AMERICAN RESCUE PLAN ACT LOAN AGREEMENT

Oaktree Apartments

by and between the

CITY OF RIVERSIDE

and

RIVERSIDE HOUSING DEVELOPMENT CORPORATION

ATTACHMENTS

AMERICAN RESCUE PLAN ACT

LOAN AGREEMENT

(Oaktree Apartments)

THIS AMERICAN RESCUE PLAN ACT ("Agreement") dated for identification purposes only as of _____, 2025, is made and entered into by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation ("City"), and Riverside Housing Development Corporation, a California nonprofit public benefit corporation, whose DUNS Number is NGKMFABRZKW9 ("Developer") 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 municipal corporation, incorporated as a charter city under to the laws of the State of California. The 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.

B. The American Rescue Plan Act ("ARPA"), Public Law No. 117-2, was signed by President Joseph R. Biden on March 11, 2021, and authorized the Department of the Treasury ("Treasury") to disburse funds for the purposes set forth in subsection (d) of Section 3201 of the ARPA Act of 2021 and any guidance issued by Treasury regarding the Emergency Rental Assistance ("ERA2") program established under Section 3201 (the "Guidance").

C. On May 7, 2021, the City entered into a contract with Treasury for a direct allocation of Four Million Five Hundred Fifty Four Thousand Nine Hundred Forty Four Dollars and Seventy-Four Cents ($4,554,944.74) of ERA2 funds.

D. On March 5, 2024, the Treasury provided Frequently Asked Questions (FAQs) as guidance regarding the requirements of the ERA2 Program established by Section 3201 of the ARPA Act of 2021, Public Law No 117-2 detailing how the statute established ERA2 and allows a grantee to use its ERA2 funds that are unobligated on October 1, 2022, for "affordable rental housing and eviction prevention purposes, as defined by the Secretary, serving very low-income families (as such term is defined in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)))." However, in accordance with the ERA2 statute, prior to obligating any funds for such purposes, the grantee must have obligated at least 75 percent of the total ERA2 funds allocated to it for financial assistance to eligible households, eligible costs for housing stability services, and eligible administrative costs. Eligible Affordable Rental Housing Purposes include the construction, rehabilitation, or preservation of affordable rental housing projects serving very low-income families.

E. Riverside Housing Development Corporation, 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. Developer submitted a proposal to the City of Riverside for the rehabilitation of 25 housing units at the Oaktree Apartments located at 1946 Seventh Street, Riverside, CA 92501 ("Project") and identified with

Assessor's Parcel Number 211-176-019 ("Site"), as depicted in the Site Plan (Attachment No.1) and described in the Site Legal Description (Attachment No. 2).

F. The Project is eligible for expenditure of ARPA Act funds, "FAQs: 46. What are eligible "other affordable rental housing and eviction prevention purposes" under the statute establishing ERA2?".

G. The City has agreed to provide ARPA - ERA2 funds to the Developer in a form of an ARPA Loan in the amount of Six Hundred Thousand Forty-Four Thousand Three Hundred Eighty-Four Dollars and 65 Cents ($644,384.65) costs associated with updates and upgrades for safety, accessibility and efficiency as well as improving the appearance of the units and property overall.

H. The Parties intend this Agreement to set forth Developer's obligations under ARPA and all other regulations pertaining to the Grant Funds.

NOW, THEREFORE, the City 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:

"Affiliate" means any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Developer which, if the party is a limited liability company, partnership, or corporation, shall include each of the constituent members of the limited liability company, the general partners of a partnership, or the shareholders of a corporation, respectively thereof, or an entity in which Developer has an equity interest and is the managing member, managing partner or controlling shareholder. The term "control" as used in the immediately preceding sentence, means, with respect to a person that is a corporation, the right to the exercise, directly or indirectly, more than 50% of the voting rights attributable to the shares of the controlled corporation, and, with respect to a person 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.

"Affordability Period" means the period commencing upon the recordation of the Release of Construction Covenants and terminating on the twentieth (20th) anniversary thereof.

"Affordable Rent" means the amount of monthly rent, including a reasonable utility allowance, that does not exceed the maximum allowable rent to be charged by Developer and paid by Very Low Income Households occupying the ARPA Assisted Units, as determined and calculated pursuant to Section 92.252 of the HOME Regulations or any successor regulation during the ARPA Affordability Period. For purposes of calculating Affordable Rent a "reasonable utility allowance" shall be the allowance established by the Riverside County Housing Authority Utility Allowance Calculator.

"Agreement" means this American Rescue Plan Act Loan Agreement by and between City and the Developer, including the following, which are incorporated herein by this reference (i) the Recitals set forth herein; (ii) all attachments hereto, (iii) all agreements entered into in the form of an attachment hereto; (iv) all agreements delivered by Developer to the City in connection herewith; and (v) any amendments and modifications to any of the foregoing.

"Annual Reporting Forms" means such forms required by City to be submitted at least annually by Developer in connection with the Project, as such forms may be amended or revised by Authority from time to time, including without limitation a certification substantially in the form of the Annual Tenant Certification Form.

"Annual Tenant Certification Form" means the form attached as Attachment 12.

"ARPA-Assisted Units" means the twenty-five (25) units to be constructed on the Site to be restricted to Very Low Income Households for which all HOME Regulations apply, including without limitation, Affordable Rent, and HOME occupancy and monitoring requirements. Pursuant to Section 92.252(j) of the HOME Regulations, the ARPA-Assisted Units shall be a "floating" designation such that the requirements of this Agreement will be satisfied so long as the total number of ARPA-Assisted Units remains the same throughout the Affordability Period and each substituted ARPA-Assisted Unit is comparable in terms of size, features, and number of bedrooms to the originally designated ARPA-Assisted Units.

"ARPA 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 City, as Beneficiary, and to be recorded as a lien against the Site securing the ARPA Loan in accordance with the terms and conditions of this Agreement.

"ARPA Loan" means the loan of ARPA Program funds set aside for affordable housing activities to the Developer in an amount not to exceed Six Hundred Thousand Forty-Four Thousand Three Hundred Eighty-Four Dollars and Sixty-Five Cents ($644,384.65).

"ARPA Loan Documents" means the following documents evidencing the ARPA Loan and required as consideration for the City to make the ARPA Loan: (i) the ARPA Promissory Note; (ii) the ARPA Deed of Trust; (iii) the ARPA Regulatory Agreement; and (iv) this Agreement.

"ARPA Loan Proceeds" is defined in Section 3.2.4.

"ARPA Program" means the American Rescue Plan Act ("ARPA"), Public Law No. 117-2, was signed by President Joseph R. Biden on March 11, 2021, and authorized the Department of the Treasury ("Treasury") to disburse funds for the purposes set forth in subsection (d) of Section 3201 of the ARPA Act of 2021 and any guidance issued by Treasury regarding the Emergency Rental Assistance ("ERA2") program established under Section 3201 (the "Guidance")..

"ARPA Promissory Note" means the promissory note evidencing the ARPA Loan in substantially the form shown in Attachment No. 6 hereto.

"ARPA Regulations" mean the implementing regulations of the American Rescue Plan Act, Public Law No. 117-2, was signed by President Joseph R. Biden on March 11, 2021. as such regulations now exist and as may hereafter be amended, to the extent applicable to the Project.

"ARPA Regulatory Agreement" means the Regulatory Agreement (ARPA) in the form attached hereto as Attachment No. 8 that provides affordability restrictions for a period of not less than twenty (20) years as required under the ARPA Regulations.

"Capital Replacement Reserve" is defined in Section 6.8.

"City" means the City of Riverside, a California charter city and municipal corporation.

"City Manager" means the City Manager of the City or designated representative.

"Construction Contract" is defined in Section 5.1.7.

"Construction Loan" means the financing described in the Evidence of Financing referenced in Section 3.5 in such amounts as may be sufficient to construct the Project.

"Developer" means Riverside Housing Development Corporation a California nonprofit public benefit corporation, and any permitted successors and assigns pursuant to Section 2.3.4. of the Agreement.

"Disbursement Request" is defined in Section 3.2.4.

"Effective Date" means the date upon which this Agreement is executed by the City Manager.

"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" is defined in Section 9.1.

"Evidence of Financing" is defined in Section 3.1.

"Evidence of Insurance" is defined in Section 8.8.4.

"General Contractor" is defined in Section 4.3.6.

"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 Laws, labor relations, prevailing wage, notification of sale to employees, Hazardous Materials, occupational health and safety, water, earthquake hazard reduction and building and fire codes; and including the National

Environmental Policy Act (NEPA) and all Environmental Laws) bearing on the demolition, alteration, replacement, repair, refurbishing, improvement, construction, maintenance, management, use, or operation of the Project.

"Hazardous Materials" means any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Materials Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Materials), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated byphenyls, (viii) methyl tertiary butyl ether, (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Division 4, Chapter 20, (x) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq. (42 U.S.C. Section 6903) or (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sections 9601, et seq., but shall not include, minor quantities of building maintenance and cleaning products, construction products and landscape maintenance products as are customarily used, stored, handled, transported, treated and disposed of in compliance with Environmental Laws by owners and operators of properties similar to the Project.

"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.

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

"Household" means a household whose head, spouse, or sole member is a Qualifying Resident and every other member is a Qualified Permanent Resident or Permitted Health Care Resident, in accordance with this Agreement and all applicable federal and state laws governing the use and occupancy of the Project (including, without limitation, the Unruh Civil Rights Act, § 51 *et seq*. of the California Civil Code, and the Federal Fair Housing Act, 42 USC § 3607 *et seq*.).

"Housing Project Manager" means that person designated by the City Manager to manage affordable housing projects within the City of Riverside.

"HUD" means the United States Department of Housing and Urban Development.

"Low HOME Rent" means a monthly rent equal to the Low HOME Rent published annually by the HOME Program for the appropriate Unit size, as may be adjusted in accordance with the requirements of 24 CFR Section 92.252(b).

"Management Plan" means the plan for the management of the Project to be submitted by the Developer and approved by the City Manager, as set forth in Section 6.7.2.

"Notice" means a notice in the form prescribed by Section 10.1.

"Official Records" means the official records of the Riverside County Recorder's Office.

"Operating Reserve" is defined in Section 6.9.

"Parties" means the City and the Developer; "Party" means the City or the Developer.

"Permitted Health Care Resident" is defined in California Civil Code Section 51.11, as may be amended.

"Predevelopment Costs" means, consistent with those costs permitted by Section 92.206(a) of the HOME Regulations, the following: (i) costs incurred in connection with the plans and specifications and construction documents for the Project including, without limitation, all architectural, engineering, and other professionals' fees relating thereto, (ii) costs from obtaining construction permits, and (iii) costs related to obtaining entitlements and satisfying the legal requirements for the Project together with any other development approvals and permits necessary to pursue the Project, including, architectural, engineering, and professionals' fees relating thereto.

"Project" means predevelopment activities related to the Site, the rehabilitation of the Units, and any other activities undertaken in connection therewith.

