Beneficiary the right, power and authority to collect such Rents. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at the option of Beneficiary at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Trustor, Trustee or Beneficiary, for all such Rents, and apply the same to the indebtedness secured hereby; provided, however, that so long as an Event of Default shall not have occurred hereunder and be continuing, Trustor shall have the right to collect such Rents. Upon the request of Beneficiary, Trustor shall execute and deliver to Beneficiary, in recordable form, a specific assignment of any leases now or hereafter affecting the Trust Estate or any portion thereof to evidence further the assignment hereby made. The Assignment of Rents in this Article 2 is intended to be an absolute assignment from Trustor to Beneficiary and not merely an assignment for security only.

**2.2 Election of Remedies.** Subject to Trustor's right to collect the Rents pursuant to Section 2.1, Beneficiary may, either in person, by agent or by a receiver appointed by a court, enter upon and take possession of all or any portion of the Property and the Improvements, enforce all Leases, in its own name sue for or collect all Rents, including those past due and unpaid, and apply the same to the costs and expenses of operation and collection, including, without limitation, attorneys' fees, and to any indebtedness then secured hereby, in such order as Beneficiary may determine. The collection of such Rents, or the entering upon and taking possession of the Property or the Improvements, or the application thereof as provided above, shall not cure or waive any Event of Default or notice of default hereunder or under any of the Loan Documents or invalidate any act done in response to such Event of Default or pursuant to such notice of default.

### **ARTICLE 3 REMEDIES UPON DEFAULT**

**3.1 Events of Default.** For all purposes hereof, the term “Event of Default” shall mean (a) at Beneficiary’s option, the failure of Trustor to pay any amount due hereunder or under the Note when the same is due and payable, whether by acceleration or otherwise; (b) the failure of Trustor to perform any non-monetary obligation hereunder, or the failure to be true in any material respect when made of any representation or warranty of Trustor contained herein, without curing such failure within ten (10) days after receipt of written notice from City (or from any party authorized by City to deliver such notice as identified by City in writing to Borrower), and the continuance of such failure for thirty (30) days after notice, provided that such default cannot reasonably be cured within thirty (30) days, Trustor shall have such additionally time as may be reasonably necessary if Trustor commences to cure such default within such thirty (30) day period and thereafter diligently prosecutes such cure to completion, or (c) the existence of any Event of Default under the Loan Documents.

**3.2 Acceleration Upon Default, Additional Remedies.** Upon the occurrence of an Event of Default, Beneficiary may, at its option, declare all indebtedness secured hereby to be immediately due and payable upon notice and demand. Thereafter Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property and the Improvements, or any part thereof, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of any portion of the Trust Estate, including, without limitation (i) taking possession of Trustor’s books and records with respect to the Property and Improvements, (ii) completing the construction of the Improvements, (iii) maintaining or repairing the Improvements or any other portion of the Trust Estate, (iv) increasing the income from the Trust Estate, with or without taking possession of the Property or the Improvements, (v) entering into, modifying, or enforcing Leases, (vi) suing for or otherwise collecting the Rents or other amounts owing to Trustor, including those past due and unpaid, and (vii) applying the same, less costs and expenses of operation and collection including, without limitation, attorneys’ fees, upon any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Property or the Improvements, the collection of such Rents and the application thereof as provided above, shall not cure or waive any Event of Default under the Loan Documents or this Deed of Trust or notice of default hereunder;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of default and demand for sale and a written notice of default and election to cause Trustor’s interest in the Trust Estate to be sold, which notice Trustee or Beneficiary shall cause to be duly filed of record in the Official Records of the county in which the Property is located; or

(d) Exercise all other rights and remedies provided herein, in any of the Loan Documents or other document now or hereafter securing all or any portion of the obligations secured hereby, or by law.

**3.3 Foreclosure by Power of Sale.** Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

(a) Beneficiary or Trustee shall give such notice of default and election to sell as is then required by applicable law. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such notice of default and after notice of sale having been given as required by law, sell the Trust Estate at the time and place of sale fixed by it in the notice of sale, either as a whole, or in separate lots or parcels or items as Beneficiary shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof a trustee's deed conveying the property so sold, which shall not contain any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale and Beneficiary shall be entitled to pay the purchase price by crediting the purchase price of the property against the obligations secured hereby. Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(b) After deducting all costs, fees and expenses of Trustee and of this Trust, including costs of evidence of title in connection with sale, Trustee shall apply the proceeds of sale in the following priority, to payment of: (i) first, all sums expended under the terms hereof, not then repaid, with accrued interest at the Default Rate; (ii) second, all other sums then secured hereby; and (iii) the remainder, if any, to the person or persons legally entitled thereto.

(c) Subject to California Civil Code ' 2924g, Trustee may postpone sale of all or any portion of the Trust Estate by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

**3.4 Appointment of Receiver.** Upon the occurrence of an Event of Default hereunder, Beneficiary, as a matter of right and without notice to Trustor or anyone claiming under Trustor, and without regard to the then value of the Trust Estate or the adequacy for any security for the obligations then secured hereby, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate, and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided herein.

**3.5 Remedies Not Exclusive.** Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby

and to exercise all rights and powers under this Deed of Trust or under any Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of the indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and either of them may pursue inconsistent remedies.

**3.6 Request for Notice.** Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in Section 4.3 of this Deed of Trust.

**3.7 Forbearance by Lender Not a Waiver.** Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Beneficiary of payment of any sum secured by this Deed of Trust after the due date of such payment shall not be a waiver of Beneficiary's right either to require prompt payment when due of all other sums so secured or to declare an Event of Default for failure to make prompt payment. The procurement of insurance or this payment of taxes or other liens or charges by Beneficiary shall not be a waiver of Beneficiary's right to accelerate the maturity of the indebtedness secured by this Deed of Trust nor shall Beneficiary's receipt of any awards, proceeds or damages under this Deed of Trust operate to cure or waive any Event of Default with respect to any payment secured by this Deed of Trust.

**3.8 Environmental Provisions.** Without limiting any of the remedies provided in the Loan Documents, Trustor acknowledges and agrees that portions of Section 4 of the Agreement and Section 1.2 of this Deed of Trust are environmental provisions (as defined in Section 736(f)(2) of the California Code of Civil Procedure) made by the Trustor relating to the real property security (the "Environmental Provisions"), and that Trustor's failure to comply with the Environmental Provisions is a breach of contract such that Beneficiary shall have the remedies provided under Section 736 of the California Code of Civil Procedure ("Section 736") for the recovery of damages and for the enforcement of the Environmental Provisions. Pursuant to Section 736, Beneficiary's action for recovery of damages or enforcement of the Environmental Provisions shall not constitute an action within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Sections 580a, 580b, 580d, or 726(b) of the California Code of Civil Procedure. Other than the remedy provided under Section 736, all remedies provided for by the Loan Documents are separate

and distinct causes of action that are not abrogated, modified, limited or otherwise affected by the remedies provided under Section 736(a) of the California Code of Civil Procedure.

## ARTICLE 4. MISCELLANEOUS

**4.1 Amendments.** This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

**4.2 Trustor Waiver of Rights.** Trustor waives to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the Trust Estate, (b) all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created, (c) all rights and remedies which Trustor may have or be able to assert by reason of the laws of the State of California pertaining to the rights and remedies of sureties, (d) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Deed of Trust or to any action brought to enforce the Agreement or any other obligation secured by this Deed of Trust, and (e) any rights, legal or equitable, to require marshalling of assets or to require upon foreclosure sales in a particular order, including any rights under California Civil Code Sections 2899 and 3433. Beneficiary shall have the right to determine the order in which any or all of the Trust Estate shall be subjected to the remedies provided herein. Beneficiary shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Nothing contained herein shall be deemed to be a waiver of Trustor's rights under Section 2924c of the California Civil Code.

**4.3 Notices.** All notices and demands given under the terms hereof shall be in writing and sent by first-class registered or certified mail, postage prepaid, return receipt requested, or by private courier service which provides evidence of delivery. Unless a different address is given by any party as provided in this Section, all such communication will be addressed as follows:

If to Trustor: Riverside Housing Development Corporation  
Attn: Bruce Kulpa, President/CEO  
4250 Brockton Avenue  
Riverside, California 92501

**If to Beneficiary:** City of Riverside  
Attn: City Manager  
3900 Main Street  
Riverside, California 92522

Copies to: City of Riverside  
Attn: Community & Economic Development Director  
3900 Main Street  
Riverside, California 92522

City of Riverside  
Attn: City Attorney  
3900 Main Street  
Riverside, California 92522

Any Notice shall be deemed received immediately if delivered by hand and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail. Each party shall promptly notify the other party of any change(s) of address to which notice shall be sent. Any address for service of notice on any party may be changed by that party serving a notice upon the other of the new address, except that any change of address to a post office box shall not be effective unless a street address is also specified for use in effectuating personal service.

**4.4 Acceptance by Trustee.** Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

**4.5 Captions.** The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

**4.6 Invalidity of Certain Provisions.** Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

**4.7 Subrogation.** To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Trust Estate, such proceeds have been or will be advanced by Beneficiary at Trustor's request and Beneficiary shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether the liens, charges or encumbrances are released.

**4.8 Attorneys' Fees.** If any payment secured hereby is not paid when due, Trustor promises to pay all costs of enforcement and collection, including but not limited to, reasonable attorneys' fees, whether or not such enforcement and collection includes the filing of a lawsuit. As used herein, the terms "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the parties hereto (including, without limitation, in-house counsel employed by Beneficiary) which may include printing, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred.

**4.9 No Merger of Lease.** If both the lessor's and lessee's estate under any lease or any portion thereof which now or hereafter constitutes a part of the Trust Estate shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Beneficiary so elects as evidenced

by recording a written declaration so stating, and, unless and until Beneficiary so elects, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Trust Estate pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Trust Estate shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

**4.10 Governing Law.** This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

**4.11 Joint and Several Obligations.** Should this Deed of Trust be signed by more than one party, all obligations herein contained shall be deemed to be the joint and several obligations of each party executing this Deed of Trust. Any married person signing this Deed of Trust agrees that recourse may be had against community assets and against his or her separate property for the satisfaction of all obligations contained herein.

**4.12 Interpretation.** In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

**4.13 Completion of Construction.** This Deed of Trust is a construction deed of trust within the meaning of California Commercial Code Section 9313. For purposes of subdivision (6) of that statute, "completion of construction" shall not be deemed to occur prior to completion of all work, and installation or incorporation into the Improvements of all materials, for which sums secured hereby are disbursed by Beneficiary.

**4.14 Reconveyance by Trustee.** Upon written request of Beneficiary stating that all sums secured hereby have been paid or that all obligations under the Regulatory Agreement have been satisfied, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto." Such grantee shall pay Trustee a reasonable fee and Trustee's costs incurred in so reconveying the Trust Estate.

**4.15 Counterparts.** This document may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to physically form one document, which may be recorded.

**4.16 Nonforeign Entity.** Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code") and Sections 18805, 18815 and 26131, as applicable, of the California Revenue and Taxation Code ("CRTC") provide that a transferee of a U.S. real property interest



must withhold tax, in the case of the Code, if the transferor is a foreign person, or if, in the case of the CRTC, the transferor is not a California resident. To inform Beneficiary that the withholding of tax will not be required in the event of the disposition of the Property or the Improvements, or any portion thereof or interest therein, pursuant to the terms of this Deed of Trust, Trustor hereby certifies, under penalty of perjury, that: (a) Trustor is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Code and the regulations promulgated thereunder; and (b) Trustor's U.S. employer identification number 90-1001541; and (c) Trustor's principal place of business is 1230 Columbia Street, San Diego, CA 92101. It is understood that Beneficiary may disclose the contents of this certification to the Internal Revenue Service and the California Franchise Tax Board, and that any false statement contained herein could be punished by fine, imprisonment or both. Trustor covenants and agrees to execute such further certificates, which shall be signed under penalty of perjury, as Beneficiary shall reasonably require. The covenant set forth herein shall survive the foreclosure of the lien of this Deed of Trust or acceptance of a deed in lieu thereof.

**4.17 Substitute Trustee.** Beneficiary at any time and from time to time, by instrument in writing, may substitute and appoint a successor Trustee (either corporate or individual) to any Trustee named herein or previously substituted hereunder, which instrument when executed, acknowledged, and recorded in the Official Records of the Office of the Recorder of the county or counties where the Property is located shall be conclusive proof of the proper substitution and appointment of each successor trustee or trustees, who shall then have all the title, powers, duties and rights of the predecessor Trustee, without the necessity of any conveyance from such predecessor. Trustee shall not be obligated to notify any party hereto of pending sale under any other Deed of Trust, or, unless brought by Trustee, or any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party.

**4.18 Fixture Filing.** This Deed of Trust constitutes a financing statement filed as a fixture filing in the Official Records of the 100 Recorder in the county in which the Property is located with respect to any and all fixtures included within the term "Trust Estate" as used herein and with respect to any goods or other personal property that may now be or hereafter become such fixtures.

**4.19 Waiver of Jury Trial.** TRUSTOR AND BENEFICIARY EACH HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENTS OR RELATING THERETO OR ARISING FROM THE RELATIONSHIP WHICH IS THE SUBJECT OF THE AGREEMENT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

TRUSTOR ACKNOWLEDGES RECEIPT OF A TRUE COPY OF THIS DEED OF TRUST WITHOUT CHARGE.

TRUSTOR PLEASE NOTE: UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, CALIFORNIA PROCEDURE PERMITS TRUSTEE TO SELL THE TRUST ESTATE AT A SALE HELD WITHOUT SUPERVISION BY ANY COURT AFTER

EXPIRATION OF A PERIOD PRESCRIBED BY LAW. UNLESS YOU PROVIDE AN ADDRESS FOR THE GIVING OF NOTICE, YOU MAY NOT BE ENTITLED TO NOTICE OF THE COMMENCEMENT OF ANY SALE PROCEEDINGS. BY EXECUTION OF THIS DEED OF TRUST, YOU CONSENT TO SUCH PROCEDURE. BENEFICIARY URGES YOU TO GIVE PROMPT NOTICE OF ANY CHANGE IN YOUR ADDRESS SO THAT YOU MAY RECEIVE PROMPTLY ANY NOTICE GIVEN PURSUANT TO THIS DEED OF TRUST.

