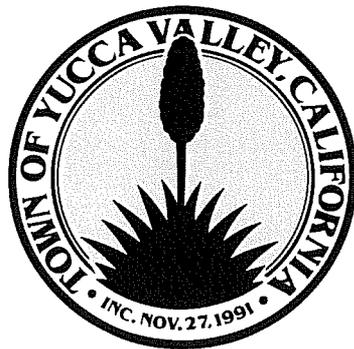


Follow-up Documentation for Item 10.

3. Development and Disposition Agreement



**AFFORDABLE HOUSING, FINANCING &
DISPOSITION & DEVELOPMENT AGREEMENT**

Escrow No. _____

Date of Opening of Escrow: _____, 2012

THIS AFFORDABLE HOUSING, FINANCING & DISPOSITION & DEVELOPMENT AGREEMENT (this "**Agreement**") is made this 20th day of March, 2012, by and between THE TOWN OF YUCCA VALLEY, a California general law municipality ("**Town**"), and YUCCA VALLEY SENIOR HOUSING PARTNERS, L.P., a California limited partnership ("**Developer**").

RECITALS

A. *The Site.* This Agreement pertains to the conveyance to Developer of a certain 2.87 acre vacant property located in the Town of Yucca, County of San Bernardino, State of California, at the northwest corner of the intersection of Twentynine Palms Highway (State Highway 62) and Dumosa Avenue, and more particularly described in Exhibit "A" attached hereto (the "**Site**").

B. *Site Title & Impacts of AB 26.* The Site is owned by the Town as a result of Health & Safety Code § 34167.5. The Town's predecessor in interest to the Site was the Yucca Valley Parks & Recreation District, with the Site inuring to the Town upon the Town's incorporation in 1991. In March 2011, the Town took action to transfer title to the Site to the Yucca Valley Redevelopment Agency (the "**Agency**"). Shortly thereafter, Assembly Bill 1X26 ("**AB 26**") went into effect on June 29, 2011. Section 34167.5 of AB 26 may void *ab initio* and retroactively unauthorized the transfer of title to the Site to the Agency. Pursuant to this statute, the Town has the option of confirming (through the State Controller, Oversight Board or otherwise) whether title to the Site was ever effectively transferred to the Agency. Alternatively, the Town and Developer may pursue approval of the Project and transfer of Site title by the Oversight Board, subject to the review periods provided to the State Department of Finance under AB 26 for such approval, or confirmation that the Site qualifies as a "housing asset" title to which is transferred to the Town pursuant to Health & Safety Code § 34176(a). By these or any other lawful means, the Town and Developer shall resolve any outstanding ambiguities arising from AB 26 relating to the Site's condition of title prior to Close of Escrow hereunder.

C. *The Project.* Developer proposes to purchase the Site for purposes of developing the Site as a 75-unit affordable rental housing complex for senior citizens (the "**Project**"). Other than one (1) Manager's Unit, the Project will consist of rental units covenanted for occupancy by Senior-only households with a Low, Lower, Very Low, or Extremely Low Income for a period of not less than fifty-five (55) years. Developer shall be solely responsible for constructing Project buildings and developing the Site, which shall include approximately 87,482 square feet of building space for the rental units and interior common areas. The Scope of Development for the Project is more specifically described in Exhibit "B" attached hereto and incorporated herein by this reference. The Project shall consist of the following number of units restricted at each income level:

1. "**Extremely Low Income**" (no more than 30% of Area Median Income or "AMI")— 8 units;
2. "**Very Low Income**" (no more than 45% of AMI)—26 units;
3. "**Lower Income**" (no more than 50% of AMI) – 26 units;
4. "**Low Income**" (no more than 55% of AMI) – 14 units.

D. *Project Entitlements; CEQA.* A Specific Plan for the Project has been prepared pursuant to the provisions of the California Government Code, Title 7, Division 1, Chapter 3, Article 8, and Sections 65450 through 65457 (the "**Specific Plan**"). A Mitigated Negative Declaration has been prepared for the Yucca Valley Senior Affordable Housing Specific Plan and the Project and has been filed with the County Clerk's Office per the requirements of the California Environmental Quality Act ("CEQA") and its Guidelines.

E. *Sale of Site to Developer for Fair Market Value.* The fair market value of the Site was appraised at \$940,000.00 on March 9, 2011, which fair market value shall constitute Developer's "**Purchase Price**" for the entire Site. Developer shall purchase all Town's right, title and interests to the Site pursuant to a "**Note**" (Exhibit "C") in favor of the Town for the full Purchase Price, which note shall be payable from fifty percent (50%) of Residual Cash Flow, to the extent Residual Cash Flow is available. The Promissory Note shall be secured by a "**Deed of Trust**" (Exhibit "D") recorded upon the Site, which Deed of Trust shall be released/reconveyed upon Developer's full and complete performance of this Agreement, the Note, and Regulatory Agreement.