"Project Budget" means the financial information attached as Attachment No. 5 hereto prepared by Developer, and any updates and amendments thereto, which sets forth Developer's representations to City as to the information set forth therein as of the Effective Date, including without limitation, the Project construction budget, estimated permanent and construction sources and uses of financing, and the Project's operating budget.

"Project Costs" means the Developer's construction expenses consistent with those permitted by Section 92.206(a) of the HOME Regulations which are customarily incurred and shall have been actually incurred by the Developer for the development of the Project and shall include: (i) construction costs, such as supervision, materials, supplies, labor, tools, equipment, transportation or other facilities furnished, used, or consumed in connection with the building of the Project, and (ii) Predevelopment Costs; provided, however, that payment to parties related to the Developer for Project Costs must not exceed reasonable and customary market rates.

"Project Description" means the scope of work for the Project set forth in Attachment No. 3.

"Property Manager" means the property manager engaged by Developer to manage the Site and approved by the City.

"Qualified Household" means a Very Low Income Household.

"Qualified Permanent Resident" is defined in California Civil Code Section 51.11, as may be amended.

"Qualifying Resident" is defined in California Civil Code Section 51.11, as may be amended.

"Qualified Tenant" means those individuals in a Qualified Household who meet all of the following requirements:

a. Upon execution of a lease with the Developer each member of the household will occupy the ARPA-Assisted Unit as his or her principal residence, and each member intends thereafter continuously to occupy such ARPA-Assisted Unit as his or her principal residence.

b. The household is qualified under the ARPA and HOME Regulations and is a Very Low Income Household.

c. The household has been selected in accordance with the Management Plan.

"Release of Construction Covenants" means the document which evidences the Developer's satisfactory completion of the development of the Site, as set forth in Section 5.1.11, in substantially the form of Attachment No. 10.

"Request for Notice of Default" means a request for notice of default to be recorded in accordance with Section 3.2.3 against the Site substantially in the form shown in Attachment No. 9.

"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 and the City. The City authorizes the City Manager to make such revisions to the Schedule of Performance as the City Manager 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, the 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 the 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 D 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 which is attached hereto as Attachment No. 1.

"State" means the State of California.

"Title Company" means Lawyer's Title, 3480 Vine Steet #300, Riverside, CA 92507, or other qualified title company to be reasonably approved by the City.

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

"Very Low Income" means a household with total annual household incomes certified to be at or below 50% of the Area Median Income for Riverside County, according to data published by HUD annually. 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.

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 City Manager.

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. Recitals and Attachments Incorporated; Attachments Additional Consideration

The Recitals are a substantive part of this Agreement and are hereby incorporated by this reference. All Attachments, as now existing and as the same may from time to time be amended or modified, are incorporated herein by this reference. Each Attachment or agreement delivered by Developer or another party substantially in the form of an Attachment hereto in connection with this Agreement is required as and constitutes consideration for City's obligations hereunder.

1.6. Effective Date

This Agreement shall become binding, and the rights and obligations herein shall vest with the respective Parties upon the Effective Date.

2. REPRESENTATIONS AND TRANSFERS

2.1. Representations by Developer

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

2.1.1. Organization

The Developer is a duly organized, validly existing nonprofit corporation in good standing under the laws of the State of California and has the power and authority to own and lease property and continue its business as now being conducted. The copies of the documents evidencing the organization of the Developer delivered to the City 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 the 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 the 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 which could materially adversely affect the ability of the Developer to carry out its obligations hereunder.

2.1.6. No Conflict

The 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 the Developer, or any provision of the organizational documents of the Developer, or will conflict with or constitute a breach of or a default under any agreement to which the Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of the 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 the Developer's knowledge, threatened against the Developer or any parties affiliated with the Developer, nor are any of such proceedings contemplated by the Developer or any parties affiliated with the Developer.

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

2.1.8. Project Budget

The Project Budget constitutes Developer's commercially reasonable representations with respect to the information set forth therein. To the best knowledge of Developer, there are no material omissions from or material misstatements in the Project Budget. Developer understands that the City is relying upon the accuracy of and the representations set forth in the Project Budget in agreeing to convey the Site.

2.1.9. Evidence of Financing

Upon Closing, and prior to commencement of construction activity, Developer represents and warrants (i) that it has provided the City with its best estimates, based upon reasonable inquiry, of commitments for financing of materials and labor in an amount sufficient to complete the Project based on the Project Budget, (ii) that such commitments are or will be in full force and effect, and (iii) Developer is in compliance in all material respects with all the requirements of such commitments and, to the best knowledge of Developer, there exists no default, or event which, upon the passage of time, would constitute a default under such commitments.

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

2.2. Representations by the City

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

2.2.1. Organization

The City is a California municipal corporation and charter city.

2.2.2. Authority

The City 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 City 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 City and all actions required under City'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.

2.2.3. 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 and delivered, will constitute when so executed and delivered, valid and binding obligations of City enforceable against it in accordance with their respective terms.

2.2.4. Contingent Obligations

The City 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 City to carry out its obligations hereunder.

2.2.5. Litigation

To the City'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 City 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 Developer which could materially adversely affect the ability of the City to carry outs its obligations hereunder.

2.2.6. No Conflict

City'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 City, or any provision of the organizational documents of City, or will conflict with or constitute a breach of or default under any agreement to which City is a party, or will result in the creation or imposition of any lien upon any assets or property of City, other than liens established pursuant hereto.

2.2.7. No City 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 City's knowledge, threatened against the City or any parties affiliated with City, nor are any of such proceedings contemplated by City or any parties affiliated with City.

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

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

2.3.1. Prohibition

The identity and qualifications of the Developer as an experienced and successful developer and operator/manager of affordable housing are of particular concern to the City. It is because of this identity and these qualifications that the City has entered into this Agreement with the Developer. Prior to the expiration of the Affordability Period, no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement by assignment or otherwise, nor shall the 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 the Developer without the prior written approval of the City, except as expressly set forth herein. Any purported transfer, voluntary or by operation of law, in violation of this Section 2.3 shall constitute a default hereunder and shall be void and the City shall have the cumulative options to terminate this Agreement and to seek all remedies available at law or equity.

2.3.2. Permitted Transfers by Developer

Notwithstanding any other provision of this Agreement to the contrary, the City 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 6.2 hereof and as set forth in the ARP Regulatory Agreement, the rental of the ARP-Assisted Units to Very Low Income Households;

iii. any requested assignment for financing purposes (subject to such financing being considered and approved by the City pursuant to Section 2.3 herein), including the grant of a deed of trust to secure funds necessary for construction and permanent financing of the Project;

v. grants of easements required for construction of the Project;

vi. the execution of a purchase option agreement and a right of first refusal agreement and the transfer under such agreement to Riverside Housing Development Corporation or an affiliate thereof;

vii. the transfer of the limited partner interest of Developer; or

viii the removal and replacement of the general partner of Developer by the limited partner of Developer in accordance with Developer's limited partnership agreement.

2.3.3. City Consideration of Requested Transfer

Except for a transfer permitted pursuant to Section 2.3.2, the Developer shall provide the City 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 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 council approval is required, forty-five (45) calendar days, after the receipt of the Developer's written request for the City approval of an assignment or transfer pursuant to this Section 2.3.3, the City shall respond in writing either approving the proposed assignee or transferee or requesting further information required by the City in order to determine whether or not to grant the requested approval. Upon receipt of such a request for further information, the Developer shall promptly furnish to the City such requested information.

An assignment or transfer approved by the City pursuant to this Section 2.3.3 shall not be effective unless and until the proposed assignee or transferee executes and delivers to the City an agreement in form reasonably satisfactory to the City's legal counsel assuming the obligations of the Developer under the ARPA Loan Documents. Thereafter, the assignor shall remain responsible to the City for performance of the obligations assumed by the assignee unless the City releases the assignor in writing.

2.3.4. Successors and Assigns

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

3. FINANCING OF THE PROJECT

3.1. Sources of Financing

The Parties anticipate that Project Costs shall be paid with the ARPA Loan and such other sources as set forth in this Section 3.

As a condition precedent to the City's obligation to disburse the ARPA Loan Proceeds, the Developer shall submit to the City Manager evidence that the Developer has obtained, or will obtain prior to the Closing, sufficient commitments for (a) financing the completion of the Project or (b) equity capital for completion of the Project, such that the City Manager is reasonably satisfied based upon the review and findings of the City's financial consultant that the Project can be rehabilitated and operated in accordance with this Agreement, that the City is not investing any more ARPA funds than are necessary for the Project, and that the Developer's profit or return on investment is appropriate and reasonable given the size, type, and complexity of the Project. Such evidence (collectively, "Evidence of Financing") shall include, at a minimum:

i. If the Project is financed by a third-party lender, final construction loan documents along with evidence reasonably satisfactory to the City Manager that the lender intends to execute the same and provide initial funding on the Closing. Any such agreement shall provide for notice of default to the City, and the right to cure required by Section 3.2.3.

ii. Evidence of such other loans or grants as may be required to pay (i) the amount of the "Construction Contract" (as defined in Section 5.1.7 below) for the Project, plus (ii) an amount equal to all consultant and loan fees, points, commissions, bond issuance costs, charges, furnishings, fixtures, taxes, interest, start-up costs, the Developer's overhead and administration, and other costs and expenses of developing and completing the Project.

iii. A copy of the most recently prepared Annual Financial Statement for the Developer.

A final Project Budget and Evidence of Financing, and such evidence as may be reasonably required to satisfy the City Manager that (a) the Developer has obtained sufficient financing to construct and operate the Project during the Affordability Period, (b) that the interest rate to be charged on any financing is commercially reasonable, and (c) that the Project is financially feasible and able to meet its financial obligations as required hereby and by any other agreements binding upon the Project, and in accordance with the Project Budget.

3.2. ARPA Loan

The City hereby agrees to loan to the Developer and the Developer hereby agrees to borrow the ARPA Loan in an amount not to exceed Six Hundred Forty-Four Thousand Three Hundred Eighty-Four Dollars and Sixty-Five Cents ($644,384.65) from the City pursuant to the terms and conditions of the ARPA Loan Documents.

3.2.1. Funding

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

3.2.2. Security for ARPA Loan; Nonrecourse Obligation After Completion of Construction

ARPA Loan shall be evidenced by the ARPA Promissory Note and shall be secured by the ARPA Deed of Trust. Following the recordation of the ARPA Release of Construction Covenants, the ARPA Loan shall constitute a nonrecourse obligation of the Developer such that the City shall resort only to the Site for repayment in the Event of Default by the Developer and the Developer shall have no further liability for repayment in the event the Site or portion thereof is foreclosed upon. Notwithstanding anything to the contrary herein, in no case shall the Developer's limited partners have any personal liability hereunder or under any of the other ARPA Loan Documents or be compelled to contribute additional capital to Developer.

3.2.3. Subordination

The City agrees to consider in good faith any other reasonable request by the Developer for subordination of the ARPA Deed of Trust to other loans obtained by the Developer pursuant to Section 3 where the City's interests are protected and secured. A Request for Notice of Default shall be recorded in the Official Records concurrent with any documents evidencing the subordination of the ARPA Loan.