**4.20 Request for Notice.** Pursuant to California Government Code Section 27321.4(b) Trustor hereby requests that a copy of any notice of default or notice of sale given under this Deed of Trust be mailed to Trustor at the address for Trustor set forth herein.

**4.21 Reconveyance.** Except upon the Event of Default by Trustor, Beneficiary shall reconvey this Deed of Trust upon termination of the Affordability Period as that term is defined in the Agreement.

**4.22 Subordination.** This Deed of Trust and the provisions contained herein shall be subordinate to any senior financing approved by Beneficiary in accordance with the Agreement.

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

**TRUSTOR:**

RIVERSIDE HOUSING DEVELOPMENT  
CORPORATION, a California non-profit  
corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT “A”**

**LEGAL DESCRIPTION**

[Attached]

**ATTACHMENT NO. 10**

**AUTHORITY REGULATORY AGREEMENT**

**RECORDING REQUESTED BY** )  
**AND WHEN RECORDED MAIL TO:** )

)  
)  
)  
)  
Housing Authority of the City of Riverside )  
3900 Main Street )  
Riverside, CA 92522 )  
Attn: Executive Director )  
)  
Project: 4307 Park Avenue )

(Space above for Recorder's Use Only)

This document is exempt from the payment of a recording fee  
pursuant to Government Code Section 27383.

**REGULATORY AGREEMENT**

**THIS REGULATORY AGREEMENT** ("Regulatory Agreement") is entered into the \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **HOUSING AUTHORITY OF THE CITY OF RIVERSIDE**, a public body corporate and politic (the "Authority") and **RIVERSIDE HOUSING DEVELOPMENT CORPORATION**, a California non-profit corporation ("Developer").

**RECITALS**

Capitalized terms used in these recitals and not otherwise defined shall have the meaning set forth in Section 1 of this Regulatory Agreement.

A. The Authority is a public body corporate and politic established by action of the City Council of the City of Riverside pursuant to Resolution No. 21275 for the purpose of providing affordable housing opportunities through a variety of programs within the City of Riverside and exercising governmental functions and powers pursuant to the California Housing Authorities Law (Health & Safety Code § 34200, *et seq.*, the "Housing Authority Law").

B. The partner Developer is an experienced affordable housing developer.

C. The Authority has established certain sources of funding for the purpose of increasing, improving and preserving the community's supply of housing available to low and moderate income households at an affordable housing cost.

D. In furtherance of the Authority's affordable housing goals and activities, Authority and Developer have entered into that certain Development Agreement dated for identification purposes only as of \_\_\_\_\_, 2017 ("Development Agreement"), which is incorporated herein by this reference and a copy of which is on file as public record of the Authority at its offices located at 3900 Main Street, Riverside, CA 92522. Pursuant to the

Development Agreement, the Authority has agreed to provide financial assistance (“Authority Loan”) to Developer in connection with the acquisition of certain real property, predevelopment and construction of an Affordable Unit at 4307 Park Avenue, located in the City of Riverside, California and further identified as Assessor Parcel No. (APN) 211-233-001 (“Site”), as more particularly described in Exhibit “A” attached hereto and by this reference incorporated herein (“Project”).

E. As a condition to the disbursement of the Authority Loan, the Developer has agreed to maintain and operate the Project in accordance with certain covenants, conditions and restrictions as set forth in this Regulatory Agreement. This Regulatory Agreement is intended to ensure that Developer, its successors, its assigns and every successor in interest to the Site or any part thereof, shall use, maintain and operate the Project in accordance with the terms and conditions of this Regulatory Agreement, including that the Unit shall be available only to a Qualified Low Income Households at Affordable Rent as specified herein for not less than fifty-five (55) years.

F. The provision of the Authority Loan to Developer and the completion and operation of the Project pursuant to the terms and conditions of the Development Agreement and this Regulatory Agreement are in the vital and best interest of the City and the health, safety and welfare of its residents, and are in accord with the public purposes and provisions of applicable state and local laws, including (without limitation) the Authority’s replacement and inclusionary housing obligations pursuant to Section 33413 of the Community Redevelopment Law.

**NOW, THEREFORE**, the foregoing recitals are a substantive part of this Regulatory Agreement and in consideration of their mutual covenants and conditions, the Parties hereto agree as follows:

## 1. **DEFINITIONS**

The following terms of this Regulatory Agreement shall have the meanings set forth below. Any capitalized terms not defined below shall have the meaning set forth therefor in the Development Agreement and attachments thereto:

**“Affordable Rent”** means the amount of monthly rent, including a reasonable utility allowance, that does not exceed the lesser of the maximum allowable rent to be charged by Developer and paid by the Qualified Household, occupying the Affordable Unit, as determined pursuant to (i) Section 92.252 of the HOME Regulations or any successor regulation, (ii) Section 50053 of the Health & Safety Code or any successor statute, (iii) applicable regulations pursuant to any other source of financing secured for, and continuing to be secured by, the Project, or (iv) if applicable, any effective Section 8 Program regulations as to any Affordable Unit designated as a project-based Section 8 unit or otherwise occupied by a holder of a Rental Voucher or Rental Certificate evidencing participation in the Section 8 Program. For purposes of calculating Affordable Rent a “reasonable utility allowance” shall be the allowance established by the County of Riverside Housing Authority or such lesser allowance reasonably permitted by the City and Authority including, but not limited to, the California Utility Allowance Calculator, if applicable.

**“Affordable Unit”** means the construction of one affordable rental unit on the Site required to be maintained on the Site and available to, occupied by, or held vacant for occupancy, Qualified

Low Income Households. Preference shall be given to households as identified in Section 6.3.3. of the Development Agreement.

***“Affordability Period”*** means the period commencing upon the recordation of the Release of Construction Covenants and terminating on the fifty-fifth (55<sup>th</sup>) anniversary thereof.

***“Authority”*** means the Housing Authority of the City of Riverside, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Chapter 2 of the Community Redevelopment Law and an express third-party beneficiary to this Regulatory Agreement pursuant to Section 10 hereof.

***“City”*** means the City of Riverside, a California municipal corporation.

***“Community Redevelopment Law”*** means California Health & Safety Code 33000, *et seq.*

***“Developer”*** is defined in Section 1.1 of the Agreement.

***“Development Agreement”*** means that certain Development Agreement dated for identification purposes only as of \_\_\_\_\_, 2017, entered into by and between the Authority and Developer. Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Development Agreement.

***“Effective Date”*** means the Effective Date of the Development Agreement.

***“Environmental Laws”*** means any and all present and future federal, state and local laws (whether under common law, statute, ordinance, rule, regulation or otherwise), court or administrative orders or decrees, requirements of permits issued with respect thereto, and other requirements of governmental authorities relating to the environment or to any Hazardous Substance or Hazardous Substance Activity (including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601, *et seq.*), as heretofore or hereafter amended from time to time (“CERCLA”), and the applicable provisions of the California Health and Safety Code and the California Water Code, and any and all successor statutes and regulations, orders, decrees, guidelines, or pronouncements promulgated thereunder).

***“Event of Default”*** means the failure of a party to perform any action or covenant required by this Regulatory Agreement within the time periods provided herein following notice and opportunity to cure.

***“Executive Director”*** means the Executive Director of the Authority or his/her designated representative.

***“Governmental Regulations”*** means any local, state, and federal laws, ordinances, rules, requirements, resolutions, policy statements and regulations (including, without limitation, those relating to land use, subdivision, zoning, environmental, labor relations, prevailing wage, notification of sale to employees, Hazardous Substance, occupational health and safety, water, earthquake hazard reduction and building and fire codes) bearing on the demolition, alteration, replacement, repair, refurbishing, rehabilitation, improvement, construction, maintenance, management, use, or operation of the Project.

***“Hazardous Substance”*** means (i) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in the United States Department of

Transportation Hazardous Materials Table (49 CFR 172. 10 1), as amended from time to time, or now or hereafter otherwise classified or regulated pursuant to any Environmental Laws as a “hazardous substance”, “hazardous material”, “hazardous waste”, “extremely hazardous waste”, “infectious waste”, “toxic substance”, “toxic pollutant” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or “EP toxicity”, (ii) any asbestos or asbestos containing material, (iii) any polychlorinated biphenyls (PCB’s), (iv) any ureaformaldehyde, and (v) any petroleum, natural gas, natural gas liquid, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources. Notwithstanding the foregoing, “Hazardous Substances” shall not include any chemical, compound, material, mixture or substance used in the normal course of operating an apartment complex, so long as such chemical, compound, material, mixture or substance is used in accordance with Environmental Laws.

**“Hazardous Substance Contamination”** means contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in or of the Site by Hazardous Substance, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Substance at any time (whether before or after the Effective Date) emanating from the Site.

**“Management Plan”** means the plan for the management of the Project to be submitted by Developer, as set forth in Section 3.C. of this Regulatory Agreement.

**“Marketing Plan”** is defined in Section 5.A. of this Regulatory Agreement.

**“Operating Reserve”** is defined in Section 3.E. of this Regulatory Agreement.

**“Operating Expenses”** is defined in Section 3.9 of the Authority Promissory Note.

**“Parties”** Authority and Developer.

**“Project”** means the acquisition of the Site and the construction of a single-family house upon the Site by the Developer in accordance with the Project Entitlements.

**“Property Manager”** means the manager of the Project, as set forth in Section 3.C.

**“Qualified Household”** means a Qualified Low Income Household.

**“Qualified Low Income Household”** means a Household whose gross annual income does not exceed sixty percent (60%) of the Riverside County median income adjusted for family size as set forth from time to time by regulation of the California Department of Housing and Community Development.

**“Request for Notice of Default”** means a request for notice of default to be recorded against the Site substantially in the form shown in Attachment No. 15 to the Development Agreement.

**“Schedule of Performance”** means that certain Schedule of Performance of required actions attached to the Development Agreement as Attachment No. 4.

**“Site”** means that certain real property referenced in Recital D above as delineated on the Site Plan (Attachment No. 1 to the Development Agreement) and more particularly described in the Site Legal Description (Attachment No. 2 to the Development Agreement).

**“Unit”** means the individual Unit within the Project to be constructed and operated by the Developer on the Site, in accordance with the terms and conditions of this Regulatory Agreement.

## 2. USE RESTRICTIONS

A. **Permitted Uses.** Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site or any part thereof, that Developer, and such successors and assigns, shall (i) construct, use, maintain and operate the Site as a housing development containing a newly constructed single-family house upon 4307 Park Avenue; and (ii) make available, restrict occupancy to, and rent at an Affordable Rent to a Qualified Low Income Household.

During the Affordability Period, all uses undertaken by Developer on the Site shall conform to this Regulatory Agreement and to all applicable provisions of the Riverside Municipal Code and Governmental Regulations. The Unit on the Site shall at any time be utilized on a transient basis, nor shall the Site or any portion thereof ever be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium or rest home.

B. **Affordable Housing.** Commencing upon and throughout the Affordability Period, Developer covenants and agrees that the Unit in the Project shall be operated and maintained for affordable housing purposes available for occupancy exclusively to Qualified Households at an Affordable Rent in accordance with the provisions of this Regulatory Agreement. It is the intent of the Authority that the Affordable Unit qualify as replacement housing and inclusionary housing pursuant to Section 33413 of the Community Redevelopment Law in furtherance of the Authority’s affordable housing goals and objectives and the requirements resulting from anticipated projects including demolition and new construction in the City’s redevelopment project areas and within the territorial jurisdiction of the Authority.

Developer agrees to make available, restrict occupancy to, and rent at an Affordable Rent to a Qualified Low Income Household.

C. **Income Requirements.** Prior to leasing an Affordable Unit and annually thereafter, Developer shall certify the eligibility of each tenant applicant as Qualified Household. The Developer shall, upon request by Authority, complete such certification on forms provided by the Authority. Developer shall submit such income certification and such additional information as may be required in the future by Authority. Such supporting documentation shall include true copies of income tax returns from the tenant applicant for the most recent tax year in which a return was filed and at least one of the following:

- (1) two (2) paycheck stubs from the tenant’s two (2) most recent pay periods;
- (2) an income verification certification from the tenant’s employer;
- (3) an income verification certification from the Social Security Administration and/or the California Department of Social Services if the tenant receives assistance from such agencies, or



(4) an alternate form of income verification reasonably requested by City or Authority if none of the above forms of verification is available to Developer.

D. **Determination of Affordable Rent.** The Affordable Unit shall be rented at an Affordable Rent.

(1) **Eligible Tenant.** Eligible Tenant is a tenant whose aggregate gross annual income does not exceed 60% of Area Median Income for Riverside County, as adjusted for family size, calculated using 24 CFR Part 5. The Unit shall be an Affordable Unit. For purposes of this Declaration, the current annual median income shall be the median income defined by the Department of Housing and Urban Development ("HUD") as the then current median income for the Riverside-San Bernardino-Ontario Standard Metropolitan Statistical Area, established periodically by HUD, as adjusted for family size. The rent and the occupancy restrictions shall be deemed adjusted, from time to time, in accordance with any adjustments that are authorized by HUD or any successor agency. In the event HUD ceases to publish an established median income as aforesaid, the Agency may, in its sole discretion, use the most comparable method of computing adjustments in area median income. Notwithstanding anything contained herein to the contrary, to the extent any other restrictions applicable to the Property limit the rent and/or occupancy of the Property, the most restrictive shall apply.

(2) **Rent Adjustment.** An adjustment of the rent may be performed annually in accordance with the rent contained in the applicable Authority or HUD rent schedules published by the City or the Authority for the affected unit type and updated from time to time. Further, the rent charged shall be further limited as set forth in Section 5, hereof. Any increase in the rent is subject to the provisions of outstanding leases. Developer must provide the Qualified Household occupying the Unit not less than thirty (30) days prior written notice before implementing any rent increase.

(3) **Rent Schedule and Utility Allowance.** The Authority will establish maximum monthly allowances for rent, utilities and services to be used by the Developer in calculating Affordable Rent. The Developer shall submit to the Housing Project Manager for review and approval the Affordable Rent proposed by Developer for the Units. The maximum monthly rent must be recalculated by Developer and reviewed and approved by the Authority annually.

(4) **Increases in Tenant Income.** The Dwelling unit shall qualify as a Unit as required by this Regulatory Agreement despite a temporary noncompliance with this Section D, if the noncompliance is caused by increases in the incomes of the existing tenant and if actions satisfactory to Authority are being taken to ensure that all vacancies are filled in accordance with this Section until the noncompliance is corrected. A Qualified Household that qualifies as a Qualified Household prior to occupancy of the Unit shall be deemed to continue to be so qualified until such time as recertification of such Qualified Household's income demonstrates that such Qualified Household no longer qualifies as a Qualified Household.