F. *Town Loan to Developer.* Town agrees to loan \$635,000 to Developer for Developer's use towards Project construction, improvements and operation ("**Town Loan**"). About \$164,756.00 of the Town Loan proceeds have already been disbursed to Developer by Town for Developer's pre-construction Project costs. The remainder of the Town Loan (approximately \$470,244.00) will be disbursed to Developer prior to, or upon, the Close of Escrow (the "**Remainder Loan Proceeds**"). The Town has identified a source of funding for the Remainder Loan Proceeds payable to Developer in certain revenues expected to be repaid to the former Agency's Low/Mod Fund as a result of Low/Mod Funds being borrowed for purposes of paying Supplemental Educational Revenue Augmentation Fund ("SERAF"). Given the current status of AB 26, however, and its unknown potential impacts upon these funding sources, the availability of a source of funds for the Remainder Loan Proceeds must be confirmed prior to making any further disbursements of the Town Loan to Developer.

G. *Tax Credits & HOME Funds.* The Developer has been awarded an allocation of San Bernardino County "HOME" Funds in the amount of \$1,622,830.00 to be dedicated to Project construction. In addition to the Town Loan for Project funding, Developer shall submit up to four (4) consecutive applications to the California Tax Credit Allocation Commission to secure tax credit financing. This Agreement is effective for the duration of at least two application rounds in the year 2012 (March 2012 and July 2012) and two application rounds in 2013 (expected March 2013 and July 2013). Town shall provide reasonable cooperation to Developer in the course of these application rounds.

NOW, THEREFORE, based on the above recitals, which are deemed true and correct and which are incorporated into the terms of this Agreement, and in consideration of the mutual covenants set forth herein, the parties hereto agree as follows:

TERMS AND CONDITIONS

(§100) DEFINITIONS

The following terms as used in this Agreement shall have the meanings given unless expressly provided to the contrary:

(§201) Affordable Rent.

The term "Affordable Rent" shall mean the monthly payments charged to and paid by tenants for the use and occupancy of a Residential Unit and facilities associated therewith, including a reasonable allowance for utilities, but shall not include any optional services provided by Developer to residents. Affordable Rent shall have the meaning prescribed for that term for each Project income level as follows:

- i. For Extremely Low Income households, the product of 1/12 of 30 percent times 30 percent of the AMI adjusted for family size appropriate for the unit (all age restricted units in the Project to be one-bedroom units).
- ii. For Very Low Income households, the product of 1/12 of 30 percent times 45% percent of the AMI adjusted for family size appropriate for the unit.
- iii. For Lower Income households, the product of 1/12 of 30 percent times 50% percent of the AMI adjusted for family size appropriate for the unit.
- iv. For Low Income households, the product of 1/12 of 30 percent times 55% percent of the AMI adjusted for family size appropriate for the unit.

(§202) Agreement.

The term "Agreement" shall mean this entire Agreement, including all exhibits, which attachments are a part hereof and incorporated herein in their entirety, and all other documents incorporated herein by reference.

(§203) AMI

The term "AMI" means "Area Median Income" and shall mean the area median income as published by the California Department of Housing and Community Development, as adjusted for household size, pursuant to Health and Safety Code Section 50093, or its successor.

(§204) Closing.

The term "Closing" or "Closing Date" shall mean the closing of the Escrow by the Escrow Agent distributing the funds and documents received through Escrow to the party entitled thereto as

provided herein, which Closing shall occur on or before the date established in Section 407, subsection 2.

(§205) Completion.

The term “Completion” means the date of issuance of the Certificate of Completion.

(§206) Days.

The term “Days” shall mean calendar days and the statement of any time period herein shall be calendar days, and not working days, unless otherwise specified.

(§207) Deed.

The term “Deed” or “Grant Deed” shall mean that Grant Deed in substantially the form attached hereto as Exhibit "E" by which Town as Grantor will convey fee title to the Site to Developer as Grantee.

(§208) Deed of Trust.

The term “Deed of Trust” shall mean that Deed of Trust and Assignment of Rents securing the Note as further described in Section 404(2), which shall be substantially in the form attached hereto as Exhibit "D".

(§209) Development Fees.

The term “Development Fees” shall mean those fees, charges, and exactions imposed by the Town or other governmental entities upon the development of the Project on the Site, including, but not limited to, application fees, building/grading/public infrastructure permit fees, processing fees, development impact fees, mitigation fees, park fees, storm drain fees, sewer fees, school fees, and other related charges.

(§210) Developer Fee.

The term “Developer Fee” means the fee paid to Developer or an affiliate of Developer and related to development services with respect to the development of the Project, in an amount equal to \$1,400,000, the payment of which shall be due at such times as are provided in the amended/restated partnership agreement for Developer as approved by Town, some or all of which Developer Fee may be deferred and, if deferred, payable to Developer as a priority from the Residual Cash Flow (see definition of Residual Cash Flow).