The ARPA Regulatory Agreement shall not be subordinate to any other interest unless the City approves such subordination in writing, based upon evidence submitted by the Developer and/or lender that an economically feasible alternative method of financing on substantially comparable terms and conditions, but without subordination, is not reasonably available.

The subordination by the City pursuant to this Section 3.2.3 shall be made in accordance with a subordination agreement in the form and substance reasonably approved by the City's legal counsel which agreement shall include written commitments reasonably designed to protect the City's investment and covenants in the event of default, including, but not limited to, reasonable notice and cure rights ("Subordination Agreement").

3.2.4. Disbursement of ARPA Loan Proceeds

The proceeds of the ARPA Loan ("ARPA Loan Proceeds") shall be used for Project Costs as approved by the City.

Upon satisfaction of the conditions precedent to the disbursement of the ARPA Loan Proceeds set forth in Section 4, *et seq*., the proceeds shall be disbursed to the Developer not later than thirty (30) calendar days after receipt by the Housing Project Manager of a written disbursement request from the Developer (each, "Disbursement Request"). The Disbursement Request shall (a) set forth the amount of the requested disbursement of the ARPA Loan Proceeds specifically identify the nature of each expense for which the ARPA Loan Proceeds are being requested, by reference to items in the approved final Project Budget and Construction Contract, (b) identify the percentage of the Project that has been completed as of the date of the Disbursement Request, and (c) certify that all applicable conditions precedent to disbursement of the ARPA Loan Proceeds set forth in Section 4, *et seq*. have been and remain satisfied and that no Event of Default has occurred and is continuing under this Agreement. The City shall use commercially reasonable efforts to wire transfer such disbursements when requested by the Developer. All disbursements of the ARPA Loan Proceeds shall be recorded by the Housing Project Manager and acknowledged by the Developer.

3.2.4.1. Retention

Except as provided herein, as to each Disbursement Request made to the City for Project Costs, disbursements of ARPA 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 the Developer during the course of the Project. Upon satisfaction of the conditions set forth in Section 4.1, the City shall disburse ARPA 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 Development 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 for the Predevelopment Costs, disbursements of the ARPA 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 the Developer during the course of the Project.

3.3. Intentionally Omitted

3.4. Permanent Loan

The Parties acknowledge that the Construction Loan is anticipated to convert to a permanent loan on this Project ("Permanent Loan") in the anticipated amount of up to Six Hundred Forty-Four Thousand Three Hundred Eighty-Four Dollars and Sixty-Five Cents ($644,384.65).

3.5. Construction Loan

The Developer expects to obtain a commitment for a construction loan ("Construction Loan") in the amount of Six Hundred Forty-Four Thousand Three Hundred Eighty-Four Dollars and Sixty-Five Cents ($644,384.65).

3.6. Developer Financing

In the event that additional Developer financing is utilized, interest and fees shall not exceed reasonable and customary interest and fees for similar commercial loans.

3.7. 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 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 ("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, the Developer may request that the City provide additional funding for completion of the Project.

The City shall have forty-five (45) calendar days to consider and act upon such additional funding request. In the event that the City declines to provide a firm commitment by way of formal resolution to commit the necessary additional funds, the Developer may terminate this Agreement. In the event that the Developer desires to terminate the Agreement, the Developer shall promptly notify the City in writing of its intent. Notwithstanding the foregoing, the 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 Construction Loan and the ARPA Loan and recordation of the liens thereto, the Developer shall be solely responsible for all remaining Project Costs and shall be obligated to complete the Project substantially in accordance with this Agreement.

3.8. Obligation to Update Project Budget

The Developer shall update the Project Budget in the event of a proposed material change to the Project Budget that results in an increase or decrease in excess of Fifty Thousand Dollars ($50,000). In the event of a proposed material change to the Project Budget that results in an increase or decrease in excess of Fifty Thousand Dollars ($50,000), the Developer shall notify

the City 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. The City shall have the right to approve such change prior to the Developer taking any action in furtherance of such change.

4. ARPA LOAN DISBURSEMENTS/CONDITIONS PRECEDENT

4.1. Conditions Precedent to Disbursement of ARPA Loan Proceeds

All disbursements of ARPA Loan Proceeds shall be recorded by the Housing Project Manager and acknowledged by the Developer on "Exhibit 'A'" to the ARPA Promissory Note. The City shall authorize the disbursement of ARPA Loan Proceeds to or on behalf of the Developer for Project Costs only upon satisfaction of the conditions precedent set forth in Section 4, *et seq*.

4.1.1. Execution and Delivery of ARPA Loan Documents

The Developer shall have executed and delivered to the City this Agreement, the ARPA Regulatory Agreement, the ARPA Promissory Note, and the ARPA Deed of Trust.

4.1.2. Recordation and Priority of ARPA Regulatory Agreement

The ARPA Regulatory Agreement shall be executed and recorded as a lien against the Site before the liens of the ARPA Loan and shall be subordinate only to those liens permitted pursuant to Section 3.2.3.

4.1.3. Recordation of the City Deed of Trust

The ARPA Deed of Trust shall have been recorded as a lien against the Site and subordinate only to those liens permitted pursuant to Section 3.2.3.

4.1.4. Title Policy

Concurrently with the recordation of the ARPA Deed of Trust, the Title Company shall issue and deliver to the City a standard ALTA lender's policies of title insurance in an amount equal to the ARPA Loan, together with such endorsements as requested by the City, insuring that a fee simple interest in the Site is vested in the Developer identified in the ARPA Deed of Trust or its affiliated entity and that the priority of the ARPA Deed of Trust and the ARPA Regulatory Agreement are consistent with Section 4.1.2 and Section 4.1.3. The Title Company shall provide the Developer with copies of such title policy. The Title Company shall, if requested by either the City, provide any extended coverage and any endorsements reasonably requested by the City (collectively, "Additional Endorsements"). The Developer shall pay the cost of such title policies.

4.1.5. Valid Interest

The Developer shall have a good and valid fee simple interest, and except as expressly provided for herein, 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 any other matters approved in writing by the City in its reasonable discretion.

4.1.6. Evidence of Financing; Analysis

Parties acknowledge that the City is required to undertake a subsidy layering and underwriting analysis of the Project to ensure that the City does not invest any more ARPA funds than are necessary to the Project and to ensure that the Developer's profit or return on investment is appropriate and reasonable, given the size, type, and complexity of the Project. ARPA funds shall not be committed until the City Manager, or his designee, has approved the Evidence of Financing and subsidy layering and underwriting analysis in accordance with Section 3.1.

4.1.7. Evidence of Insurance

The Developer shall have furnished the City with proper evidence of insurance as required by Section 5.2.

4.1.8. Construction Contracts

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

4.1.9. Construction Bonds; Completion Guaranty

Construction Bonds and Completion Guaranties are not required for this Project.

4.1.10. Environmental Compliance

All Governmental Requirements including all Environmental Laws 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, the California Environmental Quality Act, Public Resources Code Section 21000, *et seq*., and Section 92.352 and 92.355 of the HOME Regulations, shall have been satisfied if and to the extent such satisfaction is required prior to disbursement of ARPA Loan Proceeds. The City shall have conducted its environmental review in accordance with 24 CFR Part 58 before any ARPA Loan Proceeds are released to the Developer.

4.1.11. Evidence of Eligible Project Costs

The Developer shall have submitted to the City paid invoices, receipts, canceled checks or other written documentation reasonably satisfactory to the City Manager, or his designee, evidencing the Developer's expenditure for Project Costs. The Developer shall have submitted a written request for payment to the City in the form of the Disbursement Request as provided in Section 3.2.4.

4.1.12. Inspection of Work

The City or its agent(s) shall have inspected the work for which the Disbursement Request is being requested and shall have determined, within seven (7) business days of receipt of a complete Disbursement Request that (a) such work has been completed

substantially in accordance with this Agreement, the Project Description, and the approved Development Plans, (b) the amount requested for each line item corresponds to the percentage of work completed for such item, (c) there are adequate funds remaining from the ARPA Loan Proceeds (and other approved funding sources, if applicable) to complete the development and pay all remaining unpaid Project Costs, (d) the development work for which payment is being requested has been completed in a good and workmanlike manner in accordance with the standards of the construction industry, and (e) the expenses are in accordance with the approved final Project Budget and Construction Contract (including approved change orders).

4.1.13. No Default

There shall exist no condition, event or act which would constitute an Event of Default by the Developer (as defined in Section 9.1) hereunder or which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default by the Developer.

4.1.14. Representations and Warranties

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

4.2. Conditions Precedent to Disbursement of Retention

Upon satisfaction or waiver of the conditions precedent set forth below, as reasonably determined by the City Manager, the City shall disburse the retention withheld pursuant to Section 3.2.4.1 ("Retention").

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

4.2.1. Compliance With Previous Conditions

The Developer shall be in compliance with the conditions precedent to disbursement of the ARPA Loan Proceeds set forth in Section 4.1.

4.2.2. 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 Improvements 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 (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) Thirty-Five (35) calendar 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) Ninety-five (95) calendar 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) The City shall be satisfied that no mechanic's or materialman's lien will impair its interest in the Site, the City hereby agrees to consider that a CLTA Form No. 101.1 Endorsement to the Title Policy, in form and substance reasonably satisfactory to the City, may satisfy the requirement of this subparagraph (iii).

d. The City 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. The City has issued and the Developer has recorded a Release of Construction Covenants.

4.3. Conditions Precedent to Developer's Commencement of the Development

The Developer shall only commence development of the Site upon the prior satisfaction by the Developer or waiver by the City of the following conditions precedent, each of which, if it requires action by the Developer, shall also be a covenant of the Developer:

4.3.1. Approved Final Project Budget

The Developer shall have submitted to the City for its approval an updated and final pro forma and detailed final Project Budget for the development (consistent with the Project Description), and the City shall have approved the final Project Budget in the City's reasonable discretion. The use of the ARPA Loan Proceeds shall be consistent with the approved final Project Budget.

4.3.2. Recordation

The City shall have recorded or confirmed the recordation (if previously recorded) of the ARPA Regulatory Agreement and the ARPA Deed of Trust.

4.3.3. Environmental Compliance

All Governmental Requirements including all Environmental Laws 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, the California Environmental Quality Act, Public Resources Code Section 21000, *et seq*., and Section92.352 and 92.355 of the HOME Regulations, shall have been satisfied if and to the extent such satisfaction is required prior to disbursement of the ARPA Loan Proceeds. The City shall have conducted its environmental review in accordance with 24 CFR Part 58 before any ARPA Loan Proceeds are released to the Developer.

4.3.4. Environmental Condition

The environmental condition of the Site shall be reasonably acceptable to the Developer.

4.3.5. Management Plan

The Developer shall have submitted to the City, and the City shall have approved, the Management Plan for the Project, including without limitation, the tenant selection criteria hereinafter described.