A Qualified Household occupying a Unit whose income increases to an amount that exceeds the maximum qualifying income may continue to occupy his or her Unit and be charged rent that shall not exceed 30% of the household's monthly income including a reasonable utility allowance.

(5) **Maximum Rent To Be Collected by Developer.** In no event, shall all of the rent, including the portion paid by the Eligible Tenant and any other person or entity, collected by Developer ("Total Rent") for any rent restricted unit exceed the Affordable Rent. Total Rent includes all payments made by the Eligible Tenant and all subsidies received by Developer. In the case of persons receiving Section 8 benefits, who are Eligible Tenants, Developer acknowledges that it shall not accept any subsidy or payment that would cause the Total Rent received for any restricted unit to exceed the maximum rents for the Affordable Unit. Should Developer receive Total Rent in excess of the allowable maximum rent, Developer agrees to immediately notify the Authority and reimburse the Authority for any such overpayment. Acceptance by Developer or its successors in interest, of Total Rent in excess of the maximum rent shall constitute a material breach of this Regulatory Agreement. The Authority, in its sole and unfettered discretion, may waive a breach of this paragraph if it determines and informs Developer in writing that Developer's actions to immediately notify the Authority of the overpayment and reimbursement to the Authority for such overpayment has satisfactorily cured the breach of this paragraph.

E. **Affordable Marketing Plan Compliance; Selection of Resident.** Developer shall submit for the approval of the City a management and marketing plan for rental of the Affordable Unit. Developer's marketing of the Affordable Unit shall be in compliance with federal and state fair housing laws. The marketing plan, at a minimum, requires publicizing the availability of the Affordable Unit within the City, such as notices in any City-sponsored newsletter, advertising in local newspapers, and notice in City offices. In the event the City implements a master waiting list for affordable housing in the City ("Master List"), then Developer shall provide notices to persons on the Master List of the availability of the Affordable Unit, prior to undertaking other forms of marketing. Developer shall give the persons on the Master List not fewer than fifteen (15) days after receipt of such notice to respond by submitting application forms for rental of the Affordable Unit. Selection of residents shall be made based upon the Master List, rather than on a first-come, first-serve basis. Provided, however, (i) all tenants of the Affordable Unit shall meet the income requirements set forth herein and tenancy and eligibility shall be in conformance with the terms and standards set forth in the management marketing plan and no preference may be used for the purpose or effect of delaying or otherwise denying admission to the Property or unit based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant household; and (ii) nothing herein shall restrict Developer from screening tenants through the application of criteria which is lawful and customary in apartment management in Riverside County and otherwise consistent with federal, state and local regulations and restrictions related to the financing for the Project.

F. **Selection of Tenant.** Developer must adopt written tenant selection policies and criteria approved Authority that are consistent with the purpose of providing housing for a Qualified Household, and that provide for the selection of tenants from written waiting list in chronological order of their application insofar as it practicable and the prompt written notification to any rejected applicant of the grounds for any rejection. Absent a Master List described above, selection of tenants shall be made randomly within the following levels of priority, rather than a first-come, first serve basis:

(1) **First Priority.** Households which are displaced from their primary residence as a result of an action of City or Authority, a condominium conversion involving the household's residence, expiration of affordable housing covenants applicable to such residence, or

closure of a mobile home or trailer park community in which the household's residence was located, and the household resided in such housing as the household's primary place of residence for at least two years prior to such action or event.

(2) **Second Priority.** Households which meet one of the following criteria: (i) households which are displaced from their primary residence as a result of an action of City or Authority, a condominium conversion involving the household's residence, expiration of affordable housing covenants applicable to such residence, or closure of a mobile home or trailer park community in which the household's residence was located, and the household resided in such housing as the household's primary place of residence for at least one year but less than two years prior to such action or event; (ii) households with at least one member who resides within the City, as that person's primary place of residence; (iii) households with at least one member who works or has been hired to work within the City, as that person's principal place of full-time employment; or (iv) households with at least one member who is expected to live within the City as a result of a bona fide offer of employment within the City.

(3) **Third Priority.** Other Qualified Low Income Households who do not meet the criteria for first priority or second priority above.

(4) **No Discrimination.** No preference herein may be used for the purpose or effect of delaying or otherwise denying admission to the Property or unit based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant household.

(5) **Use of Standard Screening Criteria.** Nothing herein shall restrict Developer from screening tenants through the application of criteria which is lawful and customary in apartment management in Riverside County and otherwise consistent with federal, state and local regulations and restrictions related to the financing for the Project.

G. **Determination: Annual Requalification.** Developer shall obtain from each person to whom Developer leases an Affordable Unit a "Supplemental Rental Application" ("Application"). Developer shall be entitled to rely on the Application and supporting documents thereto in determining whether a household is an "Eligible Tenant". Developer shall retain the Application and supporting documents for a period of not less than four (4) years after the household ceases to occupy an Affordable Unit. An Affordable Unit occupied by an Eligible Tenant, shall be treated as an Eligible Tenant until a recertification of such tenant's income demonstrates that such tenant no longer qualifies as an Eligible Tenant.

H. **Tenant Protections.**

(1) **Rental Agreement/Lease.** The Developer shall execute or cause to be executed a written rental agreement/lease with each Qualified Household occupying a Unit identifying by name all permitted occupants. The rental agreement/lease must be in a form reasonably approved by the Authority and must be for not less than twelve (12) months, unless otherwise mutually agreed by the tenant and the Developer.

(2) **Prohibited Rental Agreement/Lease Terms.** The rental agreement/lease shall not contain any of the following provisions:

- a. Agreement to be sued. Agreement by the tenant to be sued, to admit guilty, or to a judgment in favor of the Developer in a lawsuit brought in connection with the lease;
- b. Treatment of property. Agreement by tenant that the Developer may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the Unit after the tenant has moved out of the Unit. The Developer may dispose of this personal property in accordance with state law;
- c. Excusing Developer from responsibility. Agreement by the tenant not to hold Developer or Developer's agents legally responsible for any action or failure to act, whether intentional or negligent;
- d. Waiver of notice. Agreement of the tenant that the Developer may institute a lawsuit without notice to the tenant;
- e. Waiver of legal proceedings. Agreement by the tenant that the Developer may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
- f. Waiver of a jury trial. Agreement by the tenant to waive any right to a trial by jury;
- g. Waiver of right to appeal court decision. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
- h. Tenant chargeable with cost of legal actions regardless of outcome. Agreement by the tenant to pay attorneys' fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

I. **Termination of Tenancy.** The Developer may not terminate the tenancy of a tenant of the Project except for an uncured violation(s) of the terms and conditions of the lease; for violation of applicable federal, state, or local law; or for other good cause. Any termination or refusal to renew must be preceded by not less than thirty (30) days' notice by the Developer's service upon the tenant of a written notice specifying the grounds for the action. Upon expiration of the thirty (30) day notice period, Development may proceed with any and all appropriate legal action.

J. **Compliance with Use and Occupancy Laws.** Developer agrees that for each lease, the Developer shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, which in any way restrict the use and occupancy and resale of the Site.

K. **Nondiscrimination.** There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, gender, gender identity, marital status, national origin, ancestry, or disability in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor shall the Developer establish or permit any such practice or practices of discrimination or segregation with reference to the location, subtenants, or vendees of any Unit or in connection with the employment of persons for the operation and management of the Site. All deeds, rental agreements, leases or contracts made or entered into by the Developer as to the Unit or the Site or portion thereof, shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, familial status, disability, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, subleases or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

2. In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

“There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, familial status, disability, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subleases, subtenants or vendees in the premises herein leased.”

3. In contracts: “There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, familial status, disability, ancestry or national origin, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, subleases or vendees of the premises.”

The covenants established in this Regulatory Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of Authority, its successors and assigns, Authority and any successor in interest to the Site, or any part thereof. The nondiscrimination covenants shall remain in effect in perpetuity.

L. **No Nuisance.** Developer shall not maintain, cause to be maintained, or allow to be maintained on or about the Site any public or private nuisance, including, without limitation, the

conduct of criminal activities set forth in the nuisance abatement provisions of the Uniform Controlled Substances Act (Health & Safety Code Section 11570, *et seq.*) as currently exists or as may be amended from time to time, or the Street Terrorism Enforcement and Prevention Act (Penal Code Section 186.22, *et seq.*), as currently exists or as may be amended from time to time.

M. **No Hazardous Material Activity.** Developer shall not engage in any Hazardous Material Activity and shall comply with all Governmental Regulations in connection with the construction and operation of the Project.

In addition, Developer shall take all necessary precautions to prevent the release into the environment of any Hazardous Material which are located in, on or under the Site. Such precautions shall include compliance with all Governmental Regulations with respect to Hazardous Substance. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Substance. Notwithstanding the foregoing, this Regulatory Agreement shall not prohibit the use of such products in quantities as are customarily used in the construction, maintenance, rehabilitation or management of residential developments or associated buildings and grounds, or used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the Project including without limitation alcohol, aspirin, tobacco and saccharine.

### 3. **OPERATION AND MANAGEMENT OF THE PROJECT**

A. **Compliance with Agreement.** The Developer shall comply with all the terms and provisions of the Development Agreement and all applicable Governmental Regulations.

B. **Taxes and Assessments.** The Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Site; provided, however, that the Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge against it, Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

C. **Operation and Management.** Developer shall manage, operate and maintain the Project in first class condition and in accordance with professional property management standards for similar properties in the Southern California area and shall maintain or cause to be maintained the interiors and exteriors of the Unit in a decent, safe and sanitary manner. The Unit shall be maintained in accordance with the requirements of the City's Municipal Code and all applicable Governmental Regulations.

The parties acknowledge that Authority is interested in the long-term management and operation of the Project and in the qualifications of any person or entity retained by the Developer for that purpose ("Property Manager"). Prior to the disbursement of any proceeds of the Authority Loan, the Developer shall submit for the reasonable approval of the Authority, a detailed "Management Plan" which sets forth in detail the duties of the Property Manager, the tenant selection process, a security system and crime prevention program, the procedures for the

collection of rent, the procedures for monitoring of occupancy levels, the procedures for eviction of tenants, the rules and regulations of the Project and manner of enforcement, a standard lease form, and other matters relevant to the management of the Project. The Developer may from time to time submit amendments and modifications to the Management Plan for the reasonable approval of the Authority. The management of the Project shall be in compliance with the approved Management Plan.

Developer shall contract for property management services with an experienced and qualified property management entity (based upon the criteria set forth herein below) approved by Authority which approval shall not be unreasonably withheld. In the Event of Default by the Property Manager of the requirements set forth in this Regulatory Agreement, the Authority shall provide notice to Developer of such default and Developer shall use its best efforts to correct such default. Upon failure by the Property Manager and/or Developer to cure such default within thirty (30) days of written notice by the Authority, the Authority shall have the right to require Developer to immediately remove and replace the Property Manager with another property manager or property management company who is reasonably acceptable to Authority and who has not less than five (5) years' experience in property management, including experience managing multifamily residential developments of the size, quality and scope of the Project.

The fee paid to Property Manager shall not exceed the reasonable and customary fees paid to such property managers for similar rental properties in Riverside County. Other fees and payments shall be consistent with prevailing market rates for the services performed and goods provided in consideration for such fees and payments. The Developer shall ensure that the expenses of operating the Project do not materially exceed the budget which has been approved by the Authority. The Developer shall annually provide to the Authority a detailed accounting of operating expenses and shall make available its books and records to the Authority for inspection and copying, upon reasonable advance notice during its normal hours of business.

D. **Crime Free Multi Housing Program.** Throughout the Affordability Period, the Developer covenants and agrees to participate in and fully complete the City's Crime Free Multi Housing Program for the Site within twelve (12) months following the close of Escrow for the acquisition of the Site by Developer. Developer shall continue its compliance with the City's Crime Free Multi Housing Program throughout the Affordability Period, unless authorized by Authority to cease participation. Evidence of compliance with this requirement shall be forwarded annually to the Authority within said twelve (12) month period.

E. **Reserve Requirements.** Developer shall, or shall cause the Property Manager to, set aside not less than Two Hundred Dollars (\$250.00) per Unit in the Project per year. The amount required to be placed into the Capital Replacement Reserve shall increase at the rate determined by the Authority. Funds in the Capital Replacement Reserve shall be used for capital replacements to the Project fixtures and equipment which are normally capitalized under generally accepted accounting principles. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve the Developer of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Project in the manner prescribed herein. Not less than once per year, Developer, at its expense, shall submit to the City and the Authority an accounting for the Capital Replacement Reserve.

F. **Operating Reserve.** Developer shall, or shall cause the Property Manager to, set aside at the time the Release of Construction Covenants is recorded in a separate interest-

bearing trust account held by the Developer with an initial amount equal to three (3) months of the projected annual Operating Expenses for the Development or in such lesser amount as allowed by the senior lender or investor (the "Operating Reserve"). Interest earned on funds in the Operating Reserve shall remain in the Operating Reserve. Developer may withdraw from the Operating Reserve those amounts exceeding the current year budget for operating expenses. Authority approval is not necessary for withdrawals made in accordance with this Agreement. Funds may be disbursed from the Operating Reserve to cover shortfalls between the income and actual Operating Expenses and Debt Service of the Development. Upon making disbursements to cover operating shortfalls, the Operating Reserve shall be replenished to the level prior to the disbursement from available Project cash flow unless such replenishment is not required by the senior lender or investor.

G. **Record Keeping.** Developer shall annually provide to Authority its Annual Financial Statement for the preceding year and shall make available its books and records to Authority for inspection and copying, upon reasonable advance notice during its normal hours of business. As a part of the monitoring and compliance with this Regulatory Agreement, Developer shall annually cause the Qualified Household occupying the Unit in the Project to complete an income certification in accordance with Section 2.C. of this Regulatory Agreement. Authority relies upon the information contained in such certifications to satisfy its reporting and record keeping requirements pursuant to the Community Redevelopment Law. In the event the Developer fails to submit to Authority all of the documentation required by this Regulatory Agreement, Developer shall be in default of this Regulatory Agreement. Upon failure by the Developer to cure such default within thirty (30) days of written notice by the Authority, the Authority may seek all available remedies as set forth in this Regulatory Agreement.