(§211) Effective Date.

The “Effective Date” of this Agreement shall be the date first written above, which shall be the date on which the Town approved this Agreement at a duly-noticed public meeting of the Town Council.

(§212) Enforced Delay.

The term “Enforced Delay” shall mean any delay described in Section 903 caused without fault and beyond the reasonable control of a party, which delay shall justify an extension of time to perform as provided in Section 903.

(§213) Escrow.

The term “Escrow” shall mean the escrow established pursuant to this Agreement for the conveyance of title to the Site from Town to Developer.

(§214) Escrow Agent.

The term “Escrow Agent” shall mean Fidelity National Title, located at 1300 Dove Street, Suite 310, Newport Beach, California 92660 and empowered hereunder to act as the Escrow Agent for this transaction. The Escrow Agent contact shall be Valerie Rapp, (949) 477-3646.

(§215) Extremely Low Income Household.

The term “Extremely Low Income Household” shall mean a household earning no more than thirty percent (30%) of the AMI for a household of the size of a Qualified Tenant household living in San Bernardino County.

(§216) General Partner.

The term “General Partner” shall mean Developer’s General Partner, The Southern California Housing Development Corporation of the Inland Empire, a California non-profit public benefit corporation.

(§217) Gross Income.

The term “Gross Income” shall mean: (i) all rents and payments received by the Developer from tenants and occupants for the use and occupancy of the Site and the Project, (ii) laundry income, (iii) income from concessionaires and licensees, and (iv) rent subsidies, if any, received by the Developer, but “Gross Income” shall not include any security deposits (unless and until such deposits have been forfeited by the tenants and are payable to the Developer), insurance or condemnation proceeds, industry level operating reserves or deposits (not to exceed six (6) months of operating expenses plus debt expenses), interest on such reserve accounts (if added to funds on deposit in such accounts), capital contributions made to the Developer by the partners thereof, proceeds from the construction financing or the Town Loan or other financing provided to the Developer, including financing provided by any partner of Developer, or proceeds from the sale or refinancing of the Site and/or Project.

(§218) Guaranty.

The term “Guaranty” shall mean that document referenced in Section 404, subsection 2, hereof.

(§219) Holder.

The term “Holder” shall mean the holder, including its successors, grantees, or assigns of record of any mortgage, deed of trust, or other security interest affecting the Site.

(§220) LIHTC.

The term “LIHTC” or “tax credits” shall mean Low Income Housing Tax Credits administered and allocated by the California Tax Credit Allocation Committee.

(§221) Low Income Household.

The term “Low Income Household” shall mean a household earning no more than fifty-five percent (55%) of the AMI for a household of the size of a Qualified Tenant household living in San Bernardino County.

(§222) Lower Income Household.

The term “Lower Income Household” shall mean a household earning no more than fifty percent (50%) of the AMI for a household of the size of a Qualified Tenant household living in San Bernardino County.

(§223) Low/Mod Funds.

The term “Low/Mod Funds” shall mean and be limited to that portion of the former Agency’s general property tax increment, non-tax exempt bond proceeds, and interest allocations set aside pursuant to Health and Safety Code Section 33334.2 for the purposes of increasing, providing and preserving the community’s supply of low and moderate income housing available at an affordable housing cost to persons and families of low or moderate income.

(§224) Manager’s Unit

The term “Manager’s Unit” shall mean the one (1) Residential Unit within the Project that shall be designated by Developer as a residence for a “Qualified Manager.” The Manager’s Unit shall not be an income or age restricted Residential Unit.

(§225) Note; Note Amount.

The term “Note” shall mean the promissory note evidencing Developer's repayment obligation to Town as a residual receipts loan, subordinate to Senior Financing, in the amounts of the Purchase Price and the Town Loan, all as further described in Section 404, which shall be substantially in the form attached hereto as Exhibit "C". Developer’s repayment obligations to pay both the full amount of the Town Loan (\$635,000) plus the full Purchase Price (\$940,000) shall be secured as a single debt obligation owing by Developer to the Town, totaling One Million Five Hundred Seventy-Five Thousand Even Dollars (\$1,575,000.00) also referenced herein as the “**Note Amount**”.

(§226) Operating Expenses.