4.3.6. Approval of Development Plans, Construction Contract, and General Contractor

The City shall have approved the Development Plans for the Site prepared and submitted by the Developer as being in substantial conformity with the Project Description, this Agreement, and the City of Riverside Municipal Code ("Riverside Municipal Code"), all pursuant to the City's procedures set forth in more detail in Section 5.1. In addition, the Developer shall have submitted to the City detailed information regarding its methodology for the abatement of asbestos, lead based paint, and other required Hazardous Substances remediation at the Site, if any, and such methodology shall be reasonably satisfactory to the City. In the time set in the Schedule of Performance, the Developer shall have submitted a true and complete copy of the Construction Contract to the City and both the Construction Contract and the identity of the General Contractor ("General Contractor") as well as all engineers and architects shall be reasonably acceptable to the City.

4.3.7. Building Permits

The Developer shall have obtained all Building Permits and other permits required for the Project, and shall have provided true, correct and complete copies of all such Building Permits to the City. The Developer shall not commence any portion of the development until all applicable Building Permits and other permits required for such portion of the development have been obtained, with true, correct and complete copies of such Building Permits delivered to the City.

(a) The Developer acknowledges and agrees that the Development Plans shall be subject to the City's normal development services, planning, and building review process, as applicable.

(b) To the extent any decision relating to such permits is a discretionary decision of the City or any of its commission(s), administrator(s), or employee(s), then this Agreement does not, nor shall it be construed to, pre-approve any discretionary decision relating to any Building Permit or other approval necessary to commence and complete the development of the Site.

4.3.8. Pre-Construction Meeting of General Contractor, City Representative(s) and Developer

The Developer shall have attended pre-construction meeting(s) or conference(s) as arranged by the City among General Contractor, the Developer, and the City staff relating to the commencement of the development, compliance with the Section 3 Clause (as required and hereinbefore described), and other issues related to undertaking and completing the development in conformity with this Agreement and all applicable local, state, and federal laws.

4.3.9. Lease Agreement

The Developer shall have submitted to the City and the City shall have approved the standard form lease/rental agreement in conformance with the ARPA Regulatory Agreement for rental of the ARPA-Assisted Units to eligible tenants in accordance with the terms of this Agreement.

4.3.10. Insurance

The Developer shall have furnished the City with proper evidence of insurance as required by Section 8.8.

4.3.11. Representations and Warranties

The representations and warranties of the Developer contained in this Agreement shall be correct in all material respects as of the commencement of the development as though made on and as of that date, and the City shall have received a certificate to that effect signed by an authorized officer of the Developer.

4.3.12. No Default

No Event of Default by the Developer shall have occurred, and no event shall have occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default by the Developer, and the City shall have received a certificate to that effect signed by an officer of the Developer.

5. DEVELOPMENT OF THE SITE

5.1. Scope of Work

The Developer shall construct the Project substantially in accordance with the attached Project Description (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 this Section, 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.

Project construction may be phased. Notwithstanding the foregoing, the Project shall be completed by the time established therefore in the Schedule of Performance.

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 shall reasonably cooperate and assist Developer's efforts to comply with this Section, 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 City or the City.

5.3. Defects in Plan

Neither the City nor the City 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. The Developer shall hold harmless, indemnify and defend the City and the City 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. Intentionally Omitted

5.5. Construction of the Project

The cost of planning, designing, developing and constructing the Project, and any demolition and removal of any existing structure or Site improvements, Site remediation and Site preparation costs, shall be borne solely by the Developer.

Developer may act as the general contractor. Developer shall have submitted to City, and City 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 Sections 33422.1 and 33422.3.

During construction of the Project, Developer covenants and agrees that it shall provide City with copies of the minutes of each Construction Loan draw meeting within ten (10) days of such meeting.

5.6. Design; Architectural Quality

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 constructing 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.

Developer further acknowledges and understands that the materials, workmanship, finish, design, components and general architectural quality of the Project will have a significant and continuing impact on the surrounding community and that the City's agreement to participate in assisting this Project is based upon Developer's representation that the Project will be of high quality in design, construction and finish. Accordingly, Developer understands and agrees that it will be required to develop the Site (i) by means of materials, workmanship and an overall design that will result in a residential development that is of high quality and of benefit to the Site and the community, and (ii) in accordance with applicable design guidelines. Developer assumes all responsibility for the design and construction of, and shall let contracts for (or cause contracts to be let for), the construction of the Project. The City shall not be responsible to 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.

Developer shall use commercially reasonable best efforts to cause, and its written agreements with the architect for the Project shall require, that the architect supervise the construction of the Project, attend all draw meetings, and sign off on all change orders and construction draws with respect to the Project. Developer shall provide City with copies of all written agreements with the architect and any amendments or modifications thereto.

5.7. Construction Schedule

Subject to Section 9.7, the Developer shall commence and complete all development activities within the times established therefore in the Schedule of Performance.

5.8. Insurance

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

The obligations set forth in this Section shall remain in effect only until a Release of Construction Covenants has been furnished to the Developer as provided in Section 5.16.

5.9. Reserved

5.10. Other Governmental City Permits and Environmental Compliance

Before commencement of demolition activities or 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 Resource 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 and City shall then negotiate in good faith to restructure the Project in a manner that may reduce the environmental impacts of the projects.

5.11. Rights of Access

In order to assure compliance with this Agreement, representatives of the City 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 City representatives comply with all safety rules. City representatives shall, except in emergency situations, notify the Developer prior to exercising its rights pursuant to this Section.

5.12. Federal, State, and Local Laws

5.12.1. Labor Standards

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

5.12.2. 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. Section 12101, et seq., Government Code Section 4450, et seq., and Government Code Section 11135, et seq.

5.12.3. 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, sex,

gender, gender identity, gender expression, marital status, national origin, ancestry or military and veterans status.

5.13. 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 to the satisfaction thereof within a reasonable time.

5.14. 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 demand, whichever last occurs:

(a) pay and discharge the same; or

(b) effect the release thereof by recording and delivering to the City a surety bond in sufficient form and amount, or otherwise; or

(c) provide such other assurances, which the City 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 City from the effect of such lien or bonded stop notice.

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

5.15.1. 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 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 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, which approval the City shall not unreasonably withhold provided that (i) such conveyance of 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 approval shall not be required for any financing after the issuance of a Release of Construction Covenants for the Project, as specified in Section 5.16.

5.15.2. 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.

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

Whenever the City 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 satisfaction within sixty (60) days from the date of such notice, the City 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 a subordination agreement with a senior lender, each such holder shall (insofar as the rights granted by the City 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. 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 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 5.16.

5.15.4. Failure of Holder to Complete Project

Except as otherwise agreed to in a subordination agreement with a senior lender, in any case where, thirty (30) days after the holder of any mortgage or deed of trust creating a lien or encumbrance upon the Site or any part thereof receives notice of default by the Developer in connection with the construction of the Project under this Agreement, and such holder has not exercised the option to construct as set forth in Section 5.15.2, or if it has exercised the option and has not proceeded diligently with construction, or to obtain title after institution of foreclosure or trustee's sale proceedings, the City may purchase the mortgage or deed of trust by payment to the holder of the amount of the unpaid mortgage or deed of trust debt, including principal and interest and all other sums secured by the mortgage or deed of trust. If the ownership of the Site or any part thereof has vested in the holder by virtue of a deed in lieu of foreclosure, the City, if it so desires, shall be entitled to a conveyance from the holder to the City, upon payment to the holder of an amount equal to the sum of the following items through (v) less any income derived by the lender from operations conducted on the Site (the receipt of principal and interest payments in the ordinary course of business shall not constitute income for the purposes of this Section):

(a) The unpaid mortgage or deed of trust debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

(b) All expenses with respect to foreclosure;

(c) The net expense, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Project or part thereof; and

(d) The costs of any improvements made by such holder; and

(e) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the City.

5.15.5. Right of the City to Cure Mortgage or Deed of Trust Default

Except as otherwise agreed to in a subordination agreement with a senior lender, 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 City of the Release of Construction Covenants in accordance with Section 5.16, the Developer shall immediately deliver to the City 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 City shall have the right, but not the obligation to cure the default. In such event, the City shall be entitled to reimbursement from the Developer of all proper costs and expenses incurred by the City in curing such default. Such costs and expenses incurred by the City 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.

In furtherance of this Section, every subordination agreement entered into by and between the City and senior lien holder pursuant to this Section shall include an acknowledgment and agreement by the senior lien holder to provide notice of Developer's default to the City.

5.15.6. Right of the City to Satisfy Other Liens on the Site After Title Passes

Subject to the rights of any senior lender, prior to the issuance by the City of the Release of the Construction Covenants in accordance with Section 5.16 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 City 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.

5.16. Release of Construction Covenants

Promptly after completion of the Project in conformity with this Agreement, the City shall furnish the Developer with a "Release of Construction Covenants" upon written request therefor by the Developer. The City 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. 11). 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 Notice of Affordability Restrictions and City 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 City refuses or fails to furnish the Release of Construction Covenants, after written request from the Developer, the City shall, within thirty (30) days of written request therefor, provide the Developer with a written statement of the reasons the City refused or failed to furnish the Release of Construction Covenants. The statement shall also contain the City's opinion of the actions the Developer must take to obtain the Release of Construction Covenants. If the City 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 City and the City 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 Covenants is not a notice of completion as referred to in California Civil Code Section 3093.

6. AFFORDABLE HOUSING COVENANTS; MAINTENANCE, PROPERTY MANAGEMENT, OPERATION OF PROJECT

The Developer will manage the Site in a prudent and businesslike manner, consistent with property management standards for other comparable first quality, well-managed rental housing projects in Riverside, California. Accordingly, the Project shall be subject to, and the Developer shall in its administration of the Project comply with the forgoing covenants, maintenance and operation of the Site.

6.1. Duration of Affordability Requirements; Affordability Period

The ARPA-Assisted Units shall be subject to the requirements of this Section 6 for the full term of twenty (20) years from the date the Release of Construction Covenants is recorded against the Site.

6.2. Tenant Selection Covenants

6.2.1. Selection of Qualified Tenants

The Developer shall be responsible for the selection of Qualified Tenants for the ARPA-Assisted Units in compliance with the ARPA Program, and all lawful and reasonable criteria, as set forth in the Management Plan that is required to be submitted to and approved by the City pursuant to this Agreement. To the extent ARPA-Assisted Units are available, the Developer shall not refuse to lease to a holder of a certificate of family participation under 24 CFR Part 882 (Rental Certificate Program) or a rental voucher under 24 CFR Part 887 (Rental Voucher Program) or to the holder of a comparable document evidencing participation in a HOME Program, Section 8 program or other tenant-based assistance program solely on the basis

of such certificate, voucher, or comparable document, who is otherwise qualified to be a tenant in accordance with the approved tenant selection criteria. Notwithstanding anything to the contrary in this Agreement, the Developer's selection of tenant households to occupy the ARPA-Assisted Units shall be performed in accordance with all applicable fair housing laws.

To the extent not prohibited by any applicable Governmental Regulations, preference shall also be given to tenant applicants residing in the vicinity of the Project first, then to tenant applicants currently residing within the City limits, and finally to tenant applicants in which a member of the household is employed in a business whose principal place of business is within the City limits. The tenant selection criteria shall be subject to Authority's approval or disapproval thereof in writing. In addition, the tenant selection policies and criteria shall:

(1) Be consistent with the purpose of providing housing for Qualified Tenants;

(2) Be reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease;

(3) Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

(4) Give prompt written notification to any rejected applicant of the grounds for any rejection.