H. **Right of Entry for Inspection.** Representatives of Authority shall be entitled to enter the Site, upon at least forty-eight (48) hours' notice during normal business hours, to monitor compliance with this Regulatory Agreement, to inspect the records of the Project with respect to the Unit, and to conduct an independent audit of such records. The Developer agrees to cooperate with Authority in making the Site available for such inspection. If for any reason Authority is unable to obtain the Developer's consent to such an inspection, the Developer understands and agrees that Authority may obtain at Developer's expense an administrative inspection warrant or other appropriate legal order to obtain access to such records. Developer agrees to maintain records in a business-like manner on the Site or in a location approved in writing by the Director and to make such records available to Authority upon twenty-four (24) hours' notice. Unless Authority otherwise approves, such records shall be maintained throughout the Affordability Period.

J. **No Conversion to Condominiums.** Developer agrees that the conveyance, transfer or sale of any portion of the Property as a condominium, shall be a breach of this Regulatory Agreement, the Loan Agreement, entitling the Authority to immediately exercise any and all of their rights and remedies under this Regulatory Agreement, the Loan Agreement, including without limitation acceleration of the Authority Loan and foreclosure under the deed of trust securing the Authority Loan.



#### 4. **OBLIGATION TO CONSTRUCT, MAINTAIN, REPAIR AND REBUILD**

A. **Construction Covenant.** Developer covenants and agrees to complete the construction in accordance with the Development Agreement, including without limitation the Project Development and all approved plans, drawings, documents and permits issued by the City and/or other governmental agency exercising jurisdiction over the Project.

(1) **Labor Standards.** The Developer shall comply with all applicable federal and state labor standards.

(2) **Compliance with Governmental Regulations.** Developer shall carry out the design, construction and operation of the Project in conformity with applicable Governmental Regulations, including without limitation, all applicable labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, as currently exists or as may be amended from time to time, Government Code Section 4450, *et seq.*, as currently exists or as may be amended from time to time, Government Code Section 11135, *et seq.*, as currently exists or as may be amended from time to time, and the California Building Standards Code, Health and Safety Code Section 18900, *et seq.* as currently exists or as may be amended from time to time.

B. **Schedule of Performance.** Developer covenants and agrees to commence the Project and to diligently prosecute to completion the Project in accordance with the Schedule of Performance (Attachment No. 4 to the Development Agreement). Before commencement of development of the Project, Developer shall secure or cause to be secured any and all permits and permit ready letters which may be required by the City or other governmental agency affected by such work. Upon satisfactory completion of the construction of the Project as determined by the Authority and upon written request therefor by the Developer, the Authority shall record the Release of Construction Covenants releasing the Developer from the covenant to construct set forth above.

C. **Maintenance and Replacement.** Except for the normal wear and tear, the Developer shall, at its sole cost and expense, maintain and repair the Site keeping the same in first class condition and in a safe, decent and sanitary condition, including the Unit, walkways, driveways and landscaping, and from time to time make all necessary and proper repairs, renewals and replacements as they may be required by this Regulatory Agreement and by all applicable Municipal Code and Uniform Code provisions. Developer shall manage and maintain the Project in accordance with all applicable housing quality standards and local code requirements, concerning marketing, operation, maintenance, repair, security, rental policy and method of selection of tenants.

D. **Interior Maintenance.** Developer shall maintain the interior of buildings, including carpet, drapes and paint, in clean and habitable condition.

E. **Exterior Building Maintenance.** All exterior, painted surfaces shall be maintained at all times in a clean and presentable manner, free from chipping, cracking and defacing marks. All graffiti and defacement of any type, including marks, words and pictures must

be removed and any necessary painting or repair completed within seventy-two (72) hours of their creation or within seventy-two (72) hours after notice to Developer.

F. **Landscaping.** All landscaped parcels and all front and side-yard setback areas that are not buildings, driveways or walkways shall be adequately and appropriately landscaped in accordance with minimum standards established by the City and shall be maintained in sound horticultural condition in accordance with the standards established by the City from time to time. No structure, improvement or other non-plant material shall be constructed or otherwise placed on the landscaped areas of the Project without prior written approval by the Director.

The following minimum standards shall apply to all landscaped areas of the Project: (1) lawn grasses shall not exceed six (6) inches in height; (2) hedges shall be trimmed; (3) no trees, shrubbery, lawns, and other plant life shall be dying from lack of water or other necessary maintenance; (4) no trees or shrubbery shall grow uncontrolled without proper pruning; (5) no vegetation shall be overgrown so as to be likely to harbor rats or vermin; (6) no dead, decayed or diseased trees, weeds and other vegetation shall be allowed. In addition to the forgoing, no yard areas shall be left unmaintained, including: (1) no broken or discarded furniture, appliances and other household equipment stored in yard areas for periods exceeding one (1) week; (2) no packing boxes, lumber, trash, dirt and other debris stored in yards for periods exceeding one (1) week in areas visible from public property or neighboring properties; (3) no unscreened trash cans, bins or containers stored for unreasonable periods in areas visible from public property or neighboring properties; and (4) no vehicles parked or stored in other than approved parking areas.

G. **Right to Enter to Cure.** If at any time the Developer fails to maintain the Site in accordance with this Section 4 and such condition is not corrected within seventy-two (72) hours after written notice from the Authority with respect to graffiti, debris, waste material, and general maintenance, or thirty (30) days after written notice from the Authority with respect to landscaping and building improvements with such additional time as may be reasonably necessary to diligently prosecute the cure to completion, then the Authority, in addition to whatever remedies it may have at law or at equity, shall have the right to enter upon the Site and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Site, and to attach a lien upon the Site, or to assess the Site, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the Authority and/or costs of such cure, including a fifteen percent (15%) administrative charge, which amount shall be promptly paid by the Developer upon demand.

H. **Damage and Destruction; Developer's Duty to Rebuild.** If all or any portion of the Site and the improvements thereon is damaged or destroyed by fire or other casualty, it shall be the duty of the Developer, subject to the availability of funds, to rebuild, repair or construct said portion of the Site and/or the improvements in a timely manner which will restore it to Riverside Municipal or Building Code compliance condition as approved by the City and the Authority.

In furtherance of the requirements of this Section 4.I., Developer shall keep the improvements on the Site insured by carriers at all times satisfactory to the Authority against loss by fire, rent loss and such other hazards (other than earthquake), casualties, liabilities and contingencies as included within an all risk extended coverage hazard insurance policy in an amount of the full replacement cost of the improvements as required by the Development Agreement. In the event of loss, Developer shall give prompt notice to the insurance carrier and the Authority.

If the Site is abandoned by the Developer, or if Developer fails to respond to the Authority within thirty (30) days from the date notice is mailed by Authority to Developer that the insurance carrier offers to settle a claim for insurance benefits, Authority is authorized to collect and apply the insurance proceeds at its option either to restoration or repair of the Site or to the sums secured by the Authority Deed of Trust (as those terms are defined in the Development Agreement).

I. **Time Limitation.** Upon damage to the Site or the improvements thereon, the Developer shall be obligated to proceed with all due diligence hereunder and commence reconstruction within one year after the damage occurs and complete reconstruction within a term deemed acceptable by the parties after damage occurs, or if appropriate, to demolition and vacation of the Site within one year, unless prevented by causes beyond its reasonable control.

## **5. MISCELLANEOUS PROJECT REQUIREMENTS**

A. **Affirmative Marketing.** As stated above in section 2E, within the time specified therefor in the Schedule of Performance, Developer shall submit for the approval by Authority, which approval shall not unreasonably be withheld, a plan for marketing the rental of the Unit ("Marketing Plan"). The Marketing Plan shall include a plan for publicizing the availability of the Unit within the City in a manner which gives notice to Qualified Household currently living within the City before residents of other cities receive such notice, such as notices in any City sponsored newsletter, newspaper advertising in local newspapers and notices in City offices.

## **6. COVENANTS**

A. **Term.** This Regulatory Agreement and the covenants and restrictions contained herein shall be effective on the date this Regulatory Agreement is recorded and shall remain in full force and effect for a period of fifty-five (55) years from the date of issuance of the certificate of occupancy for the Project.

B. **Affordability Period.** The provisions of this Regulatory Agreement shall apply to the Site throughout the Affordability Period, even if the Authority Loan is paid in full. This Regulatory Agreement shall bind any successor, heir or assign of the Developer, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, with or without the approval of Authority, except as expressly released by the Authority. Authority makes the Authority Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

C. **Covenants to Run with the Land.** Authority and Developer hereby declare their express intent that the covenants and restrictions set forth in this Regulatory Agreement shall run with the land, and shall bind all successors in title to the Site. Each and every contract, deed or other instrument hereafter executed covering or conveying the Site or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless Authority expressly releases such conveyed portion of the Site from the requirements of this Regulatory Agreement.

D. **Mortgagees Protection.** No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Regulatory Agreement shall defeat or render invalid or in any way impair the lien or charge of any permitted deed of trust recorded on the Property provided, however, that any subsequent owner of the Property shall be bound by the covenants, conditions, restrictions, limitations and provisions of this Regulatory Agreement, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

## 7. ENFORCEMENT AND REMEDIES

A. **Remedies.** Subject to the notice and cure rights of the Developer set forth in Section 8 of the Development Agreement, in the event of default or breach of any of the terms or conditions of this Regulatory Agreement by Developer, its heirs, executors, administrators or assigns, Authority may pursue the remedy thereof by any and all means of enforcement, both in equity and at law, as provided by the laws of the State of California, including, but not limited to, injunctive relief and/or specific performance.

B. **Rights of the City.** The City of Riverside has the right to enforce all of the provisions of this Regulatory Agreement. This Regulatory Agreement does not in any way infringe on the right or duties of the City to enforce any of the provisions of the Municipal Code including, but not limited to, the abatement of dangerous buildings. In addition to the general rights of enforcement, the City shall have the right, through its agents and employees, to enter upon any part of the Site for the purpose of enforcing the California Vehicle Code, and the ordinances and other regulations of the City, and for maintenance and/or repair of any or all publicly owned utilities.

C. **Jurisdiction and Venue.** Legal actions must be instituted and maintained in the Superior Court of the County of Riverside, State of California. Owner specifically waives any rights provided to it pursuant to California Code of Civil Procedure Section 394 or state statutes or judicial decisions of like effect.

D. **Nuisance.** The result of every act or omission whereby any of the covenants contained in this Regulatory Agreement are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowable at law or equity, against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any owner or its successors in interest, without derogation of the Authority's rights under law.

E. **Right of Entry.** The Authority has the right of entry at reasonable hours after reasonable attempts to contact Developer, to effect emergency repairs or maintenance which the Developer has failed to perform. Subsequent to sixty (60) days written notice to the Developer specifically outlining the noncompliance, the Authority shall have the right of entry at reasonable hours to enforce compliance with this Regulatory Agreement which the Developer has failed to perform.

F. **Costs of Repair.** The costs borne by the Authority of any such repairs or maintenance emergency and/or non-emergency, shall become a charge for which Developer shall be responsible; and may, if unpaid, be assessed as a lien against the Site.

G. **Cumulative Remedies.** The remedies herein provided for breach of the covenants contained in this Regulatory Agreement shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

H. **Failure to Enforce.** The failure to enforce any of the covenants contained in this Regulatory Agreement shall not constitute a waiver of the right to enforce the same thereafter.

## **8. HOLD HARMLESS**

Except to the extent of Authority's sole negligence, Developer agrees to defend and to hold Authority and its officers, agents, employees, representatives, elected and appointed boards and officials harmless from liability for damage or claims for any type of damage including, but not limited to, personal injury and claims for property damage, which may arise from the activities of Developer or those of Developer's contractors, subcontractors, agents, employees or other persons acting on Developer's behalf and which relate to the Project. Developer agrees to and shall defend Authority and its respective officers, agents, employees, representatives, elected and appointed boards and officials from any action for damages caused or alleged to have been caused by reason of Developer's activities in connection with the Project.

## **9 ASSIGNMENT OF AGREEMENT**

This Regulatory Agreement shall be binding upon Developer, its executors, administrators and assigns and all persons claiming under or through Developer. Wherever this Regulatory Agreement employs the term "Developer", it shall be deemed to include Developer, its executors, administrators and assigns and all persons claiming under or through Developer. Assignment of this Regulatory Agreement shall be limited to authorized assignees of the Development Agreement in compliance with Section 2 thereof.

## **10. THIRD PARTY BENEFICIARIES**

This Regulatory Agreement is made and entered into for the sole protection and benefit of the Authority, its successors and assigns, and Developer, its permitted successors and assigns, and no other person or persons shall have any right of action hereon.

## **11. RECORDATION**

Developer agrees that this Regulatory Agreement and any amendment or cancellation hereof shall be recorded in the official records of Riverside County by Developer within ten (10) days of the date of this Regulatory Agreement and within ten (10) days after any amendment or cancellation hereof.

## **12. NOTICE**

Written notice, demands and communications between City, Authority and Developer shall be sent by first-class registered or certified mail, postage prepaid, return receipt requested, or by private courier service which provides evidence of delivery. Unless a different address is given by any party as provided in this Section, all such communications will be addressed as follows:

To Developer: Riverside Housing Development Corporation  
Attn: Bruce Kulpa, President/CEO  
4250 Brockton Avenue  
Riverside, CA 92501

To Authority: Housing Authority of the City of Riverside  
Attn: Executive Director  
3900 Main Street  
Riverside, California 92522

Copies to: City of Riverside  
Attn: Community & Economic Development Director  
3900 Main Street, Third Floor  
Riverside, California 92522

City of Riverside  
Attn: City Attorney  
3900 Main Street  
Riverside, California 92522

Any Notice shall be deemed received immediately if delivered by hand and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail. Each party shall promptly notify the other party of any change(s) of address to which notice shall be sent. Any address for service of notice on any party may be changed by that party serving a notice upon the other of the new address, except that any change of address to a post office box shall not be effective unless a street address is also specified for use in effectuating personal service.

### **13. WAIVER**

Failure by a party to insist upon the strict performance of any of the provisions of this Regulatory Agreement by the other party or the failure by the party to exercise its rights under or upon a default by the other party herein shall not constitute a waiver of such party's right to demand strict compliance from such other party in the future.

### **14. SUBORDINATION**

This Regulatory Agreement and the covenants contained herein shall be subordinate to the senior construction loan, and when converted into its permanent phase, permanent loan, and the regulatory agreement recorded in connection with any award of low-income housing tax credits.