The Term “Operating Expenses” shall mean the aggregate of the following: (i) the cost of utilities supplied to and used for the Project and payable by the Developer; (ii) the cost of all insurance required for the Project in this Agreement, Developer’s partnership agreement, the Senior Financing documents, or any ancillary documents concerning the operation of the Project; (iii) real property taxes, if any, and assessment payments; (iv) expenses and costs of social programs and compliance/monitoring reporting for the Project; (v) the deposits for the replacement reserves or operating reserves for the Project, in the amount provided by the Senior Financing or required by Developer's partnership agreement or any junior lender, if a greater requirement; (vi) on-site administrative costs (including payroll and payroll taxes and expenses, employee benefits); (vii) operating, maintenance and repair expenses and services, and necessary capital expenditures for the upkeep and repair of the Project and any expenditures required based upon a physical needs assessment by the Qualified Tax Credit Investor or Senior Financing lender (including materials and labor) including charges for public services such as sewer charges, license and permit fees, goods, commodities, materials, equipment, furniture, furnishings, installation of appliances, fixtures, painting, cleaning, pest control, gardening, rubbish removal, security services, advertising and promotion, leasing commissions, accounting, and legal expenses attributable to the Site or the Project which are directly attributable and customarily incurred in the operation of real estate projects similar to the Project, including property management fees, expenses and costs payable to the property manager; (viii) fees, costs or expenses of refinancing any loan; (ix) any post closing legal fees or other expenses, fees, costs incurred by the Developer in connection with obtaining this Agreement or the Town Loan to the extent not already included hereunder; (x) all scheduled, or otherwise due, payments of principal and/or interest on the Senior Financing, together with all financing fees and related charges payable by the Developer under the terms of the Senior Financing, including without limitation, issuer fees, trustee fees, remarketing fees, and rebate analyst fees, interest rate cap deposits and credit enhancer charges; (xi) all other fees and expenses which may be provided in Developer’s annual budget prepared in accordance with the Senior Financing; and (xii) repayments of loans to a partner or affiliate of a partner of the Developer in accordance with the Partnership Agreement for operating deficits or similar operating shortfalls; and (xiii) repayments of any amounts owing to a partner or an affiliate of a partner of the Developer in accordance with the Partnership Agreement due to an adjustment in the tax credit equity caused by an adjustment to tax credits available to the Project. “Operating Expenses” shall not include the following: (a) repairs or replacements paid out of insurance proceeds received by the Developer; (b) book depreciation of buildings or other similar non-cash items of expense; (c) principal payments on all junior financing; (d) any deferred Developer Fee; and (e) any asset management or limited or general partner fees. To the extent that the Site or Project, or any part thereof, shall be leased by the Developer and the lessee or occupant pays any items described as Operating Expenses, then such items that are paid by such occupant shall not be Operating Expenses.

(§227) Project.

The term “Project” shall mean all of the improvements required to be constructed by Developer on the Site pursuant to this Agreement and the Specific Plan adopted for the Project (approximately 87,482 square feet of building space), including, but not limited to, the construction of buildings, glass and concrete work, landscaping, construction of parking areas,

and related improvements. The overall Project is more particularly described in the Scope of Development attached hereto as Exhibit "B". Other than one (1) Manager's Unit, the Project will consist of rental units covenanted for occupancy by Senior-only households with a Low, Lower, Very Low, or Extremely Low Income for a period of not less than fifty-five (55) years. The Project shall consist of the following number of units restricted at each income level:

1. Eight Extremely Low Income Units restricted to Senior Qualified Tenants;
2. Twenty-Six Very Low Income Units restricted to Senior Qualified Tenants;
3. Twenty-Six Lower Income Units restricted to Senior Qualified Tenants; and
4. Fourteen Low Income Units restricted to Senior Qualified Tenants.

The Residential Units will consist of 74 one-bedroom units of approximately six hundred and fifty (650) square feet (plus 100 square feet of balcony) and one two-bedroom Manager Unit.

(§228) Purchase Price.

The term "Purchase Price" shall mean the fair market value of the Site, which is based on an appraisal conducted in March 9, 2011, which shall be in the amount of Nine Hundred and Forty Thousand Dollars Even (\$940,000.00).

(§229) Qualified Manager.

The term "Qualified Manager" shall mean the resident manager of the Project who is selected and retained by Developer pursuant to the Regulatory Agreement. The Qualified Manager shall reside in the "Manager's Unit" within the Project as designated by Developer. The Manager's Unit shall be restricted to occupancy by the Qualified Manager and his/her household, and shall not be subject to an income or age restriction.

(§230) Qualified Tax Credit Investor.

The term "Qualified Tax Credit Investor" shall mean a person or entity, or affiliate of such person or entity who (i) is an experienced limited partner and investor in multifamily housing developments receiving low income housing tax credits allocated by the State of California or the United States federal government ("Tax Credits"), and (ii) has obtained or is contractually obligated to obtain a limited partnership or limited liability company membership interest in the Developer whereby it will receive ninety percent (90%) or more of the Tax Credits obtained in connection with the Project. Town shall have the right to reasonable prior approval, which shall not be unreasonably withheld, conditioned or delayed, of (i) the managing general partner, and (ii) the limited partner. Approved Qualified Tax Credit Investors shall include any entity which has Developer as a general partner, managing member or controlling shareholder.

(§231) Qualified Tenant.