In addition, and to the extent not prohibited by any applicable Governmental Regulations, preference shall also be given to tenant applicants residing and/or working in the vicinity of the Project first and then within the City limits.

In connection with its Qualified Tenant selection process, Developer agrees to obtain criminal background checks on all tenant applicants in accordance with all applicable Governmental Regulations. Developer shall determine, in accordance with all applicable Governmental Regulations, whether or not the tenant applicant's arrest and/or conviction record, if any, warrants denial of such tenant's application. Developer shall maintain or destroy the results of such criminal background checks in accordance with all applicable Governmental Regulations.

6.2.2. Income and Occupancy Restrictions

As included in the annual income certification provided by the Developer or as otherwise reasonably requested by the City, the Developer shall endeavor to make available for the City's review and approval such information as the Developer has reviewed and considered in its selection process, together with the statement by the Developer that the Developer has determined that each selected tenant will comply with all applicable terms and conditions of this Agreement in each tenant's occupancy of a ARPA-Assisted Unit, including without limitation, that each corresponding household satisfies the income eligibility requirements, Affordable Rent requirements, and other requirements of this Agreement.

In this regard, the Developer covenants and agrees that (i) each tenant of a ARPA-Assisted Unit shall and will be a Very Low Income Household as defined herein, (ii) the cost to each tenant household for the corresponding ARPA-Assisted Unit on the Site shall be at and within the defined Affordable Rent for Very Low Income Households, (iii) each tenant household shall meet Housing Quality Standards (HQS) (24 CFR 982.401) occupancy standards

for the ARPA-Assisted Unit, and (iv) the occupancy and use of the Site shall comply with all other covenants and obligations of this Agreement (collectively, "Tenant Selection Covenants").

6.3. Income Certification Requirements

Upon the initial occupancy of the ARPA-Assisted Unit, and annually thereafter (on or before April 30th of each year), the Developer shall submit to the City, at the Developer's expense, a written summary of the income, household size and rent payable by each of the tenants of the ARPA-Assisted Unit. At the City's request, but not less frequently than prior to each initial and subsequent rental of each ARPA-Assisted Unit to a new tenant household and annually thereafter, the Developer shall also provide to the City completed income computation, asset evaluation, and certification forms for any such tenant or tenants, which forms shall be reasonably acceptable to the City. The Developer shall obtain or shall cause to be obtained by the Property Manager, an annual certification from each household leasing a ARPA-Assisted Unit demonstrating that such household is a Very Low-Income Household and meets the eligibility requirements established for the ARPA-Assisted Unit. The Developer shall verify, or shall cause to be verified by the Property Manager, the income certification of each tenant household. This requirement is in addition to and does not replace or supersede the Developer's obligation to annually submit to the City the documentation necessary to certify compliance with the HOME Program ("Certificate of Continuing Program Compliance").

6.3.1. Verification of Income of New and Continuing Tenants

Gross income calculations for prospective (and continuing) tenants shall be determined in accordance with Section 92.203 and 92.252(h) of the HOME Regulations. The Developer shall verify the income and information provided in the income certification of the proposed tenant as set forth below.

(a) The Developer shall verify the income of each proposed tenant of the ARPA-Assisted Units pursuant to the Tenant Selection Covenants set forth in Section 6.2 herein, and by at least one of the following methods as appropriate to the proposed tenant:

(i) obtain two (2) paycheck stubs from the person's two (2) most recent pay periods.

(ii) obtain three (3) months of bank statements for each adult household member.

(iii) obtain a true copy of an income tax return from the person for the most recent tax year in which a return was filed.

(iv) obtain an income verification certification from the employer of the person.

(v) obtain an income verification certification from the Social Security Administration and/or the California Department of Social Services if the person receives assistance from such agencies.

(vi) obtain an alternate form of income verification reasonably requested by the City, if none of the above forms of verification is available to the Developer.

6.4. Affordable Rent

6.4.1. Maximum Monthly Rent

The maximum monthly rent chargeable for the ARPA-Assisted Units shall be annually determined by the City in accordance with the following:

(i) for a Very Low-Income Household, the Low HOME Rent.

For purposes of calculating Affordable Rent a "reasonable utility allowance" shall be the allowance established by the, the Riverside County Housing Authority Utility Allowance Calculator, if applicable.

For purposes of this Agreement, "Affordable Rent" means the total of monthly payments for (a) use and occupancy of each ARPA-Assisted Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by the Developer which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, or cable TV or internet services, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than the Developer.

Additionally, following the foreclosure (or deed-in-lieu) of the Construction Loan or Permanent Loan, the rents and income levels of the Affordable Units in the Project shall be automatically increased to the extent allowed by HOME Regulations.

6.4.2. Annual Rent Adjustment

The City will review and approve the Affordable Rents proposed by the Developer for the ARPA-Assisted Units together with the monthly allowances proposed by the Developer for utilities and services to be paid by the tenant. The Developer must annually reexamine the income of each tenant household living in the ARPA-Assisted Units in accordance with Section 6.3.1. The maximum monthly rent must be recalculated by the Developer and reviewed and approved by the City annually and may change as changes in the applicable gross rent amounts, the income adjustments, or the monthly allowance for utilities and services warrant. Any increase in rents for the ARPA-Assisted Units is subject to the provisions of outstanding leases. The Developer must provide all tenants with not less than thirty (30) calendar days prior written notice before implementing any increase in rents.

6.4.3. Increases in Tenant Income

Units shall qualify as ARPA-Assisted Units as required despite a temporary noncompliance with this Section 6.4 if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this Section until the noncompliance is corrected.

A household occupying a ARPA-Assisted Unit whose income increases to an amount that exceeds the maximum qualifying income of a Qualified Tenant may continue to occupy his or her ARPA-Assisted Unit subject to the requirements of Section 92.252(i) of the

HOME Regulations. Notwithstanding the foregoing, a Qualified Tenant's rent shall not be increased by more than 30% of the Qualified Tenant's annual income less allowable utility allowances.

6.4.4. Most Restrictive Affordable Rent Covenants Govern

To the extent of an inconsistency between or among the foregoing covenants relating to Affordable Rent and other covenants or agreements applicable to the Site, the most restrictive covenants or agreement regarding the Affordable Rent for the ARPA-Assisted Units in the Site shall prevail.

6.5. Lease Agreements for ARPA-Assisted Unit

The Developer shall submit a standard lease form, which shall comply with HOME Regulations (including Section 92.253), and all requirements of this Agreement, to the City for approval. The City shall reasonably approve such lease form upon finding that such lease form is consistent with this Agreement and contains all of the provisions required pursuant to the HOME Program and the HOME and ARPA Regulations. The Developer shall enter into a written lease, in the form approved by the City, with each tenant/tenant household of a ARPA-Assisted Unit. No lease shall contain any of the provisions that are prohibited pursuant to Section 92.253 of the HOME Regulations.

6.6. Maintenance

6.6.1. General Maintenance

The Developer shall maintain the Site and all improvements thereon, including lighting and signage, in good condition, free of debris, waste and graffiti, and in compliance with the Riverside Municipal Code and HUD's Uniform Physical Conditions Standards ("UPCS", 24 CFR, Part 5 and 200). The Developer shall maintain the improvements and landscaping on the Site in accordance with the Maintenance Standards (as hereinafter defined). Such Maintenance Standards shall apply to all buildings, signage, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Site and any and all other improvements on the Site. To accomplish the maintenance, the Developer shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement. The Developer and its maintenance staff, contractors or subcontractors shall comply with the following standards (collectively, "*Maintenance Standards*"):

(a) The Site shall be maintained in conformance and in compliance with the approved Development Plans, as finalized, and reasonable maintenance standards for comparable first quality affordable housing projects, including but not limited to painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curbline. The Site shall be maintained in good condition and in accordance with the custom and practice generally applicable to comparable first quality affordable apartment complexes in the City.

(b) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning;

trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(c) Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

The City agrees to notify the Developer in writing if the condition of the Site does not meet with the Maintenance Standards and to specify the deficiencies and the actions required to be taken by the Developer to cure the deficiencies. Upon the Developer's written receipt of notification of any maintenance deficiency, the Developer shall have thirty (30) calendar days within which to correct, remedy or cure the deficiency, or if the maintenance deficiency cannot be corrected, remedied, or cured within a thirty (30) day period, the Developer will have a longer period of time as is reasonable provided that the Developer commences to correct, remedy or cure the maintenance deficiency within the thirty (30) day period and completes the correction, remedy, or cure of the deficiency within sixty (60) days or within the period of time otherwise agreed to by the Parties in writing. If the written notification states the problem is urgent relating to the public health and safety of the City, then the Developer shall have forty-eight (48) hours to rectify the problem. In the event the Developer does not maintain the Site in the manner set forth herein and in accordance with the Maintenance Standards, the City shall have, in addition to any other rights and remedies hereunder, the right to maintain the Site, or to contract for the correction of such deficiencies, after written notice to the Developer, and the Developer shall be responsible for the payment of all such costs incurred by the City.

6.7. Management of the Project

6.7.1. Property Manager

Developer may contract with a third party for property maintenance services but shall be responsible for the costs associated therewith.

6.7.2. Management Plan

Prior to the initial or any subsequent disbursement of the ARPA Loan Proceeds, the Developer shall prepare and submit to the City for review and approval an updated and supplemented management plan which includes a detailed plan and strategy for long term operation, maintenance, repair, security, social/supportive services for, and marketing of the Project, method of selection of tenants, rules and regulations for tenants, and other rental and operational policies for the Project ("Management Plan"). The Management Plan shall include a plan for publicizing the availability of the ARPA-Assisted Units 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. Following the approval of the Management Plan shall not be unreasonably withheld or delayed. Subsequent to

approval of the Management Plan by the City the ongoing management and operation of the Project shall comply with the approved Management Plan. The Developer may from time to time submit to the City proposed amendments to the Management Plan, which are also subject to the prior written approval of the City.

6.8. Capital Replacement Reserve Requirements

The Developer shall set aside an amount equal to Two Hundred Fifty Dollars ($250) per Unit per year ("Capital Replacement Reserve"). 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. The Developer, at its expense, shall submit to the Housing Project Manager annually an accounting for the Capital Replacement Reserve. The City approval is not required for withdrawals from the Capital Replacement Reserve in accordance with this Agreement or any senior lender's requirements. Not less than once per year, the Developer, at its expense, shall submit to the City an accounting for the Capital Replacement Reserve, preferably set forth in an annual financial statement, demonstrating compliance with this Section 6.8.

6.9. Operating Reserve Requirements

The Developer shall not be required to set aside any Operating Reserves for this Project.

6.10. Operating Budget

The Developer shall submit to the City on not less than an annual basis the Operating Budget for the Project that sets forth the projected Operating Expenses for the upcoming year. The City shall not unreasonably withhold, condition, or delay the City's approval of the annual Operating Budget, or any amendments thereto.