### **15. SEVERABILITY**

If any one or more of the provisions contained in this Regulatory Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Regulatory Agreement, and this Regulatory Agreement shall be construed as if such invalid, illegal or unenforceable provision(s) had never been contained herein.

**16. CAPTION AND PRONOUNS**

The captions and headings of the various sections of this Regulatory Agreement are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and masculine, feminine and neuter shall be freely interchangeable.

**17. ATTORNEYS' FEES**

In any action to interpret or enforce any provision of this Regulatory Agreement, the prevailing party shall be entitled to its costs and reasonable attorneys' fees.

**18. MODIFICATION OF AGREEMENT**

This Regulatory Agreement may be modified or amended by mutual consent of the Developer and Authority provided that all amendments are in writing and signed by all of the parties hereto.

**19. SOLE AND ONLY AGREEMENT**

This Regulatory Agreement, the Development Agreement and all of the attachments thereto and incorporated therein integrate all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the Site. In the event of a conflict between this Regulatory Agreement and Development Agreement, the provisions of this Regulatory Agreement shall control.

Authority and Developer acknowledge and agree that neither of them has made any representation with respect to the subject matter of this Regulatory Agreement or any representations inducing the execution and delivery, except representations set forth herein, and each party acknowledges that it has relied on its own judgment in entering this Regulatory Agreement. Authority and Developer further acknowledge that all statements or representations that heretofore may have been made by either of them to the other are void and of no effect, and that neither of them has relied thereon in its dealings with the other.

**IN WITNESS WHEREOF**, the parties hereto have executed this Regulatory Agreement as of the date and year set forth below.

(Signatures on following page)

**“DEVELOPER”**

RIVERSIDE HOUSING DEVELOPMENT  
CORPORATION, a California non-profit  
corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**“AUTHORITY”**

HOUSING AUTHORITY OF THE CITY OF  
RIVERSIDE, a public body, corporate and politic

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Executive Director

ATTEST:

By: \_\_\_\_\_

Housing Authority Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_

Housing Authority General Counsel



**EXHIBIT “A”**

**LEGAL DESCRIPTION**

[Attached]

**ATTACHMENT NO. 11**

**CITY HOME REGULATORY AGREEMENT**

**RECORDING REQUESTED BY** )  
**AND WHEN RECORDED MAIL TO:** )  
 )  
 )  
City of Riverside )  
Community & Economic Development Dept. )  
3900 Main Street, 5<sup>th</sup> Floor )  
Riverside, CA 92522 )  
Attn: Housing Authority Manager )  
 )  
Project: 4307 Park Avenue )

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(Space above for Recorder's Use Only)

This document is exempt from the payment of a recording fee  
pursuant to Government Code Section 27383.

**CITY HOME REGULATORY AGREEMENT**

**THIS CITY HOME REGULATORY AGREEMENT** ("Regulatory Agreement") is entered into the \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **CITY OF RIVERSIDE**, a California charter city and municipal corporation (the "City") and **RIVERSIDE HOUSING DEVELOPMENT CORPORATION**, a California non-profit corporation ("Developer").

**RECITALS**

Capitalized terms used in these recitals and not otherwise defined shall have the meaning set forth in Section 1 of this Regulatory Agreement.

- A. The City is a California municipal corporation.
- B. The partner Developer is an experienced affordable housing developer.
- C. In furtherance of the City's affordable housing goals and activities, the City and Developer have entered into that certain Development Agreement dated for identification purposes only as of \_\_\_\_\_, 2017 ("Development Agreement"), which is incorporated herein by this reference and a copy of which is on file as public record of the City at its offices located at 3900 Main Street, Riverside, CA 92522. Pursuant to the Development Agreement, the City has agreed to provide financial assistance ("City HOME Loan") to Developer in connection with the acquisition of certain real property, predevelopment and construction of an Affordable Unit at 4307 Park Avenue, located in the City of Riverside, California and further identified as Assessor Parcel No. (APN) 211-233-001 ("Site"), as more particularly described in Exhibit "A" attached hereto and by this reference incorporated herein ("Project").
- D. As a condition to the disbursement of the City HOME Loan, the Developer has agreed to maintain and operate the Project in accordance with certain covenants, conditions

and restrictions as set forth in this Regulatory Agreement. This Regulatory Agreement is intended to ensure that Developer, its successors, its assigns and every successor in interest to the Site or any part thereof, shall use, maintain and operate the Project in accordance with the terms and conditions of this Regulatory Agreement, including that the Unit shall be available only to a Qualified Low Income Households at Affordable Rent as specified herein for not less than twenty (20) years.

E. The provision of the City HOME Loan to Developer and the completion and operation of the Project pursuant to the terms and conditions of the Development Agreement and this Regulatory Agreement are in the vital and best interest of the City and the health, safety and welfare of its residents, and are in accord with the public purposes and provisions of applicable state and local laws.

**NOW, THEREFORE**, the foregoing recitals are a substantive part of this Regulatory Agreement and in consideration of their mutual covenants and conditions, the Parties hereto agree as follows:

## 1. **DEFINITIONS**

The following terms of this Regulatory Agreement shall have the meanings set forth below. Any capitalized terms not defined below shall have the meaning set forth therefor in the Development Agreement and attachments thereto:

***“Affordable Rent”*** means the amount of monthly rent, including a reasonable utility allowance, that does not exceed the lesser of the maximum allowable rent to be charged by Developer and paid by the Qualified Household, occupying the Affordable Unit, as determined pursuant to (i) Section 92.252 of the HOME Regulations or any successor regulation, (ii) Section 50053 of the Health & Safety Code or any successor statute, (iii) applicable regulations pursuant to any other source of financing secured for, and continuing to be secured by, the Project, or (iv) if applicable, any effective Section 8 Program regulations as to any Affordable Unit designated as a project-based Section 8 unit or otherwise occupied by a holder of a Rental Voucher or Rental Certificate evidencing participation in the Section 8 Program. For purposes of calculating Affordable Rent a “reasonable utility allowance” shall be the allowance established by the County of Riverside Housing Authority or such lesser allowance reasonably permitted by the City including, but not limited to, the California Utility Allowance Calculator, if applicable.

***“Affordable Unit”*** means the construction of one affordable rental unit on the Site required to be maintained on the Site and available to, occupied by, or held vacant for occupancy, Qualified Low Income Households. Preference shall be given to households as identified in Section 6.3.3. of the Development Agreement.

***“Affordability Period”*** means the period commencing upon the recordation of the Release of Construction Covenants and terminating on the twentieth (20<sup>th</sup>) anniversary thereof.

***“City”*** means the City of Riverside, a California municipal corporation.

***“City Manager”*** means the City Manager of the City of Riverside or his/her designated representative.

***“Developer”*** is defined in Section 1.1 of the Agreement.

***“Development Agreement”*** means that certain Development Agreement dated for identification purposes only as of as of \_\_\_\_\_, 2017, entered into by and between the City, Authority, and Developer. Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Development Agreement.

***“Effective Date”*** means the Effective Date of the Development Agreement.

***“Environmental Laws”*** means any and all present and future federal, state and local laws (whether under common law, statute, ordinance, rule, regulation or otherwise), court or administrative orders or decrees, requirements of permits issued with respect thereto, and other requirements of governmental authorities relating to the environment or to any Hazardous Substance or Hazardous Substance Activity (including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601, *et seq.*), as heretofore or hereafter amended from time to time (“CERCLA”), and the applicable provisions of the California Health and Safety Code and the California Water Code, and any and all successor statutes and regulations, orders, decrees, guidelines, or pronouncements promulgated thereunder).

***“Event of Default”*** means the failure of a party to perform any action or covenant required by this Regulatory Agreement within the time periods provided herein following notice and opportunity to cure.

***“Governmental Regulations”*** means any local, state, and federal laws, ordinances, rules, requirements, resolutions, policy statements and regulations (including, without limitation, those relating to land use, subdivision, zoning, environmental, labor relations, prevailing wage, notification of sale to employees, Hazardous Substance, occupational health and safety, water, earthquake hazard reduction and building and fire codes) bearing on the demolition, alteration, replacement, repair, refurbishing, rehabilitation, improvement, construction, maintenance, management, use, or operation of the Project.

***“Hazardous Substance”*** means (i) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172. 10 1), as amended from time to time, or now or hereafter otherwise classified or regulated pursuant to any Environmental Laws as a “hazardous substance”, “hazardous material”, “hazardous waste”, “extremely hazardous waste”, “infectious waste”, “toxic substance”, “toxic pollutant” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or “EP toxicity”, (ii) any asbestos or asbestos containing material, (iii) any polychlorinated biphenyls (PCB’s), (iv) any ureaformaldehyde, and (v) any petroleum, natural gas, natural gas liquid, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources. Notwithstanding the foregoing, “Hazardous Substances” shall not include any chemical, compound, material, mixture or substance used in the normal course of operating an apartment complex, so long as such chemical, compound, material, mixture or substance is used in accordance with Environmental Laws.

***“Hazardous Substance Contamination”*** means contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on,

in or of the Site by Hazardous Substance, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Substance at any time (whether before or after the Effective Date) emanating from the Site.

***“Management Plan”*** means the plan for the management of the Project to be submitted by Developer, as set forth in Section 3.C. of this Regulatory Agreement.

***“Marketing Plan”*** is defined in Section 5.A. of this Regulatory Agreement.

City and Developer.

***“Project”*** means the acquisition of the Site and the construction of a single-family house upon the Site by the Developer in accordance with the Project Entitlements.

***“Property Manager”*** means the manager of the Project, as set forth in Section 3.C.

***“Qualified Household”*** means a Qualified Low Income Household.

***“Qualified Low Income Household”*** means a Household whose gross annual income does not exceed sixty percent (60%) of the Riverside County median income adjusted for family size as set forth from time to time by regulation at 24 CFR 5.609 and shall be calculated using source documents or third party certifications of all income and assets held or generated by all members of the applicant or tenant household, in accordance with regulations published at 24 CFR 5.203(a)(1)(i) and 24 CFR 92.203(a)(1)(i), or 24 CFR 5.617 when calculating the income of persons with disabilities.

***“Request for Notice of Default”*** means a request for notice of default to be recorded against the Site substantially in the form shown in Attachment No. 15 to the Development Agreement.

***“Schedule of Performance”*** means that certain Schedule of Performance of required actions attached to the Development Agreement as Attachment No. 4.

***“Site”*** means that certain real property referenced in Recital D above as delineated on the Site Plan (Attachment No. 1 to the Development Agreement) and more particularly described in the Site Legal Description (Attachment No. 2 to the Development Agreement).

***“Unit”*** means the individual Unit within the Project to be constructed and operated by the Developer on the Site, in accordance with the terms and conditions of this Regulatory Agreement.

## **2. USE RESTRICTIONS**

A. **Permitted Uses.** Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site or any part thereof, that Developer, and such successors and assigns, shall (i) construct, use, maintain and operate the Site as a housing development containing a newly constructed single-family house upon 4307 Park Avenue; and (ii) make available, restrict occupancy to, and rent at an Affordable Rent to a Qualified Low Income Household.

During the Affordability Period, all uses undertaken by Developer on the Site shall conform to this Regulatory Agreement and to all applicable provisions of the Riverside Municipal Code and Governmental Regulations. The Unit on the Site shall at any time be utilized on a

transient basis, nor shall the Site or any portion thereof ever be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium or rest home.

B. **Affordable Housing.** Commencing upon and throughout the Affordability Period, Developer covenants and agrees that the Unit in the Project shall be operated and maintained for affordable housing purposes available for occupancy exclusively to Qualified Households at an Affordable Rent in accordance with the provisions of this Regulatory Agreement. Developer agrees to make available, restrict occupancy to, and rent at an Affordable Rent to a Qualified Low Income Household.

C. **Income Requirements.** Prior to leasing an Affordable Unit and annually thereafter, Developer shall certify the eligibility of each tenant applicant as Qualified Household. The Developer shall, upon request by City, complete such certification on forms provided by the City. Developer shall submit such income certification and such additional information as may be required in the future by City. Such supporting documentation shall include true copies of income tax returns from the tenant applicant for the most recent tax year in which a return was filed and at least one of the following:

- (5) two (2) paycheck stubs from the tenant's two (2) most recent pay periods;
- (6) an income verification certification from the tenant's employer;
- (7) an income verification certification from the Social Security Administration and/or the California Department of Social Services if the tenant receives assistance from such agencies, or
- (8) an alternate form of income verification reasonably requested by City if none of the above forms of verification is available to Developer.

D. **Determination of Affordable Rent.** The Affordable Unit shall be rented at an Affordable Rent.

(1) **Eligible Tenant.** Eligible Tenant is a tenant whose aggregate gross annual income does not exceed 60% of Area Median Income for Riverside County, as adjusted for family size, calculated using 24 CFR Part 5. The Unit shall be an Affordable Unit. For purposes of this Declaration, the current annual median income shall be the median income defined by the Department of Housing and Urban Development ("HUD") as the then current median income for the Riverside-San Bernardino-Ontario Standard Metropolitan Statistical Area, established periodically by HUD, as adjusted for family size. The rent and the occupancy restrictions shall be deemed adjusted, from time to time, in accordance with any adjustments that are authorized by HUD or any successor agency. In the event HUD ceases to publish an established median income as aforesaid, the City may, in its sole discretion, use the most comparable method of computing adjustments in area median income. Notwithstanding anything contained herein to the contrary, to the extent any other restrictions applicable to the Property limit the rent and/or occupancy of the Property, the most restrictive shall apply.

(2) **Rent Adjustment.** An adjustment of the rent may be performed annually in accordance with the rent contained in the applicable City or HUD rent schedules published by the City for the affected unit type and updated from time to time. Further, the rent charged shall be further limited as set forth in Section 5, hereof. Any increase in the rent is subject to the

provisions of outstanding leases. Developer must provide the Qualified Household occupying the Unit not less than thirty (30) days prior written notice before implementing any rent increase.

(5) **Rent Schedule and Utility Allowance.** The City will establish maximum monthly allowances for rent, utilities and services to be used by the Developer in calculating Affordable Rent. The Developer shall submit to the Housing Project Manager for review and approval the Affordable Rent proposed by Developer for the Unit. The maximum monthly rent must be recalculated by Developer and reviewed and approved by the City annually.