The term "Qualified Tenant" shall mean those households seeking to rent a Restricted Unit who satisfy all of the following requirements:

1. Upon execution of a lease with Developer, each member of the household will occupy the Residential Unit (other than the Manager Unit) as its principal residence, and each member intends to thereafter continuously occupy such Residential Unit as its principal residence.
2. Upon execution of a lease with Developer, the household is a Low, Lower, Very Low, or Extremely Low, Income household.
3. The household has been selected in accordance with the tenant selection criteria set forth in the Regulatory Agreement.
4. At least one person in residence must be a Senior Citizen, and other residents in the same unit who are not Senior Citizens must be Qualified Permanent Residents, as defined in California Civil Code Section 51.3(b).

(§232) Regulatory Agreement.

The term “Regulatory Agreement” shall mean that Regulatory Agreement attached hereto as Exhibit "F", running with the land and providing for the proper maintenance of common facilities and improvements and the management and use of the Project, which also sets forth the limitations on occupancy, residency and use of the Residential Units.

(§233) Related Entity.

The term “Related Entity” means National Community Renaissance of California, a California public benefit corporation related to Developer’s General Partner.

(§234) Related Agreements.

The term “Related Agreements” means the Regulatory Agreement, the Note, the Deed of Trust and the Deed.

(§235) Release of Construction Covenants.

The term “Release of Construction Covenants” shall mean that document prepared in accordance with Section 513 of this Agreement, in the form attached as Exhibit "G", which shall evidence that the construction and development of the improvements required by this Agreement have been satisfactorily completed.

(§236) Residential Unit.

The term “Residential Units” shall mean and refer collectively to each and every Residential Unit located on the Site, including the Manager's Unit.

(§237) Residual Cash Flow.

The term “Residual Cash Flow” shall mean for any fiscal year the amount of Gross Income for such fiscal year less the Operating Expenses and less any partnership management fees for any

such fiscal year and less any deferred Developer's Fee. Partnership management/asset management fees shall exclude any payment of any item which is deducted separately as an Operating Expense and shall be limited as follows: (a) the limited partner fee shall be capped at \$5,000 per year for the 15 year TCAC compliance period (with CPI escalations up to 3% per year) and (b) any general partner fee shall be limited to \$10,000 per year (with CPI escalations up to 3% per year) during the 55 year affordability period).

(§238) Senior Citizen.

The terms "Senior" or "Senior Citizen" shall mean a person who is 55 years of age or older who intends to reside in the Residential Unit as his or her primary residence on a permanent basis and any other person residing in the unit is a "qualified permanent resident" or a "permitted health care resident" as provided in the Unruh Civil Rights Act, California Civil Code Section 51, *et seq.*, and all other applicable federal, state and local laws and regulations governing the use and occupancy of the Project.

(§239) Senior Financing; Construction & Permanent Loans.

Shall mean the non-Town loan(s) taken by Developer to fund the construction of the Project during the construction phase (the "**Construction Loans**") and the permanent loan(s) ("**Permanent Loans**") which shall replace the construction phase loans after the completion and stabilization of the Project, which the Town Loan (including the Deed of Trust and the Regulatory Agreement) shall be subordinate to, as evidenced by such subordination agreements as may be required by the lender(s) for the Senior Financing. Senior Financing shall also include such financing and instruments recorded upon the Site in conjunction with LIHTC and the San Bernardino County HOME Program. Senior Financing is more particularly described in Article 700 hereof.

(§240) Site.

The term "Site" shall mean the parcel of real property that is owned by the Town, which totals approximately 2.87 acres of real property and which shall be transferred to Developer pursuant to this Agreement upon which Developer shall construct the Project. The Site is legally described in Exhibit "A" hereto.

(§241) Title.

The term "Title" shall mean the fee title to the Site which shall be conveyed to Developer pursuant to the Deed.

(§242) Title Company.

The term "Title Company" shall mean Fidelity National Title, located at 1300 Dove Street, Suite 310, Newport Beach, CA 92660, and empowered hereunder to act as the Title Company for this transaction. The title officer shall be Patti Porter, (949) 221-4728.

(§243) Town.

The term "Town" shall mean the Town of Yucca Valley, a general law California Municipality.

(§244) TCAC.

The term "TCAC" shall mean the California Tax Credit Allocation Committee. To secure Project funding, Developer shall submit up to four (4) consecutive applications to the TCAC for LIHTC for the two application rounds in the years 2012 and 2013 (March/July 2012 and March/July 2013). Town shall provide reasonable cooperation to Developer in the course of these TCAC application rounds.

(§245) Town Loan; Remainder Loan Proceeds.

The term "Town Loan" shall mean that loan in the amount of \$635,000 by Town to Developer for Developer's use towards Project construction, improvements and operation, which loan shall bear an interest rate of 0.5% per annum. About \$164,756.00 of the Town Loan proceeds have already been disbursed to Developer by Town for Developer's pre-construction Project costs. The remainder of the Town Loan (approximately \$470,244.00) will be disbursed to Developer after the Effective Date hereof and is referenced herein as the "**Remainder Loan Proceeds**".