6.11. Monitoring and Recordkeeping

The Developer shall comply with all applicable recordkeeping and monitoring requirements set forth in the HOME Program, including Section 92.508 of the HOME and ARPA Regulations, and as further set forth in ARPA Documentation, Recordkeeping, Reporting and Monitoring Requirements attached hereto as Attachment No. 11. Developer shall further annually complete and submit to the City substantially in the form of Attachment No. 12 or such other form approved by the City. Representatives of the City shall be entitled to enter the Site, upon at least forty-eight (48) hours' notice, to monitor compliance with this Agreement, to inspect the records of the Project, and to conduct an independent audit or inspection of such records. The Developer agrees to cooperate with the City in making the Site and all ARPA-Assisted Units thereon available for such inspection or audit. The Developer agrees to maintain records in a businesslike manner, to make such records available to the City upon seventy-two (72) hours' prior written notice, and to maintain such records for not less than five (5) years after completion of the Project.

6.12. ARPA Regulatory Agreement

The requirements of this Agreement that are applicable after the completion of the development are set forth in the ARPA Regulatory Agreement. The execution and recordation of the ARPA Regulatory Agreement is a condition precedent to the initial or any subsequent disbursement of the ARPA Loan Proceeds.

6.13. Successors and Assigns

All of the terms, covenants and conditions of this Agreement shall be binding upon the Developer and its permitted successors and assigns. Whenever the term "Developer" is used in this Agreement, such term shall include any other permitted successors and assigns of the Developer, as applicable, and as herein provided.

7. ARPA PROGRAM LIMITATIONS; COMPLIANCE WITH LAWS

7.1. ARPA Program

Because the ARPA Loan to the Developer will be provided with ARPA Program funds, the Developer shall carry out the development of the ARPA-Assisted Units and the operation of the Site in conformity with all requirements of the HOME Program. In the event the Developer desires to change the affordable housing or maintenance requirements for the Site from the specific requirements set forth in this Agreement in order to comply with a subsequently enacted amendment to the HOME Program, the Developer shall notify the City in writing of such proposed change and the amendment related thereto at least thirty (30) calendar days prior to implementing such change. In the event the City disapproves of such change and the Developer's interpretation of the amendment related thereto, the City shall notify the Developer of its disapproval in writing and the parties shall seek clarification from the appropriate HUD Field Office. Only if HUD concurs with the Developer's interpretation of the HOME Program shall the Developer be permitted to implement the proposed change.

7.2. HOME and ARPA Laws and Regulations

The Developer shall comply with all applicable laws and regulations governing the HOME Program and the use of the ARPA Loan, including but not limited to, the requirements set forth in the ARPA Regulatory Agreement. In the event of any conflict between this Agreement and applicable laws and regulations governing the HOME Program and the use of the ARPA Loan Proceeds, the applicable HOME Program laws and regulations shall govern. The Developer agrees to enter into any modification of this Agreement and/or the ARPA Regulatory Agreement reasonably required by the City to attain compliance with the requirements of the HOME Program. The Developer acknowledges and agrees that it has received and reviewed a copy of the regulations regarding the HOME Program in effect as of the date of execution of this Agreement.

7.3. Specific Requirements

The laws and regulations governing the HOME and ARPA Program and the use of the ARPA Loan include (but are not limited to) the following, as may be amended from time to time:

7.3.1. Miscellaneous Federal Mandates

i. Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-20 (Public Law 90-284) and implementing regulations at 24 CFR Part 107;

ii. Executive Order 11063 and regulations at 24 CFR Part 107;

iii. Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and regulations at 24 CFR Part 107;

iv. The Age Discrimination Act of 1975, 42 U.S.C. 6101-07, and regulations at 24 CFR Part 146;

v. Executive Order 12372 and implementing regulations at 24 CFR Part 52, regarding intergovernmental review of federal programs;

vi. Flood Disaster Act of 1973, 42 U.S.C. 4001, *et seq*.;

vii. Drug Free Workplace Act of 1988, P.L. 100-690, Title V, Subtitle D.

viii. The Fair Housing Act (42 U.S.C. 3601-3620)(Pub. L. 90-284) as it ensures fair housing practices and prohibits housing discrimination based on race, color, religion, sex, national origin, disability, or familial status;

ix. Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto at 24 CFR Section 470.601 as it relates to prohibiting discriminatory actions in activities funded by Community Development Funds;

x. Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086 and 12107 (Equal Employment Opportunity) and implementing regulations issued at 41 CFR Chapter 60 and Section 3 of the Housing and Urban Development Act of l968 (12 U.S.C. 1701u), as amended and implementing regulations at 24 CFR Part 135 as they relate to equal employment opportunities;

xi. Executive Orders 11625 and 12432 (concerning minority business enterprise) and 12138 (concerning women's business enterprise) to encourage the use of women and minority owned businesses to the maximum extent possible.

xii. "Federal Funding Accountability and Transparency Act" means that information about Project HOME funding will be posted on www.USASpending.gov, a federally maintained website that is open to public access utilizing information that shall be provided by the Developer as required by the City.

xiii. The applicable policies, guidelines, and requirements of OMB Circulars Nos. A-87, A-102 (Revised), A-110, A-122, and A-128, or successor regulations.

7.3.2. Environment and Historic Preservation

Section 104(f) of the Housing and Community Residence Act of 1974 and 24 CFR Part 58, which prescribe procedures for compliance with the National Environmental

Policy Act of 1969 (42 U.S.C. 4321-4361), and the additional laws and authorities listed at 24 C.F.R. 58.5.

7.3.3. Architectural Barriers

The requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4l5l-4l57).

7.3.4. Americans With Disabilities Act

The requirements of the Americans with Disabilities Act (42 U.S.C 12131; 47 U.S.C. 155, 201, 218 and 255) which protects the comprehensive civil rights of individuals with disabilities.

7.3.5. Relocation

The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601-4655), and similar state laws. If and to the extent that development of the Project results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then the Developer shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance and payment of monetary benefits. The Developer shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws.

7.3.6. Disabled Discrimination

The requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), and federal regulations issued pursuant thereto (24 CFR Part 8), which prohibit discrimination against the disabled in any federally assisted program.

7.3.7. Future HOME and ARPA Regulations

Any other U.S. Department of Housing and Urban Development regulations currently in effect or as may be amended or added in the future pertaining to the HOME Program.

7.3.8. Ineligible Contractors

Use of debarred, suspended, or ineligible contractors or subrecipients is prohibited directly or indirectly as part of this award as set forth in 24 CFR Part 5.

7.3.9. Conflict of Interest

No member, officer or employee of the organization, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during such person tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the loan, and the Developer shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of the certification.

7.3.10. Affirmative Marketing

The requirements of the City of Riverside's affirmative marketing policies and procedures as set forth in Exhibit B to the ARPA Regulatory Agreement, and as may be amended, in accordance with Section 92.351 of the ARPA and HOME Regulations.

7.3.11. Property Standards

The ARPA-Assisted Units must meet all applicable federal, state and local housing quality standards and code requirements, including the Uniform Physical Conditions Standards ("UPCS", 24 CFR, Part 5 and 200) established by HUD for housing that is decent, safe, sanitary, and in good repair.

7.3.12. HUD Regulations

Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to the use of ARPA funds, including but not limited to HUD regulations as may be promulgated regarding subrecipients.

7.3.13. Successor Rules

In the event HUD ceases to provide definitions, determinations and calculations under the HOME Program related to Income Eligible Households or Annual Income, or both, the provisions of this Section shall be performed in accordance with definitions, determinations and calculations related to such matters as established by the City with a view toward establishing such definitions, determinations and calculations in a manner consistent, as nearly as possible, with those formerly promulgated by HUD under the HOME Program.

7.3.14. Addendum. Developer agrees to comply with all requirements set forth in the Addendum, attached hereto as Attachment No. 13 and incorporated herein by reference. (the "Addendum"). In the event of a conflict between the Addendum and this Agreement, including all exhibits to this Agreement, the terms contained in the Addendum shall control.

7.4. Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

i. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; and

ii. If any funds other than federally appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL. "Disclosure form to Report Lobbying" in accordance with its instructions.

7.5. Religious Activity

In addition to, and not in substitution for, other provisions of this Agreement regarding the provision of services with funds, pursuant to Title II of the Housing and Community Development Act of 1990, as amended, the Developer:

i. Represents that it is not, or may not be deemed to be, a religious or denominational institution or organization or an organization operated for religious purposes which is supervised or controlled by or in connection with a religious or denominational institution or organization; and,

ii. Agrees that, in connection with such services:

(a) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(b) It will not discriminate against any person applying for housing on the basis of religion and will not limit such services or give preference to persons on the basis of religion;

(c) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence on or in the Project; and,

(d) The common portion of the Site shall contain no sectarian or religious symbols or decorations.

7.6. Disclosure of Confidential Tenant Information

To the extent allowed by law, the Developer and the City agree to maintain the confidentiality of any information regarding Tenants or applicants for residency under this Project, or their immediate families, pursuant to this Agreement, which may be obtained through application forms, interviews, tests, reports, from public agencies or counselors, or any other source. Without the written permission of the applicant, such information shall be divulged only as necessary for purposes related to the performance or evaluation of the services and work to be provided pursuant to this Agreement, and then only to persons having responsibilities under the Agreement, including those furnishing services under the Project through subcontracts.

7.7. Layering Review

The amount of ARPA funds provided in this agreement is contingent on a HOME Subsidy Layering analysis completed by the City. The purpose of the layering analysis is to demonstrate that the ARPA funds are reasonable and necessary to the Project and that federal sources of funds do not over-subsidize the Project. The Developer shall notify the City promptly in writing should other local, state or federal government assistance be obtained in the future other than that contemplated under the existing Project Budget.

7.8. Compliance with Federal, State and Local Laws

The Developer shall comply with all applicable federal, state and local statutes, ordinances, regulations and laws (including the Governmental Requirements), with respect to the development and the operation and management of the Site by the Developer (all of which comprises the Project hereunder). The Developer shall carry out the design, construction, rehabilitation and completion of improvements, and operation and management of the Project, in conformity with all applicable laws, including all applicable federal, state, and local labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Riverside Municipal Code.

7.8.1. Prevailing Wage Laws

The Developer shall carry out the development through completion of the Project and the overall rehabilitation of the Site in conformity with all applicable federal, state and local labor laws and regulations, including without limitation, if and to the extent applicable, the requirements to pay prevailing wages under federal law (the Davis Bacon Act, 40 U.S.C. Section 3141, *et seq*., and the regulations promulgated thereunder set forth at 29 CFR Part 1 (collectively, "Davis Bacon") and, if and to the extent applicable, California law (Labor Code Section 1720, *et seq*.).

The Developer shall be solely responsible, expressly or impliedly, for determining and effectuating compliance with all applicable federal, state and local public works requirements, prevailing wage laws, labor laws and standards, and the City makes no representations, either legally or financially, as to the applicability or non-applicability of any federal, state or local laws to the Project or any part thereof, either onsite or offsite. The Developer expressly, knowingly and voluntarily acknowledges and agrees that the City has not previously represented to the Developer or to any representative, agent or affiliate of the Developer, or its General Contractor or any subcontractor(s) for the construction or development of the Project, in writing or otherwise, in a call for bids or otherwise, that the work and construction undertaken pursuant to this Agreement is (or is not) a "public work," as defined in Section 1720 of the Labor Code or under Davis Bacon.