(6) **Increases in Tenant Income.** The Dwelling unit shall qualify as a Unit as required by this Regulatory Agreement despite a temporary noncompliance with this Section D, if the noncompliance is caused by increases in the incomes of the existing tenant and if actions satisfactory to City are being taken to ensure that all vacancies are filled in accordance with this Section until the noncompliance is corrected. A Qualified Household that qualifies as a Qualified Household prior to occupancy of the Unit shall be deemed to continue to be so qualified until such time as recertification of such Qualified Household's income demonstrates that such Qualified Household no longer qualifies as a Qualified Household.

A Qualified Household occupying a Unit whose income increases to an amount that exceeds the maximum qualifying income may continue to occupy his or her Unit and be charged rent that shall not exceed 30% of the household's monthly income including a reasonable utility allowance.

(5) **Maximum Rent to Be Collected by Developer.** In no event, shall all of the rent, including the portion paid by the Eligible Tenant and any other person or entity, collected by Developer ("Total Rent") for any rent restricted unit exceed the Affordable Rent. Total Rent includes all payments made by the Eligible Tenant and all subsidies received by Developer. In the case of persons receiving Section 8 benefits, who are Eligible Tenants, Developer acknowledges that it shall not accept any subsidy or payment that would cause the Total Rent received for any restricted unit to exceed the maximum rents for the Affordable Unit. Should Developer receive Total Rent in excess of the allowable maximum rent, Developer agrees to immediately notify the City and reimburse the City for any such overpayment. Acceptance by Developer or its successors in interest, of Total Rent in excess of the maximum rent shall constitute a material breach of this Regulatory Agreement. The City, in its sole and unfettered discretion, may waive a breach of this paragraph if it determines and informs Developer in writing that Developer's actions to immediately notify the City of the overpayment and reimbursement to the City for such overpayment has satisfactorily cured the breach of this paragraph.

E. **Affordable Marketing Plan Compliance; Selection of Resident.** Developer shall submit for the approval of the City a management and marketing plan for rental of the Affordable Unit. Developer's marketing of the Affordable Unit shall be in compliance with federal and state fair housing laws. The marketing plan, at a minimum, requires publicizing the availability of the Affordable Unit within the City, such as notices in any City-sponsored newsletter, advertising in local newspapers, and notice in City offices. In the event the City implements a master waiting list for affordable housing in the City ("Master List"), then Developer shall provide notices to persons on the Master List of the availability of the Affordable Unit, prior to undertaking other forms of marketing. Developer shall give the persons on the Master List not fewer than fifteen (15) days after receipt of such notice to respond by submitting application forms for rental of the

Affordable Unit. Selection of residents shall be made based upon the Master List, rather than on a first-come, first-serve basis. Provided, however, (i) all tenants of the Affordable Unit shall meet the income requirements set forth herein and tenancy and eligibility shall be in conformance with the terms and standards set forth in the management marketing plan and no preference may be used for the purpose or effect of delaying or otherwise denying admission to the Property or unit based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant household; and (ii) nothing herein shall restrict Developer from screening tenants through the application of criteria which is lawful and customary in apartment management in Riverside County and otherwise consistent with federal, state and local regulations and restrictions related to the financing for the Project.

G. **Selection of Tenant.** Developer must adopt written tenant selection policies and criteria approved City that are consistent with the purpose of providing housing for a Qualified Household, and that provide for the selection of tenants from written waiting list in chronological order of their application insofar as it practicable and the prompt written notification to any rejected applicant of the grounds for any rejection. Absent a Master List described above, selection of tenants shall be made randomly within the following levels of priority, rather than a first-come, first serve basis:

(1) **First Priority.** Households which are displaced from their primary residence as a result of an action of City, a condominium conversion involving the household's residence, expiration of affordable housing covenants applicable to such residence, or closure of a mobile home or trailer park community in which the household's residence was located, and the household resided in such housing as the household's primary place of residence for at least two years prior to such action or event.

(2) **Second Priority.** Households which meet one of the following criteria: (i) households which are displaced from their primary residence as a result of an action of City, a condominium conversion involving the household's residence, expiration of affordable housing covenants applicable to such residence, or closure of a mobile home or trailer park community in which the household's residence was located, and the household resided in such housing as the household's primary place of residence for at least one year but less than two years prior to such action or event; (ii) households with at least one member who resides within the City, as that person's primary place of residence; (iii) households with at least one member who works or has been hired to work within the City, as that person's principal place of full-time employment; or (iv) households with at least one member who is expected to live within the City as a result of a bona fide offer of employment within the City.

(3) **Third Priority.** Other Qualified Low Income Households who do not meet the criteria for first priority or second priority above.

(4) **No Discrimination.** No preference herein may be used for the purpose or effect of delaying or otherwise denying admission to the Property or unit based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant household.

(5) **Use of Standard Screening Criteria.** Nothing herein shall restrict Developer from screening tenants through the application of criteria which is lawful and customary



in apartment management in Riverside County and otherwise consistent with federal, state and local regulations and restrictions related to the financing for the Project.

G. **Determination: Annual Requalification.** Developer shall obtain from each person to whom Developer leases an Affordable Unit a “Supplemental Rental Application” (“Application”). Developer shall be entitled to rely on the Application and supporting documents thereto in determining whether a household is an “Eligible Tenant”. Developer shall retain the Application and supporting documents for a period of not less than four (4) years after the household ceases to occupy an Affordable Unit. An Affordable Unit occupied by an Eligible Tenant, shall be treated as an Eligible Tenant until a recertification of such tenant’s income demonstrates that such tenant no longer qualifies as an Eligible Tenant.

I. **Tenant Protections.**

(1) **Rental Agreement/Lease.** The Developer shall execute or cause to be executed a written rental agreement/lease with each Qualified Household occupying a Unit identifying by name all permitted occupants. The rental agreement/lease must be in a form reasonably approved by the City and must be for not less than twelve (12) months, unless otherwise mutually agreed by the tenant and the Developer.

(2) **Prohibited Rental Agreement/Lease Terms.** The rental agreement/lease shall not contain any of the following provisions:

- a. **Agreement to be sued.** Agreement by the tenant to be sued, to admit guilty, or to a judgment in favor of the Developer in a lawsuit brought in connection with the lease;
- b. **Treatment of property.** Agreement by tenant that the Developer may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the Unit after the tenant has moved out of the Unit. The Developer may dispose of this personal property in accordance with state law;
- c. **Excusing Developer from responsibility.** Agreement by the tenant not to hold Developer or Developer’s agents legally responsible for any action or failure to act, whether intentional or negligent;
- d. **Waiver of notice.** Agreement of the tenant that the Developer may institute a lawsuit without notice to the tenant;
- e. **Waiver of legal proceedings.** Agreement by the tenant that the Developer may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
- f. **Waiver of a jury trial.** Agreement by the tenant to waive any right to a trial by jury;

- g. Waiver of right to appeal court decision. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
- h. Tenant chargeable with cost of legal actions regardless of outcome. Agreement by the tenant to pay attorneys' fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

J. **Termination of Tenancy.** The Developer may not terminate the tenancy of a tenant of the Project except for an uncured violation(s) of the terms and conditions of the lease; for violation of applicable federal, state, or local law; or for other good cause. Any termination or refusal to renew must be preceded by not less than thirty (30) days' notice by the Developer's service upon the tenant of a written notice specifying the grounds for the action. Upon expiration of the thirty (30) day notice period, Development may proceed with any and all appropriate legal action.

J. **Compliance with Use and Occupancy Laws.** Developer agrees that for each lease, the Developer shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, which in any way restrict the use and occupancy and resale of the Site.

K. **Nondiscrimination.** There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, gender, gender identity, marital status, national origin, ancestry, or disability in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor shall the Developer establish or permit any such practice or practices of discrimination or segregation with reference to the location, subtenants, or vendees of any Unit or in connection with the employment of persons for the operation and management of the Site. All deeds, rental agreements, leases or contracts made or entered into by the Developer as to the Unit or the Site or portion thereof, shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, familial status, disability, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, subleases or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

2. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, familial

status, disability, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subleases, subtenants or vendees in the premises herein leased.”

3. In contracts: “There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, familial status, disability, ancestry or national origin, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, subleases or vendees of the premises.”

The covenants established in this Regulatory Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of City, its successors and assigns, City and any successor in interest to the Site, or any part thereof. The nondiscrimination covenants shall remain in effect in perpetuity.

L. **No Nuisance.** Developer shall not maintain, cause to be maintained, or allow to be maintained on or about the Site any public or private nuisance, including, without limitation, the conduct of criminal activities set forth in the nuisance abatement provisions of the Uniform Controlled Substances Act (Health & Safety Code Section 11570, *et seq.*) as currently exists or as may be amended from time to time, or the Street Terrorism Enforcement and Prevention Act (Penal Code Section 186.22, *et seq.*), as currently exists or as may be amended from time to time.

M. **No Hazardous Material Activity.** Developer shall not engage in any Hazardous Material Activity and shall comply with all Governmental Regulations in connection with the construction and operation of the Project.

In addition, Developer shall take all necessary precautions to prevent the release into the environment of any Hazardous Material which are located in, on or under the Site. Such precautions shall include compliance with all Governmental Regulations with respect to Hazardous Substance. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Substance. Notwithstanding the foregoing, this Regulatory Agreement shall not prohibit the use of such products in quantities as are customarily used in the construction, maintenance, rehabilitation or management of residential developments or associated buildings and grounds, or used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the Project including without limitation alcohol, aspirin, tobacco and saccharine.

### 3. **OPERATION AND MANAGEMENT OF THE PROJECT**

A. **Compliance with Agreement.** The Developer shall comply with all the terms and provisions of the Development Agreement and all applicable Governmental Regulations.

B. **Taxes and Assessments.** The Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Site; provided, however, that the Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge against it, Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

C. **Operation and Management.** Developer shall manage, operate and maintain the Project in first class condition and in accordance with professional property management standards for similar properties in the Southern California area and shall maintain or cause to be maintained the interiors and exteriors of the Unit in a decent, safe and sanitary manner. The Unit shall be maintained in accordance with the requirements of the City's Municipal Code and all applicable Governmental Regulations.

The parties acknowledge that City is interested in the long-term management and operation of the Project and in the qualifications of any person or entity retained by the Developer for that purpose ("Property Manager"). Prior to the disbursement of any proceeds of the City HOME Loan, the Developer shall submit for the reasonable approval of the City, a detailed "Management Plan" which sets forth in detail the duties of the Property Manager, the tenant selection process, a security system and crime prevention program, the procedures for the collection of rent, the procedures for monitoring of occupancy levels, the procedures for eviction of tenants, the rules and regulations of the Project and manner of enforcement, a standard lease form, and other matters relevant to the management of the Project. The Developer may from time to time submit amendments and modifications to the Management Plan for the reasonable approval of the City. The management of the Project shall be in compliance with the approved Management Plan.

Developer shall contract for property management services with an experienced and qualified property management entity (based upon the criteria set forth herein below) approved by City which approval shall not be unreasonably withheld. In the Event of Default by the Property Manager of the requirements set forth in this Regulatory Agreement, the City shall provide notice to Developer of such default and Developer shall use its best efforts to correct such default. Upon failure by the Property Manager and/or Developer to cure such default within thirty (30) days of written notice by the City, the City shall have the right to require Developer to immediately remove and replace the Property Manager with another property manager or property management company who is reasonably acceptable to City and who has not less than five (5) years' experience in property management, including experience managing multifamily residential developments of the size, quality and scope of the Project.

The fee paid to Property Manager shall not exceed the reasonable and customary fees paid to such property managers for similar rental properties in Riverside County. Other fees and payments shall be consistent with prevailing market rates for the services performed and goods provided in consideration for such fees and payments. The Developer shall ensure that the expenses of operating the Project do not materially exceed the budget which has been approved by the City. The Developer shall annually provide to the City a detailed accounting of operating

expenses and shall make available its books and records to the City for inspection and copying, upon reasonable advance notice during its normal hours of business.

D. **Crime Free Multi Housing Program.** Throughout the Affordability Period, the Developer covenants and agrees to participate in and fully complete the City's Crime Free Multi Housing Program for the Site within twelve (12) months following the close of Escrow for the acquisition of the Site by Developer. Developer shall continue its compliance with the City's Crime Free Multi Housing Program throughout the Affordability Period, unless authorized by City to cease participation. Evidence of compliance with this requirement shall be forwarded annually to the City within said twelve (12) month period.

E. **Reserve Requirements.** Developer shall, or shall cause the Property Manager to, set aside not less than Two Hundred Dollars (\$250.00) per Unit in the Project per year. The amount required to be placed into the Capital Replacement Reserve shall increase at the rate determined by the City. Funds in the Capital Replacement Reserve shall be used for capital replacements to the Project fixtures and equipment which are normally capitalized under generally accepted accounting principles. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve the Developer of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Project in the manner prescribed herein. Not less than once per year, Developer, at its expense, shall submit to the City an accounting for the Capital Replacement Reserve.

F. **Operating Reserve.** Developer shall, or shall cause the Property Manager to, set aside at the time the Release of Construction Covenants is recorded in a separate interest-bearing trust account held by the Developer with an initial amount equal to three (3) months of the projected annual Operating Expenses for the Development or in such lesser amount as allowed by the senior lender or investor (the "Operating Reserve"). Interest earned on funds in the Operating Reserve shall remain in the Operating Reserve. Developer may withdraw from the Operating Reserve those amounts exceeding the current year budget for operating expenses. City approval is not necessary for withdrawals made in accordance with this Agreement. Funds may be disbursed from the Operating Reserve to cover shortfalls between the income and actual Operating Expenses and Debt Service of the Development. Upon making disbursements to cover operating shortfalls, the Operating Reserve shall be replenished to the level prior to the disbursement from available Project cash flow unless such replenishment is not required by the senior lender or investor.

G. **Record Keeping.** Developer shall annually provide to City its Annual Financial Statement for the preceding year and shall make available its books and records to City for inspection and copying, upon reasonable advance notice during its normal hours of business. As a part of the monitoring and compliance with this Regulatory Agreement, Developer shall annually cause the Qualified Household occupying the Unit in the Project to complete an income certification in accordance with Section 2.C. of this Regulatory Agreement. City relies upon the information contained in such certifications to satisfy its reporting and record keeping. In the event the Developer fails to submit to City all of the documentation required by this Regulatory Agreement, Developer shall be in default of this Regulatory Agreement. Upon failure by the Developer to cure such default within thirty (30) days of written notice by the City, the City may seek all available remedies as set forth in this Regulatory Agreement.