(§246) Very Low Income Household.

The term "Very Low Income Household" shall mean a household earning no more than forty-five percent (45%) of the AMI for a household of the size of a Qualified Tenant household living in San Bernardino County.

(§300) PARTIES TO THE AGREEMENT

(§301) Town & Potential Assignment to Housing Authority.

1. Authority of Town. The Town is a California general law municipality with the general powers of disposing of real property essentially in any way it chooses, if the disposition is for the common benefit. (*See*, Cal. Const. Art. XI, §5; Govt. Code §37350.) On May 12, 2011, the Yucca Valley Planning Commission considered the proposed disposition of the Site for the Project and found that such disposition conforms with the general plan. (Govt. Code §65402(a).) The Site is not deemed by the Town to be surplus land pursuant to the California Surplus Lands Act, and even if such Site was deemed surplus land the proposed conveyance to Developer as a housing provider meets the priority disposition requirement of said Act. (Govt. Code §54222.) The Town in adopting this Agreement has found that the disposition of the Site is made in furtherance of the common benefit vis-à-vis providing 74 Residential Units for the benefit of the Town's Low, Lower, Very Low and Extremely Low Income Senior Citizens. (*See, Winkelman v. City of Tiburon* (1973) 32 Cal.App.3d 834.)

2. Town Acting As Lender Only. Town and Developer acknowledge and understand that the Town's participation in the Project is solely as a lender and that the Town is not participating in the Project as a developer or owner. Any actions by the Town which are not fully consistent with the Town's role as a lender are intended only to carry out routine government functions and impose constitutionally or statutorily authorized conditions acceptable

to the Developer. As such, the Project and the Town's participation through this Agreement are outside the scope of California Constitution Article XXXIV and its enabling legislation.

3. Possible Assignment to Housing Authority. Developer and Town acknowledge that the Town is in the process of establishing a Housing Authority to exercise the governmental functions and powers, organized and existing under the Housing Authority Law of the State of California (Health and Safety Code Section 34200, *et seq.*). It is proposed that all housing functions and assets, to the extent they may be retained by a governmental body of the Town pursuant to AB 26, may be assigned to the Town's Housing Authority once formed. If the Housing Authority is formed prior to Close of Escrow on the Site, title to the Site and all terms of this Agreement may be assigned to the Housing Authority without requiring further action of the Town or Developer, at which time the Housing Authority would undertake all Town's rights and obligations hereunder.

(§302) Developer.

1. Identification. Developer is Yucca Valley Senior Housing Partners, L.P., a California limited partnership. The General Partner of the Developer is The Southern California Housing Development Corporation of the Inland Empire, a California non-profit public benefit corporation, an entity that is related to the Related Entity. The Developer has been formed as a limited partnership in which a Qualified Tax Credit Investor will be allocated Tax Credits in consideration of a capital contribution that will be used by Developer to fund a portion of the cost of acquiring and developing the Site and operating the Project. The principal office of Developer for the purposes of this Agreement is located at 9065 Haven Ave., Suite 100, Rancho Cucamonga, CA 91730. Developer warrants and represents to Town that Developer will be qualified to do business in good standing under the laws of the State of California and has all requisite power and authority to carry out Developer's business as now and whenever conducted and to enter into and perform Developer's obligations under this Agreement.

2. Successors and Assigns. Except as may be expressly provided hereinbelow, all of the terms, covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of Developer and the permitted successors, assigns and nominees of Developer as to each portion of the Site. Wherever the term "Developer" is used herein, such term shall include any permitted successors and assigns of Developer as herein provided.

3. Qualifications. The qualifications and identity of Developer are of particular concern to the Town, and it is because of such qualifications and identity that Town has entered into this Agreement with Developer. The Town has considered the experience, financial capability, and product being marketed by Developer, the Site location and characteristics, the public costs of acquiring and developing the Site and return on investment, and the product mix necessary to produce a Project. Based upon these considerations, the Town has imposed those restrictions on transfer set forth in this Agreement.

(§303) Restrictions on Transfer.

1. Transfer Defined. As used in this section, the term "Transfer" shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this

Agreement, the Site, or the improvements thereon. A Transfer shall also include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Developer in the aggregate, taking all Transfers into account on a cumulative basis, except transfers of such ownership or control interest between members of the same immediate family, or Transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the Transferor's immediate family. In the event Developer or its successor is a corporation or trust, such Transfer shall refer to the Transfer of the issued and outstanding capital stock of Developer, or of beneficial interests of such trust. In the event that Developer is a limited or general partnership, such Transfer shall refer to the Transfer of more than twenty-five percent (25%) of the limited or general partnership interest that is not excepted from the prohibitions hereof pursuant to subparagraph (3) below. In the event that Developer is a joint venture, such Transfer shall refer to the Transfer of more than twenty-five percent (25%) of the ownership and/or control of any such joint venture partner, taking all Transfers into account on a cumulative basis.