7.8.2. Section 3 Compliance

The Developer agrees to comply with and to cause the general contractor, each subcontractor, and any other contractors and/or subcontractors or agents of the Developer to comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. Section 1701u, and the implementing regulations, in connection with the rehabilitation of the Site. The Developer shall submit to the City each Construction Contract with appropriate provisions providing for the development of the Site in conformance with the terms of this Agreement, including the Section 3 Clause, in accordance with Section 206(d). The General Contractor, each subcontractor, and any other contractors or subcontractors or agents of the Developer (subject to compliance with 24 CFR Part 135) shall have provided to the City the certification in appendix B of 24 CFR Part 24 that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from this Project, and the City shall be responsible for determining whether each contractor has been debarred.

The City has prepared a Section 3 "checklist" and other forms related to Section 3 compliance; and as provided by the City to the Developer, and its contractor(s) or subcontractor(s), if any, and as applicable, such forms shall be utilized in all contracts and subcontracts to which Section 3 applies. The Developer hereby acknowledges and agrees to take all responsibility for compliance with all Section 3 Clause federal requirements as to the Developer, general contractor, subcontractors, or other contractor(s), subcontractor(s), and other agents. The Developer shall provide or cause to be provided to the General Contractor and each subcontractor, and each of its other contractor(s), subcontractor(s) and agents the checklist for compliance with the Section 3 Clause federal requirements provided by the City, to obtain from the General Contractor, each subcontractor, and other contractor(s), subcontractor(s), and agents all applicable items, documents, and other evidence of compliance with the items, actions, and other provisions within the checklist, and to submit all such completed Section 3 Clause documentation and proof of compliance to the City. To the extent applicable, the Developer shall comply and/or cause compliance with all Section 3 Clause requirements for the Project. For example, when and if the Developer or its contractor(s) hire(s) full time employees, rather than volunteer labor or materials, Section 3 is applicable and all disclosure and reporting requirements apply.

7.8.3. Labor Standards

In addition to compliance with Section 1304.1, the Construction Contract for the Project, as well as any other contract for the development work, shall be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. § 3701, *et seq*.). Participating contractors, subcontractors, and other participants must comply with regulations issued under these Acts and with other federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. The Developer shall supply to the City certification, in form and substance satisfactory to HUD and the City, as to compliance with the provisions of this Section before receiving any disbursement of federal funds for the development work.

7.9. Lead-Based Paint

The City, as recipient of federal funds, has modified and conformed all of its federally funded housing programs to the Lead-Based Paint Poisoning Prevention Act, Title X of the 1992 Housing and Community Development Act, 42 U.S.C. Section 4800, *et seq*., specifically Sections 4821–4846, and the implementing regulations thereto, which are aimed to take advantage of rehabilitation events as a cost-effective opportunity to reduce lead based paint and lead based paint hazards (LBP) in existing housing.

The implementing regulations to Title X, set forth in 24 CFR Part 35 (LBP Regs), were adopted by HUD on September 15, 1999, and are now effective for compliance by all recipients and subrecipients of federal funds. Subpart J of the LBP Regs focuses on the requirements for programs that provide assistance for housing rehabilitation, such as this Project. In this regard, the Developer shall comply with the requirements, as and to the extent applicable, of Title X and the implementing LBP Regs for the Project.

The Project shall be undertaken and completed by qualified contractor(s) selected by the Developer and, if applicable, meeting the requirements of the LBP Regs. All work relating

to LBP and LBP hazards and the reduction and clearance thereof shall be undertaken using safe work practices and shall be conducted by qualified contractor(s) and inspectors(s) meeting the requirements of the LBP Regs. Under the LBP Regs, treatment and clearance shall be conducted by separate contractors. All treatment and clearance using safe work practices of LBP and LBP hazards at the Site shall be completed first and prior to any other part of the development work.

Prior to commencing any part of the development, if applicable, the Developer shall cause each household in occupancy at the Site to receive (and shall obtain proof of receipt through signature) (1) a complete copy of the HUD issued informational pamphlet/brochure about LBP and LBP hazards, (2) any necessary disclosure forms relating to information about LBP and LBP Hazards, and (3) the results of any evaluation for LBP or LBP hazards at the applicable Unit within the Site.

7.10. Duty to Prevent Release of Hazardous Substances

During the development of the Site, the Developer shall take all necessary precautions to prevent the release of any Hazardous Substances (with particular regard to any asbestos, or asbestos-containing materials, or lead-based paint or other lead containing products which are regulated by the HOME Program) into the environment or onto or under the Site. Such precautions shall include compliance with all Environmental Laws with respect to Hazardous Substances. In addition, the Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with applicable Environmental Laws and then-prevailing industry standards as respects the disclosure, storage, use, abatement, removal and disposal of Hazardous Substances.

8. INDEMNITY AND INSURANCE

8.1. Developer's Indemnity

To the fullest extent permitted by law, Developer shall indemnify, defend and hold harmless the City Indemnitees from and against any Losses and Liabilities, where the same arise out of, are a consequence of, are in connection with, or are in any way attributable to, in whole or in part, to: (i) Developer's or the contractor's failure to comply with all applicable laws, including all applicable federal and state labor standards, including, without limitation, the requirements of Section 3, Labor Code Section 1720 and the Davis Bacon Act; (ii) defects in the design or construction of the Project, including (without limitation) the violation of any laws, and for defects in any work done according to the City approved plans, or (iii) Developer's performance of this Agreement, or the breach or failure to perform or act pursuant to this Agreement by Developer, or by any individual or entity that Developer shall engage in connection with the Project, including but not limited to officers, agents, employees, contractors or subcontractors of Developer.

Without affecting the rights of the City Indemnitees under any provisions of this Agreement, Developer shall not be required to indemnify and hold harmless the City Indemnitees for liability attributable to the gross negligence or intentional misconduct of City Indemnitees, provided such active negligence or intentional misconduct is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City Indemnitees are shown to have been grossly negligent or to have acted with intentional misconduct and where City Indemnitees' active negligence or intentional misconduct 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 or intentional misconduct of City Indemnitees.

Developer agrees to use good faith efforts to obtain executed indemnity agreements with provisions identical to those set forth here in this section identifying the City Indemnitees as named indemnitees 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. Such indemnity agreements may be separate agreements, or, at Developer's discretion, may consist of indemnification provisions included in Developer's contract with such third party which such provisions identify the City Indemnitees as named indemnitees. In the event Developer fails to obtain such indemnity obligations from others as required here, Developer agrees to be fully responsible to City for all acts of 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 according to the terms of this Section 5.10.

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

8.2. Bodily Injury and Property Damage Indemnification

Developer agrees to and shall defend, indemnify and hold the City Indemnitees harmless from and against all Losses and Liabilities, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from, in connection with or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person resulting from the alleged negligent or intentional acts or omissions of Developer, its officers, agents, contractors or employees, in the performance of its obligations under 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.

8.3. Rights of Access

Representatives of City shall have the right of access to the Site, without charges or fees, during normal construction hours and upon reasonable written or electronic notice for the purpose of determining compliance with this Agreement, including but not limited to, the inspection of the work being performed in constructing the Project so long as (i) City representatives comply with all safety rules, and (ii) City permits, upon the request of Developer, representatives of the Developer to accompany the representatives of City gaining such access. City representatives shall, except in emergency situations, notify the Developer one full business day prior to exercising its rights pursuant to this Section. In the event of an emergency, City representatives may immediately enter upon the Site.

8.4. Environmental Indemnity

With respect to any of the following Losses and Liabilities arising from and after the Closing Date, Developer agrees to save, protect, defend, indemnify and hold harmless the City

Indemnitees from and against any and all Losses and Liabilities which may now or in the future be incurred or suffered by City by reason of, resulting from, in connection with or arising in any manner whatsoever as a direct or indirect result of (i) the ownership (or possession) by Developer of all or any part of the Site for purposes of any Governmental Regulations regulating Hazardous Materials, (ii) any act or omission on the part of Developer, any contractors, subcontractors or invitees in violation of Environmental Laws with respect to the Site, (iii) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Site of any Hazardous Materials, (iv) any environmental or other condition of the Site, (v) any liability, loss, damage, costs, or expenses (including attorneys' fees and costs, court costs, interest or defense costs, expert witness fees, reasonable consultants' fees, investigation and laboratory fees, and remedial and response costs) incurred with respect to the Site under any Governmental Regulations relating to Hazardous Materials discovered on the Site, and (vi) the condition of the Site, including but not limited to the existence of any Hazardous Materials or condition requiring remediation, other kinds of soil or water contamination or pollutants of any kind, thereon or therein. Developer's indemnification obligations under this section shall survive any termination of this Agreement.

8.5. Compliance with Laws

8.5.1. Labor Standards

Developer shall carry out the construction of the Improvements on the Site in conformance with all applicable laws, including all applicable federal and state labor standards which such standards shall include, without limitation: (a) the payment of not less than the wages prevailing in the locality as determined by the Secretary of Labor pursuant to the Davis Bacon Act (40 U.S.C. 276a to 276a-5), to all laborers and mechanics employed in the development of any part of the Project; (b) the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 332); and (c) Labor Code Section 1720 et seq., including without limitation the payment of prevailing wage and maintenance of payroll records in accordance with Labor Code Sections 1776 and 1812, and employment of apprentices in accordance with Labor Code Section 1777.5.

Developer further agrees that all public work (as defined in Labor Code § 1720) performed pursuant to this Agreement (the "work") shall comply with the requirements of Labor Code Section 1770 et seq. In all bid specifications, contracts and subcontracts for the work, Developer (or its general contractor, in the case of subcontracts) shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification or type of worker needed to perform the work, and shall include such rates in the bid specifications, contract or subcontract. Such bid specifications, contract or subcontract must contain the following provision:

"It shall be mandatory for the contractor to pay not less than the said prevailing rate of wages to all workers employed by the contractor in the execution of this contract. The contractor expressly agrees to comply with the penalty provisions of Labor Code Section 1775 and the payroll record keeping requirements of Labor Code Section 1776."

The provisions of Labor Code Sections 1775 and 1813 regarding penalties to be paid upon the failure to pay prevailing wage and for failure to comply with the hours laws respectively shall be enforced. As set forth in Labor Code Section 1810, eight (8) hours of labor

constitutes a legal day's work. In accordance with the provisions of Labor Code Section 3700, Developer is required to secure payment of compensation to its employees. Developer shall include in every contract for the development of the Project: (a) a statement that in accordance with the provisions of Labor Code Section 3700, the contractor will be required to secure the payment of compensation to its employees; and (b) copies of Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815.

Within ten (10) calendar days after the request of the City Manager, Developer shall provide the City Manager payroll information related to the Project certified by an officer of Developer to be true and correct. In addition, Developer shall require its contractors and subcontractors to provide such certified payroll information within ten (10) calendar days of any request by the City Manager.