H. **Right of Entry for Inspection.** Representatives of City shall be entitled to enter the Site, upon at least forty-eight (48) hours' notice during normal business hours, to monitor

compliance with this Regulatory Agreement, to inspect the records of the Project with respect to the Unit, and to conduct an independent audit of such records. The Developer agrees to cooperate with City in making the Site available for such inspection. If for any reason City is unable to obtain the Developer's consent to such an inspection, the Developer understands and agrees that City may obtain at Developer's expense an administrative inspection warrant or other appropriate legal order to obtain access to such records. Developer agrees to maintain records in a business-like manner on the Site or in a location approved in writing by the Director and to make such records available to City upon twenty-four (24) hours' notice. Unless City otherwise approves, such records shall be maintained throughout the Affordability Period.

J. **No Conversion to Condominiums.** Developer agrees that the conveyance, transfer or sale of any portion of the Property as a condominium, shall be a breach of this Regulatory Agreement, the Loan Agreement, entitling the City to immediately exercise any and all of their rights and remedies under this Regulatory Agreement, the Loan Agreement, including without limitation acceleration of the City HOME Loan and foreclosure under the deed of trust securing the City HOME Loan.

#### **4. OBLIGATION TO CONSTRUCT, MAINTAIN, REPAIR AND REBUILD**

A. **Construction Covenant.** Developer covenants and agrees to complete the construction in accordance with the Development Agreement, including without limitation the Project Development and all approved plans, drawings, documents and permits issued by the City and/or other governmental agency exercising jurisdiction over the Project.

(1) **Labor Standards.** The Developer shall comply with all applicable federal and state labor standards.

(2) **Compliance with Governmental Regulations.** Developer shall carry out the design, construction and operation of the Project in conformity with applicable Governmental Regulations, including without limitation, all applicable labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, as currently exists or as may be amended from time to time, Government Code Section 4450, *et seq.*, as currently exists or as may be amended from time to time, Government Code Section 11135, *et seq.*, as currently exists or as may be amended from time to time, and the California Building Standards Code, Health and Safety Code Section 18900, *et seq.* as currently exists or as may be amended from time to time.

B. **Schedule of Performance.** Developer covenants and agrees to commence the Project and to diligently prosecute to completion the Project in accordance with the Schedule of Performance (Attachment No. 4 to the Development Agreement). Before commencement of development of the Project, Developer shall secure or cause to be secured any and all permits and permit ready letters which may be required by the City or other governmental agency affected by such work. Upon satisfactory completion of the construction of the Project as determined by the City and upon written request therefor by the Developer, the City shall record the Release of Construction Covenants releasing the Developer from the covenant to construct set forth above.

C. **Maintenance and Replacement.** Except for the normal wear and tear, the Developer shall, at its sole cost and expense, maintain and repair the Site keeping the same in first class condition and in a safe, decent and sanitary condition, including the Unit, walkways, driveways and landscaping, and from time to time make all necessary and proper repairs, renewals and replacements as they may be required by this Regulatory Agreement and by all applicable Municipal Code and Uniform Code provisions. Developer shall manage and maintain the Project in accordance with all applicable housing quality standards and local code requirements, concerning marketing, operation, maintenance, repair, security, rental policy and method of selection of tenants.

D. **Interior Maintenance.** Developer shall maintain the interior of buildings, including carpet, drapes and paint, in clean and habitable condition.

E. **Exterior Building Maintenance.** All exterior, painted surfaces shall be maintained at all times in a clean and presentable manner, free from chipping, cracking and defacing marks. All graffiti and defacement of any type, including marks, words and pictures must be removed and any necessary painting or repair completed within seventy-two (72) hours of their creation or within seventy-two (72) hours after notice to Developer.

F. **Landscaping.** All landscaped parcels and all front and side-yard setback areas that are not buildings, driveways or walkways shall be adequately and appropriately landscaped in accordance with minimum standards established by the City and shall be maintained in sound horticultural condition in accordance with the standards established by the City from time to time. No structure, improvement or other non-plant material shall be constructed or otherwise placed on the landscaped areas of the Project without prior written approval by the Director.

The following minimum standards shall apply to all landscaped areas of the Project: (1) lawn grasses shall not exceed six (6) inches in height; (2) hedges shall be trimmed; (3) no trees, shrubbery, lawns, and other plant life shall be dying from lack of water or other necessary maintenance; (4) no trees or shrubbery shall grow uncontrolled without proper pruning; (5) no vegetation shall be overgrown so as to be likely to harbor rats or vermin; (6) no dead, decayed or diseased trees, weeds and other vegetation shall be allowed. In addition to the foregoing, no yard areas shall be left unmaintained, including: (1) no broken or discarded furniture, appliances and other household equipment stored in yard areas for periods exceeding one (1) week; (2) no packing boxes, lumber, trash, dirt and other debris stored in yards for periods exceeding one (1) week in areas visible from public property or neighboring properties; (3) no unscreened trash cans, bins or containers stored for unreasonable periods in areas visible from public property or neighboring properties; and (4) no vehicles parked or stored in other than approved parking areas.

G. **Right to Enter to Cure.** If at any time the Developer fails to maintain the Site in accordance with this Section 4 and such condition is not corrected within seventy-two (72) hours after written notice from the City with respect to graffiti, debris, waste material, and general maintenance, or thirty (30) days after written notice from the City with respect to landscaping and building improvements with such additional time as may be reasonably necessary to diligently prosecute the cure to completion, then the City, in addition to whatever remedies it may have at law or at equity, shall have the right to enter upon the Site and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Site, and to attach a lien upon the Site, or to assess the Site, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the City and/or costs of such cure,

including a fifteen percent (15%) administrative charge, which amount shall be promptly paid by the Developer upon demand.

H. **Damage and Destruction; Developer's Duty to Rebuild.** If all or any portion of the Site and the improvements thereon is damaged or destroyed by fire or other casualty, it shall be the duty of the Developer, subject to the availability of funds, to rebuild, repair or construct said portion of the Site and/or the improvements in a timely manner which will restore it to Riverside Municipal or Building Code compliance condition as approved by the City.

In furtherance of the requirements of this Section 4.I., Developer shall keep the improvements on the Site insured by carriers at all times satisfactory to the City against loss by fire, rent loss and such other hazards (other than earthquake), casualties, liabilities and contingencies as included within an all risk extended coverage hazard insurance policy in an amount of the full replacement cost of the improvements as required by the Development Agreement. In the event of loss, Developer shall give prompt notice to the insurance carrier and the City.

If the Site is abandoned by the Developer, or if Developer fails to respond to the City within thirty (30) days from the date notice is mailed by City to Developer that the insurance carrier offers to settle a claim for insurance benefits, City is authorized to collect and apply the insurance proceeds at its option either to restoration or repair of the Site or to the sums secured by the City HOME Deed of Trust (as those terms are defined in the Development Agreement).

I. **Time Limitation.** Upon damage to the Site or the improvements thereon, the Developer shall be obligated to proceed with all due diligence hereunder and commence reconstruction within one year after the damage occurs and complete reconstruction within a term deemed acceptable by the parties after damage occurs, or if appropriate, to demolition and vacation of the Site within one year, unless prevented by causes beyond its reasonable control.

## **5. MISCELLANEOUS PROJECT REQUIREMENTS**

A. **Affirmative Marketing.** As stated above in section 2E, within the time specified therefor in the Schedule of Performance, Developer shall submit for the approval by City, which approval shall not unreasonably be withheld, a plan for marketing the rental of the Unit ("Marketing Plan"). The Marketing Plan shall include a plan for publicizing the availability of the Unit within the City in a manner which gives notice to Qualified Household currently living within the City before residents of other cities receive such notice, such as notices in any City sponsored newsletter, newspaper advertising in local newspapers and notices in City offices.

## **6. COVENANTS**

A. **Term.** This Regulatory Agreement and the covenants and restrictions contained herein shall be effective on the date this Regulatory Agreement is recorded and shall remain in full force and effect for a period of twenty (20) years from the date of issuance of the certificate of occupancy for the Project.

B. **Affordability Period.** The provisions of this Regulatory Agreement shall apply to the Site throughout the Affordability Period, even if the City HOME Loan is paid in full. This Regulatory Agreement shall bind any successor, heir or assign of the Developer, whether a change



in interest occurs voluntarily or involuntarily, by operation of law or otherwise, with or without the approval of City, except as expressly released by the City. City makes the City HOME Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

C. **Covenants to Run with the Land.** City and Developer hereby declare their express intent that the covenants and restrictions set forth in this Regulatory Agreement shall run with the land, and shall bind all successors in title to the Site. Each and every contract, deed or other instrument hereafter executed covering or conveying the Site or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless City expressly releases such conveyed portion of the Site from the requirements of this Regulatory Agreement.

D. **Mortgagees Protection.** No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Regulatory Agreement shall defeat or render invalid or in any way impair the lien or charge of any permitted deed of trust recorded on the Property provided, however, that any subsequent owner of the Property shall be bound by the covenants, conditions, restrictions, limitations and provisions of this Regulatory Agreement, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

## **7. ENFORCEMENT AND REMEDIES**

A. **Remedies.** Subject to the notice and cure rights of the Developer set forth in Section 8 of the Development Agreement, in the event of default or breach of any of the terms or conditions of this Regulatory Agreement by Developer, its heirs, executors, administrators or assigns, City may pursue the remedy thereof by any and all means of enforcement, both in equity and at law, as provided by the laws of the State of California, including, but not limited to, injunctive relief and/or specific performance.

B. **Rights of the City.** The City of Riverside has the right to enforce all of the provisions of this Regulatory Agreement. This Regulatory Agreement does not in any way infringe on the right or duties of the City to enforce any of the provisions of the Municipal Code including, but not limited to, the abatement of dangerous buildings. In addition to the general rights of enforcement, the City shall have the right, through its agents and employees, to enter upon any part of the Site for the purpose of enforcing the California Vehicle Code, and the ordinances and other regulations of the City, and for maintenance and/or repair of any or all publicly owned utilities.

C. **Jurisdiction and Venue.** Legal actions must be instituted and maintained in the Superior Court of the County of Riverside, State of California. Owner specifically waives any rights provided to it pursuant to California Code of Civil Procedure Section 394 or state statutes or judicial decisions of like effect.

D. **Nuisance.** The result of every act or omission whereby any of the covenants contained in this Regulatory Agreement are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowable at law or equity, against a nuisance, either

public or private, shall be applicable against every such result and may be exercised by any owner or its successors in interest, without derogation of the City's rights under law.

E. **Right of Entry.** The City has the right of entry at reasonable hours after reasonable attempts to contact Developer, to effect emergency repairs or maintenance which the Developer has failed to perform. Subsequent to sixty (60) days written notice to the Developer specifically outlining the noncompliance, the City shall have the right of entry at reasonable hours to enforce compliance with this Regulatory Agreement which the Developer has failed to perform.

F. **Costs of Repair.** The costs borne by the City of any such repairs or maintenance emergency and/or non-emergency, shall become a charge for which Developer shall be responsible; and may, if unpaid, be assessed as a lien against the Site.

G. **Cumulative Remedies.** The remedies herein provided for breach of the covenants contained in this Regulatory Agreement shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

H. **Failure to Enforce.** The failure to enforce any of the covenants contained in this Regulatory Agreement shall not constitute a waiver of the right to enforce the same thereafter.

## **8. HOLD HARMLESS**

Except to the extent of City's sole negligence, Developer agrees to defend and to hold City and its officers, agents, employees, representatives, elected and appointed boards and officials harmless from liability for damage or claims for any type of damage including, but not limited to, personal injury and claims for property damage, which may arise from the activities of Developer or those of Developer's contractors, subcontractors, agents, employees or other persons acting on Developer's behalf and which relate to the Project. Developer agrees to and shall defend City and its respective officers, agents, employees, representatives, elected and appointed boards and officials from any action for damages caused or alleged to have been caused by reason of Developer's activities in connection with the Project.

## **9 ASSIGNMENT OF AGREEMENT**

This Regulatory Agreement shall be binding upon Developer, its executors, administrators and assigns and all persons claiming under or through Developer. Wherever this Regulatory Agreement employs the term "Developer", it shall be deemed to include Developer, its executors, administrators and assigns and all persons claiming under or through Developer. Assignment of this Regulatory Agreement shall be limited to authorized assignees of the Development Agreement in compliance with Section 2 thereof.

## **10. THIRD PARTY BENEFICIARIES**

This Regulatory Agreement is made and entered into for the sole protection and benefit of the City, its successors and assigns, and Developer, its permitted successors and assigns, and no other person or persons shall have any right of action hereon.

## **11. RECORDATION**

Developer agrees that this Regulatory Agreement and any amendment or cancellation hereof shall be recorded in the official records of Riverside County by Developer within ten (10) days of the date of this Regulatory Agreement and within ten (10) days after any amendment or cancellation

hereof.

## **12. NOTICE**

Written notice, demands and communications between City and Developer shall be sent by first-class registered or certified mail, postage prepaid, return receipt requested, or by private courier service which provides evidence of delivery. Unless a different address is given by any party as provided in this Section, all such communications will be addressed as follows:

To Developer:	Riverside Housing Development Corporation Attn: Bruce Kulpa, Executive Director 4250 Brockton Avenue Riverside, CA 92501
To City:	City of Riverside Attn: City Manager 3900 Main Street Riverside, California 92522
Copies to:	City of Riverside Attn: Community & Economic Development Director 3900 Main Street Riverside, California 92522
	City of Riverside Attn: City Attorney 3900 Main Street Riverside, California 92522

Any Notice shall be deemed received immediately if delivered by hand and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail. Each party shall promptly notify the other party of any change(s) of address to which notice shall be sent. Any address for service of notice on any party may be changed by that party serving a notice upon the other of the new address, except that any change of address to a post office box shall not be effective unless a street address is also specified for use in effectuating personal service.

## **13. WAIVER**

Failure by a party to insist upon the strict performance of any of the provisions of this Regulatory Agreement by the other party or the failure by the party to exercise its rights under or upon a default by the other party herein shall not constitute a waiver of such party's right to demand strict compliance from such other party in the future.

## **14. SUBORDINATION**

This Regulatory Agreement and the covenants contained herein shall be subordinate to the senior construction loan, and when converted into its permanent phase, permanent loan, and the regulatory agreement recorded in connection with any award of low-income housing tax credits.