2. Restrictions Prior to Completion. Any Transfer of the Developer's interest in the Site or the Project, in whole or in part, and any Transfer of the Developer's interest in all or any part of this Agreement or the Related Agreements, shall be subject to the approval of the Town, which shall be given or withheld within thirty (30) days of the Developer's written request therefor. The Town's approval shall not be unreasonably withheld or delayed, and the Town shall consent to any such Transfer by the Developer, without any adjustment to the financial terms and conditions of this Agreement or the Related Agreements, if prior to such Transfer, each of the following requirements is satisfied: (1) the Developer submits or causes to be submitted to the Town all information reasonably requested for the Town to make its determination required hereunder; (2) there is no event of default continuing under this Agreement or the Related Agreements; (3) the transferee satisfies the qualification standards with respect to creditworthiness, reputation and experience customarily applied by Fannie Mae or Freddie Mac, as applicable, to the approval of borrowers in connection with the transfer of similar loans on multifamily properties; (4) the transferee executes an assumption agreement that is acceptable to the Town and that, among other things, requires the transferee to perform all obligations of the Developer set forth in this Agreement and the Related Agreements; and (5) the Developer pays, or causes the proposed transferee to pay, the amount of the Town's out-of-pocket costs (including reasonable staff and attorneys' fees) incurred in reviewing the Transfer request.

In the absence of specific written agreement by Town, prior to the issuance of a Release of Construction Covenants, no Transfer by Developer of all or any portion of its interest in the Site or this Agreement (including without limitation an assignment or transfer not requiring Town approval hereunder) shall be deemed to relieve it or any successor party from any obligations under this Agreement with respect to the completion of the development of the Project with respect to that portion of the Site which is so transferred. In addition, no attempted assignment of any of Developer's obligations hereunder shall be effective unless and until the successor party executes and delivers to Town an assumption agreement, in a form approved by the Town, assuming such obligations.

3. Exceptions. The foregoing prohibition shall not apply to any of the following:

A. Any mortgage, deed of trust, or other form of conveyance for financing, as provided in Section 512, but Developer shall notify Town in advance of any such mortgage, deed of trust, or other form of conveyance for financing pertaining to the Site.

B. Any mortgage, deed of trust, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (A) above, provided that the amount of indebtedness incurred in the restructuring or refinancing does not exceed the outstanding balance on the debt incurred to finance the Project, including any additional costs of construction, whether direct or indirect.

C. The granting of easements to any appropriate governmental agency or utility or permits to facilitate the development of the Site.

D. A sale or Transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

E. A sale or Transfer of 49% or more of an ownership or controlling interest between members of the same immediate family, or Transfers to a trust, testamentary or otherwise, in which the beneficiaries consist solely of immediate family members of the trustor or Transfers to a corporation or partnership in which the immediate family members or shareholders of the Transferor have a controlling majority interest of 51% or more.

F. A sale or Transfer of an interest in Developer to a Qualified Tax Credit Investor.

G. The (i) sale, transfer, conveyance or pledge of limited partnership interests in the Developer, (ii) sale, transfer, conveyance or pledge of any partnership interest or membership interests in the limited partners of the Developer, or (iii) the appointment by the partners of the Developer of an additional or substitute co-general partner in accordance with the partnership agreement of the Developer; provided the Developer delivers prior written notice thereof to the Town that any additional or substitute general partner of the Developer is a single purpose entity to which the Town has given its written consent, which consent shall not be unreasonably withheld.

H. The transfer (i) of an interest in and/or of an existing partner to another existing partner, or (ii) of an interest in an existing general partner to an affiliate of any general partner, or (iii) of an interest in an existing general partner so long as such transfer, together with any prior transfer of an interest or interests in an existing general partner, do not result in more than forty-nine percent (49%) of the interest in an existing general partner having been transferred since the date hereof.

I. Transfers of an interest to a new partner which is an affiliate of an existing partner, including transfers of an additional general partner interest to an affiliate of the Tax Credit limited partner.

J. Transfers of an interest in a parent of a partner, provided, however, transfers of an interest in a parent of a partner performing the primary management functions on behalf of the Developer which results in Related Entity owning less than a controlling interest in such parent of such partner shall be subject to the written consent of the Town, which consent shall not be unreasonably withheld; or

K. The lease of Residential Units to Qualified Tenants or Qualified Manager.

L. Assignments for financing purposes as required in order to effect the Senior Financing.

M. Transfer of the Project or partnership interests in the Developer's limited partnership to a general partner of Developer at the end of the fifteen year Tax Credit initial compliance period.

N. Admission of the Qualified Tax Credit Investor to the Developer or the transfer of the Qualified Tax Credit Investor's interest in Developer to another party, or the redemption of the Qualified Tax Credit Investor's interest in the Developer provided that, prior to any such Transfer, the Qualified Tax Credit Investor has paid in full its capital contribution to Developer as and to the extent required in the Developer's partnership agreement.