8.6. General

Developer shall comply with all 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 City Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation (as currently exists or may be amended from time to time) the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., and Government Code Section 11135, et seq.

8.7. Nondiscrimination in Employment

Developer certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all contractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, et seq., the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, et seq., the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, et seq., 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Government Code Section 12900, et seq., the California Equal Pay Law, Labor Code Section 1197.5, Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq. (applicable to those with fifteen (15) or more employees), Executive Order 11246-Equal Employment Opportunity, as amended, its implementing regulations at 41 CFR Part 60, and all other applicable anti- discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Nondiscrimination notices shall be included in all job postings and posted in a visible place in the offices of all applicable parties.

8.8. Insurance

During the term of this Agreement, Developer shall:

Procure and maintain, at Developer's expense, for the duration of this Agreement and any extensions, renewals or holding over thereof the following insurance coverages from

insurance carriers admitted to write insurance in California or legally authorized non-admitted carriers having a minimum rating of or equivalent to A:VIII by A.M. Best Company:

(i) Commercial general liability insurance equivalent in scope to CG 00 01 11 85 or 10 93 in an amount not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) in aggregate.. City, the City, and their respective directors, officials, employees and agents shall be named as additional insureds by endorsement on a form equivalent in coverage scope to ISO CG 20 26 11 85 and with respect to liability arising out of activities by or on behalf of Developer or in connection with the development, use or occupancy of the Site. This insurance shall contain no special limitations on the scope of protection afforded to City, the City, and their respective directors, officials, employees, and agents.

(ii) Commercial automobile liability insurance equivalent in scope to ISO form CA 00 01 06 92 covering Auto Symbol 1 (Any Auto) in an amount not less than Two Million Dollars ($2,000,000) combined single limit.

(iii) Special Perils Property insurance (which shall include fire coverage), including builder's risk protection during the course of construction and debris removal, in an amount sufficient to cover the full replacement value of all buildings and structural improvements erected on the Site. City shall be named as loss payee under a standard loss payable endorsement.

(iv) All Risk property insurance in an amount sufficient to cover the full replacement value of Developer's personal property, improvements and equipment on the Site.

(v) Workers' compensation insurance as required by the Labor Code of the State of California and Employer's Liability insurance with minimum limits of One Million Dollars ($1,000,000) per accident or occupational illness. Developer agrees to obtain and furnish evidence to City of the waiver of Developer's workers' compensation insurance carrier of any rights of subrogation against City.

(b) Until the completion of the construction, require the General Contractor to obtain the following coverages from insurance carriers admitted to write insurance in California or legally authorized non-admitted insurers having a minimum rating of or equivalent to a current rating of A:VIII by A.M. Best Company unless otherwise agreed in writing by City's Risk Manager or designee:

(i) General liability insurance equivalent in scope to CG 00 01 11 85 or 10 93 in an amount not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) in aggregate. Such coverage shall include but shall not be limited to products and completed operations liability. Such insurance shall be endorsed equivalent in coverage scope to ISO CG 20 26 11 85 to add City, the City, and their respective directors, officials, employees, and agents as additional insureds.

(ii) Automobile liability insurance in an amount not less than One Million Dollars ($1,000,000) combined single limit per accident for bodily injury and property damage covering owned, hired and non-owned autos.

(iii) Special Perils property insurance in an amount sufficient to cover the full replacement value of the contractors' or subcontractors' improvements, personal property and equipment on or about the Site.

(iv) Workers' compensation insurance as required by the Labor Code of the State of California and Employer's Liability insurance with minimum limits of One Million Dollars ($1,000,000) per accident or occupational illness. Developer 's contractors and subcontractors agree to obtain and furnish evidence to City of the waiver of Developer's contractors and subcontractors' workers' compensation insurance carriers of any rights of subrogation against the City.

With respect to damage to property, City hereby waives all rights of subrogation against the Developer, but only to the extent that collectible commercial insurance is available for said damage, and Developer hereby waives all rights of subrogation against City, but only to the extent that collectible commercial insurance is available for said damage.

Any self-insurance program, self-insured retention, or deductibles must be approved separately in writing by City's Risk Manager or designee and shall protect City, and its officials, employees, and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention provisions.

In addition to the endorsements specified herein, each insurance policy required herein shall also be endorsed to provide as follows: (a) that coverage shall not be voided, canceled or changed by either party except after thirty (30) days prior written notice to City (or, in the event the policy issuer must reserve the right to cancel without notice, a letter on the letterhead of Developer's insurance broker stating that the insurance broker has used commercially best efforts to endeavor to obtain such an endorsement but has been unable to), (b) that the insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; and (c) and that coverage shall be primary and not contributing to any other insurance or self-insurance maintained by City, City or by their respective directors, officials, employees, and agents.

Prior to commencement of construction, Developer shall deliver to City certificates of insurance and required endorsements evidencing the insurance coverage required by this Agreement for approval as to sufficiency and form, including any insurance required of Developer's General Contractor. If the endorsements required by the immediately preceding sentence are not available prior to the commencement of construction, the actual endorsements may be provided to City within thirty (30) days of Closing and Developer shall provide, prior to commencement of construction, (a) a letter from its insurance agent or broker on the agent or broker's letterhead stating that the endorsements have been ordered, describing the endorsements ordered and indicating the carrier from who the endorsements were ordered; and/or (b) an insurance binder issued by the insurance broker or agent for the coverage and endorsements required hereby. The certificates and endorsements shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. In addition, Developer shall, at least thirty (30) days prior to expiration of such policies, furnish City with certificates of insurance and endorsements evidencing renewal of the insurance required herein. City reserves the right to require complete certified copies of all policies of the Developer or any of the Developer's contractors or subcontractors at any time.

If, from time to time, in the reasonable opinion of City's Risk Manager the amount, scope, or type of insurance coverage specified herein is not adequate, Developer shall amend its

insurance as required by City's Risk Manager or his or her designee. Developer shall not be required to purchase earthquake insurance.

The insurance required herein shall not be deemed to limit Developer's liability relating to performance under this Agreement. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification and hold harmless provisions of this Agreement. Developer understands and agrees that, notwithstanding any insurance, Developer is obligated to defend, indemnify, and hold the City Indemnitees harmless hereunder for the full and total amount of any damage, injury, loss, expense, cost, or liability caused by the condition of the Site or in any manner connected with or attributed to the acts, omissions or operations of Developer, its officers, agents, contractors, subcontractors, employees, licensees, or visitors, or their use, misuse, or neglect of the Site.

Developer agrees to make available to the City Manager all books, records and other information relating to the insurance coverage required by this Agreement during normal business hours.

Any modification or waiver of the insurance requirements herein shall be made only with the written approval of the City's Risk Manager or designee. Developer shall notify City in writing within five (5) Business Days if any coverage required by this section is voided, canceled or changed.

Prior to the Closing, and periodically thereafter upon the reasonable request of City, Developer shall deliver said policy or policies of insurance or certified true copies thereof, or endorsement forms furnished by the City ("Evidence of Insurance") for approval as to sufficiency by the City Risk Manager and approval as to form by the City Attorney, which approval shall not be unreasonably withheld or delayed. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. If Workers' Compensation Coverage is placed with the State Compensation Insurance Fund, a State Compensation Insurance Fund Certificate of coverage will be acceptable if endorsed in accordance with the above.

Should Developer fail to maintain policies with the coverages and limits specified in this Section, in full force and effect at all times, City shall have the right to withhold any payment due Developer or to suspend Developer's operations until Developer has fully complied with these provisions and furnished the required evidence of insurance. In the event that Developer's operations are suspended for failure to maintain acceptable insurance coverage, Developer shall not be entitled to an extension of time for completion of the work.

9. DEFAULTS, REMEDIES AND TERMINATION

9.1. Defaults - General

Subject to the extensions of time set forth in Section 10.7, 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 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.

9.2. Legal Actions

9.2.1. 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.

9.2.2. Applicable Law

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

9.2.3. Acceptance of Service of Process

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

In the event that any legal action is commenced by City 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.

9.3. 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.

9.4. 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.

9.5. Specific Performance

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

9.6. Rights of Termination and Damages

9.6.1. 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, the Developer shall have the right to terminate this Agreement by written notice to City in accordance with the provisions of Section 9.1. Upon termination by the Developer pursuant to this Section 9.6.1, the City 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 and the Developer.

9.6.2. Termination by City

Provided the City 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 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 may exercise its rights under the City Deed of Trust and/or apply to a court of competent jurisdiction for relief at law or in equity as may be appropriate and permissible.

9.7. 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

10. GENERAL PROVISIONS

10.1. Notices, Demands and Communications Between the Parties

Unless otherwise specified in this Agreement, it shall be sufficient service of giving 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 prepared, 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
Riverside, CA 92522

Copies to: City of Riverside
Attn: City Attorney
3900 Main Street
Riverside, CA 92522

Any notice shall be deemed received immediately if delivered by hand and shall be deemed received on the third (3rd) day from the date it is postmarked if delivered by registered or certified mail.

10.2. Conflicts of Interest

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

10.3. 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.

10.4. Nonliability of City Officials and Employees

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

10.5. Approval by City 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 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.

10.6. Plans and Data

If this Agreement is terminated, the City 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 City ARPA Loan proceeds for such purposes.

10.7. 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 shall not excuse performance by the City); 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 City 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 City 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.

10.8. 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.

10.9. Inspection of Books and Records, Reports

The City 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 reasonable written progress reports as and when reasonably requested by City on all matters pertaining to the Project of the Site.

10.10. Administration

This Agreement shall be administered by the City Manager following approval of this Agreement by the City. Whenever a reference is made in this Agreement to an action, finding or approval to be undertaken by the City, the City Manager is authorized to act on behalf of the City unless specifically provided otherwise or the context should require otherwise. The City Manager shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City 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 as specified herein or as agreed to by the City Board. Notwithstanding the foregoing, the Executor Director may in the Executive Director's sole and absolute discretion refer any matter to the City Council for action, direction or approval.

10.11. 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 City 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.

10.12. Intentionally Omitted.

10.13. 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 City.

11. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement includes one hundred fifty (150) pages, two (2) signature pages, and Attachments Nos. 1 through 13 which together constitute the entire understanding and agreement of the Parties. Duplicate originals of this Agreement may 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 or Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and Developer. Developer shall promptly pay City's costs of evaluating and consummating any amendment of this Agreement, including any reasonable attorneys' and consultants' fees and costs.

(Signatures on following page)

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

"CITY"

CITY OF RIVERSIDE, a California charter city and municipal corporation

By:_____

_____
City Manager

ATTEST TO:

_____
City Clerk

CERTIFIED AS TO AVAILAVILITY OF FUNDS:

_____
Chief Financial Officer

APPROVED AS TO FORM:

Sean Murphy
_____
Deputy City Attorney

"DEVELOPER"
Riverside Housing Development Corporation, a
President & Chief Executive Officer

Dated: 09/03/2025

By Bruce Kulpa (Sep 3, 2025 11:53:04 PDT)
Bruce Kulpa
President