**15. SEVERABILITY**

If any one or more of the provisions contained in this Regulatory Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Regulatory Agreement, and this Regulatory Agreement shall be construed as if such invalid, illegal or unenforceable provision(s) had never been contained herein.

**16. CAPTION AND PRONOUNS**

The captions and headings of the various sections of this Regulatory Agreement are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and masculine, feminine and neuter shall be freely interchangeable.

**17. ATTORNEYS' FEES**

In any action to interpret or enforce any provision of this Regulatory Agreement, the prevailing party shall be entitled to its costs and reasonable attorneys' fees.

**18. MODIFICATION OF AGREEMENT**

This Regulatory Agreement may be modified or amended by mutual consent of the Developer and City provided that all amendments are in writing and signed by all of the parties hereto.

**19. SOLE AND ONLY AGREEMENT**

This Regulatory Agreement, the Development Agreement and all of the attachments thereto and incorporated therein integrate all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the Site. In the event of a conflict between this Regulatory Agreement and Development Agreement, the provisions of this Regulatory Agreement shall control.

City and Developer acknowledge and agree that neither of them has made any representation with respect to the subject matter of this Regulatory Agreement or any representations inducing the execution and delivery, except representations set forth herein, and each party acknowledges that it has relied on its own judgment in entering this Regulatory Agreement. City and Developer further acknowledge that all statements or representations that heretofore may have been made by either of them to the other are void and of no effect, and that neither of them has relied thereon in its dealings with the other.

(Signatures on following page)

**IN WITNESS WHEREOF**, the parties hereto have executed this Regulatory Agreement as of the date and year set forth below.

**“DEVELOPER”**

RIVERSIDE HOUSING DEVELOPMENT CORPORATION, a California non-profit corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**“CITY”**

THE CITY OF RIVERSIDE, a California charter city and municipal corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Executive Director

ATTEST:

By: \_\_\_\_\_

City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_

City Attorney

**EXHIBIT “A”**

**LEGAL DESCRIPTION**

**[Attached]**

**ATTACHMENT NO. 12**

**NOTICE OF AFFORDABILITY RESTRICTIONS**

**RECORDING REQUESTED BY** )  
**AND WHEN RECORDED MAIL TO:** )

)  
)  
)  
Housing Authority of the City of Riverside )  
3900 Main Street )  
Riverside, CA 92522 )  
Attn: Executive Director )  
)  
Project: 4307 Park Avenue )

(Space above for Recorder's Use Only)

This document is exempt from the payment of a recording fee  
pursuant to Government Code Section 27383.

**NOTICE OF AFFORDABILITY RESTRICTIONS  
ON TRANSFER OF PROPERTY**

In accordance with Health and Safety Code Section 33334.3(f)(3)(B), notice is hereby given that certain real property located at 4307 Park Avenue, all located in the City of Riverside, California and further identified as Assessor Parcel No. (APN) 211-233-001, and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, is subject to certain affordability covenants and restrictions identified in the Regulatory Agreement by and between the **HOUSING AUTHORITY OF THE CITY OF RIVERSIDE**, a public body corporate and politic ("Authority") and **RIVERSIDE HOUSING DEVELOPMENT CORPORATION**, a California non-profit corporation ("Owner"), recorded concurrently herewith and incorporated herein by this reference.

The affordability covenants and restrictions set forth in the aforementioned Regulatory Agreement shall expire (i) fifty-five (55) years after the recordation of the Release of Construction Covenants

This notice is prepared for notice and recordation purposes only, and in no way modifies the terms, conditions, provisions and covenants set forth in the Regulatory Agreement. In the event of any inconsistency between the terms, conditions, provisions and covenants set forth in the Regulatory Agreement and this notice, the terms, conditions, provisions and covenants set forth in the Regulatory Agreement shall prevail.

(Signatures on following page)

**“OWNER”**

RIVERSIDE HOUSING DEVELOPMENT  
CORPORATION, a California non-profit  
corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**“AUTHORITY”**

HOUSING AUTHORITY OF THE CITY OF  
RIVERSIDE, a public body, corporate and politic

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Executive Director

ATTEST:

By: \_\_\_\_\_  
Housing Authority Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Housing Authority General Counsel



**EXHIBIT “A”**

**LEGAL DESCRIPTION**

[Attached]

**ATTACHMENT NO. 13**

**RELEASE OF CONSTRUCTION COVENANTS**

**RECORDING REQUESTED BY** )  
**AND WHEN RECORDED MAIL TO:** )

)  
)  
)  
Housing Authority of the City of Riverside )  
3900 Main Street )  
Riverside, CA 92522 )  
Attn: Executive Director )  
)  
Project: 4307 Park Avenue )

(Space above for Recorder's Use Only)

This document is exempt from the payment of a recording fee  
pursuant to Government Code Section 27383.

**RELEASE OF CONSTRUCTION COVENANTS**

**THIS RELEASE OF CONSTRUCTION COVENANTS** ("Release") is hereby made as of this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by the **HOUSING AUTHORITY OF THE CITY OF RIVERSIDE**, a public body corporate and politic (the "Authority") in favor of **RIVERSIDE HOUSING DEVELOPMENT CORPORATION**, a California non-profit corporation ("Developer").

**R E C I T A L S**

A. The Authority and the Developer entered into that certain Development Agreement dated for identification purposes only as of \_\_\_\_\_, 2017 ("Agreement").

B. Pursuant to the Agreement, the Authority and the Developer entered into that certain Regulatory Agreement dated \_\_\_\_\_, 2017. The Agreement provides for the completion of certain improvements ("Project") to certain real property ("Site") situated in the City of Riverside, California, and more particularly described on Exhibit "A" attached hereto and made a part hereof by this reference. Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Regulatory Agreement.

C. As required in the Agreement and the Regulatory Agreement, the Authority shall furnish the Developer with a Release of Construction Covenants upon completion of the Project which Certificate shall be in such form as to permit it to be recorded in the Riverside County Recorder's Office.

D. The Authority has conclusively determined that the construction of the Project required by the Agreement, and the Regulatory Agreement on the Site has been satisfactorily completed.

**NOW, THEREFORE**, Authority hereto certifies as follows:

1. As provided in the Regulatory Agreement, the Authority does hereby certify that all of the construction of the Project on the Site has been fully and satisfactorily performed and completed in accordance with the Agreement and the Regulatory Agreement.

2. After the recordation of this Release any person or entity then owning or thereafter purchasing, or otherwise acquiring any interest in the Site will not (because of such ownership, purchase, or acquisition) incur any obligation or liability under the Development Agreement, or the Regulatory Agreement to construct the Project, however, such party shall be bound by any and all of the covenants, conditions, and restrictions concerning the use, maintenance and operation of the Site which survive such recordation.

3. This Release is not a notice of completion as referred to in Section 3093 of the California Civil Code.

**IN WITNESS WHEREOF**, the Authority has executed this Release as of the date set forth above.

**HOUSING AUTHORITY OF THE CITY OF  
RIVERSIDE**, a public body, corporate and politic

By: \_\_\_\_\_  
Executive Director

**ATTEST:**

\_\_\_\_\_  
Authority Secretary

**EXHIBIT “A”**

**LEGAL DESCRIPTION**

[Attached]

**ATTACHMENT NO. 14**

**REQUEST FOR NOTICE OF DEFAULT**

**RECORDING REQUESTED BY** )  
**AND WHEN RECORDED MAIL TO:** )

)  
)  
)  
)  
Housing Authority of the City of Riverside )  
3900 Main Street )  
Riverside, CA 92522 )  
Attn: Executive Director )  
)  
)  
Project: 4307 Park Avenue )

(Space above for Recorder's Use Only)

This document is exempt from the payment of a recording fee  
pursuant to Government Code Section 27383.

**REQUEST FOR NOTICE OF DEFAULT**  
**(Under Section 2924b Civil Code)**

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust recorded on \_\_\_\_\_, 20\_\_, in Book \_\_\_\_\_, Page \_\_\_\_\_, Official Records of Riverside County, California, executed by **RIVERSIDE HOUSING DEVELOPMENT CORPORATION**, a California non-profit corporation as Trustor, in which **HOUSING AUTHORITY OF THE CITY OF RIVERSIDE**, a public body corporate and politic is named as Beneficiary, and \_\_\_\_\_ as Trustee, be mailed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (Number and Street)  
\_\_\_\_\_ (City and State)

**NOTICE:** A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.

**HOUSING AUTHORITY OF THE CITY OF RIVERSIDE**, a public body, corporate and politic

By: \_\_\_\_\_  
Executive Director

## **ATTACHMENT NO. 15**

### **ASSIGNMENT OF PLANS, REPORTS AND DATA**

FOR VALUE RECEIVED, and subject to the rights of any senior lender, **RIVERSIDE HOUSING DEVELOPMENT CORPORATION**, a California corporation ("Borrower"), does hereby assign, pledge, transfer and set over to the **CITY OF RIVERSIDE**, a California charter city and municipal corporation ("City") and **HOUSING AUTHORITY OF THE CITY OF RIVERSIDE**, a public body corporate and politic ("Authority"), all of its rights, title and interest in and to the following (collectively, the "Plans, Reports and Data"): any and all plans, drawings, studies, reports and related documents concerning the Property, and all amendments, modifications, supplements, general conditions and addenda thereto, including, without limitation, Environmental Reports, all architectural and engineering plans, any architect's agreement entered into hereafter ("Architect's Agreement") by and between Borrower and any architect engaged to perform services with respect to the Property ("Architect") and those certain plans and specifications referred to therein, and all amendments, modifications, supplements, general conditions and addenda thereto (collectively, "Architectural Plans") prepared by Architect for the account of Borrower in connection with the development of certain real property located in the City of Riverside, County of Riverside, State of California more particularly described on Exhibit "A" attached hereto (the "Property"). The Plans, Reports and Data, including, without limitation, the Architect's Agreement and the Architectural Plans, are hereby assigned as collateral security for certain indebtedness of Borrower to Authority evidenced by that certain Authority Promissory Note ("Authority Promissory Note") of even date herewith in the principal amount of \$183,238 (the "Authority Loan") and certain indebtedness of Borrower to City evidenced by that certain City HOME Promissory Note ("City HOME Promissory Note") of even date herewith in the principal amount of \$252,662 (the "City HOME Loan"). The Authority Loan and City HOME Loan is made pursuant to that certain Development Agreement dated for identification purposes only as of \_\_\_\_\_, 2017 entered into between Borrower, City and Authority. All capitalized terms not defined herein shall have the meaning set forth in the Development Agreement. For purposes hereof, "Environmental Reports" means any "Phase 1" and/or "Phase 2" investigations of the Property and all final reports and test results (not including drafts) provided by Developer's environmental consultant, if any.

Upon the occurrence and during the continuance of an Event of Default under the Development Agreement, the Authority Promissory Note or any other document relating to the Authority Loan (collectively, the "Authority Loan Documents"), Authority shall have the right, but not the obligation, at any time, in its own name or in the name of Borrower, or otherwise, to take such action as Authority may at any time or from time to time determine to be necessary or desirable in order to cure any default by Borrower under the Architect's Agreement, including, without limitation, the protection of Borrower's rights with respect to the Architectural Plans or to protect the rights of Borrower thereunder. Authority shall not incur any liability if any action taken by Authority or on its behalf in good faith, pursuant to the foregoing sentence, shall prove to be, in whole or in part, inadequate or invalid, and Borrower hereby indemnifies and agrees to hold Authority harmless from and against any and all loss, claim, demand, cost, liability, damage or expense, including, without limitation, attorneys' fees and expenses in connection with any such action or actions. Borrower agrees to have each architect engaged to perform services in connection with the Property execute a Consent in the form attached hereto.

Upon the occurrence of an Event of Default or termination under Section 3.5.7 of the Development Agreement, Authority may exercise its rights hereunder and take possession of and title to the Plans, Reports and Data, including, without limitation, all architectural plans and the Architect's Agreement. Authority shall notify Borrower in writing of its exercise of its rights hereunder in accordance with the notice provisions set forth in the Development Agreement. Borrower shall deliver possession of and title to the Plans, Reports and Data to Authority within forty-eight (48) hours of receipt of Authority's written notice.

Borrower and Architect, by executing the Consent to this Assignment, agree that Authority does not assume any of Borrower's obligations or duties concerning the Architect's Agreement and the Architectural Plans, including, but not limited to, the obligation to pay for the preparation of the Architect's Agreement and the Architectural Plans, until and unless Authority shall exercise its rights hereunder.

Except for an Assignment to the senior lender, Borrower hereby represents and warrants to Authority that no previous assignment of its interest in the Plans, Reports and Data, including, without limitation, the Architect's Agreement and the Architectural Plans, has been made, and Borrower agrees not to assign, sell, pledge, transfer, mortgage or otherwise encumber its interest in the Plans, Reports and Data, including, without limitation, the Architect's Agreement and the Architectural Plans, so long as this Assignment is in effect.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, or successors in interest of the Borrower and Authority.

IN WITNESS WHEREOF, Borrower has caused this Assignment of Plans, Reports and Data to be executed as of \_\_\_\_\_, 2017.

BORROWER:

**RIVERSIDE HOUSING DEVELOPMENT  
CORPORATION**, a California non-profit  
corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Name: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Name: \_\_\_\_\_

## CONSENT

The undersigned has prepared the Architectural Plans and hereby consents to the assignment and other conditions set forth in the above Assignment of Plans, Reports and Data. The undersigned also agrees that in the event of a breach by Borrower of any of the terms and conditions of the Architect's Agreement or any other agreement entered into with the undersigned in connection with the Architectural Plans, that so long as Borrower's interest in the Plans is assigned to Authority, the undersigned will give written notice to Authority of such breach. Authority shall have 60 days from the receipt of such notice of default to remedy or cure said default; however, nothing herein shall require Authority to cure said default, Authority shall only have the option to do so.

The undersigned also agrees that in the event of default by Borrower under any of the documents or instruments entered into in connection with the Development Agreement, the undersigned, at Authority's request, shall continue performance under the Architect's Agreement in accordance with the terms hereof, provided that the undersigned shall be reimbursed in accordance with the Architect's Agreement for all services rendered on Authority's behalf.

Dated: \_\_\_\_\_

ARCHITECT:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**EXHIBIT “A”**

**LEGAL DESCRIPTION**

[Attached]