O. Transfer of the interest of General Partner in the Developer to another entity controlled by Related Entity.

P. A conveyance resulting from eminent domain action or an acquisition under threat of an acquisition under threat of eminent domain.

4. Restrictions After Completion. It is hereby acknowledged by Developer and Town that a Town Loan is being provided for the Project. Therefore, subsequent to the issuance of the Certificate of Completion, except as otherwise permitted under the §303, subsection 3, Developer may not sell, Transfer, convey, hypothecate, assign or lease all or any portion of its interest in the Site without complying with any Transfer restrictions contained within the Related Agreements, as applicable.

(§400) DISPOSITION OF THE SITE

(§401) Financing Milestones.

The parties acknowledge that Developer intends to finance the acquisition, development, construction, and equipping costs for the Project with funds from a variety of sources, including those funding sources identified on the "**Project Budget**" attached to this Agreement as Exhibit "H". Developer shall diligently apply for and pursue each funding source identified in the Project Budget at the earliest feasible opportunity, taking into account rules, requirements and scoring criteria applicable to each funding source. Not counting the Town Loan to be provided pursuant to this Agreement, Developer shall demonstrate, to Town's reasonable satisfaction, that Developer has secured a bona fide award of LIHTC in an amount sufficient to provide for development of the Project in accordance with the Project Budget.

Developer shall submit up to four (4) consecutive applications to the TCAC for LIHTC for the two application rounds in the year 2012 (March 2012 and July 2012) and the two TCAC application rounds in the year 2013 (expected in March 2013 and July 2013). In the event that the Developer applies for and does not receive an allocation of LIHTC after these four allocation rounds, Developer and the Town shall meet and confer to determine whether Developer shall make another application if all parties agree that such application would be competitive under the then-applicable TCAC scoring criteria, provided that neither party shall have an obligation to continue this Agreement.

If the parties mutually agree that funding conditions suggest that an alternative financing structure would be more advantageous for the Project, the parties may agree to pursue that alternative financing structure and amend the Project Budget accordingly, although nothing herein shall require either party to pursue such alternative financing structure.

All funding sources for the Project shall be subject to Town's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed.

(§402) Employment of Local Residents.

A goal of the Town with respect to this Project and other major projects within the Town is to secure employment opportunities for Yucca Valley residents. To that end, Developer covenants that Developer shall make best faith efforts to cause all solicitations for full or part-time, new or replacement, employment relating to the construction of the Project, including minority owned business enterprises, to be listed with the Town of Yucca Valley Town Hall, 57090 Twentynine Palms Highway, Town of Yucca Valley, CA 92284, (760) 369-7207. Prior to the commencement of construction, and as soon as practicable, Developer and its prime contractor(s) shall contact the Town of Yucca Valley to schedule a Pre-Construction Orientation Meeting to discuss the encouragement to hire locally. In addition, Developer's contractor(s) shall: (i) establish a point of contact to provide information about available job opportunities, and (ii) conduct outreach efforts to attract local subcontractors and tradesmen. In addition, Developer shall include in each contract with any contractor and shall obligate the contractor to include in each subcontract with any subcontractor undertaking work on the Project, a provision obligating such contractor to make such efforts or to cause its subcontractors to make such efforts. Developer shall be deemed to have complied with its obligations set forth in this Section if its construction contract(s) with contractors contains language substantially as follows: "[Name of contractor] shall make reasonable efforts to cause all solicitations for full or part-time, new or replacement, employment relating to the construction/installation of [describe the applicable work of improvements], including minority owned business enterprises, to be listed with the Town of Yucca Valley. The Town is an express third party beneficiary of the foregoing obligations of [name of contractor] and shall have the authority to enforce the same (provided that no such exercise by the Town of its rights or remedies provided for herein impairs or jeopardizes the rights of [name of Developer]."

The provisions of this Section are not intended, and shall not be construed, to benefit or be enforceable by any person whatsoever other than the Town. In addition, and notwithstanding any other provision set forth in this Agreement to the contrary, in no event shall Developer be deemed to be in Default of its obligations set forth in this Agreement if it performs its obligations set forth in this Section but a contractor of Developer commits a default under the applicable provisions of its construction contract.

(§403) Disposition of the Site.

Developer hereby agrees to purchase from Town, and Town agrees to sell to Developer all Town's rights, title and interests to the Site upon the terms and conditions hereinafter set forth. Developer agrees to develop the Site with seventy-four (74) income-restricted, Senior-only rental Residential Units as well as one (1) Residential Unit for a Qualified Manager as described in the Scope of Development and Project Budget. The Site shall be sold to Developer for the Purchase Price, which Purchase Price will be paid pursuant to a Note in favor of the Town for the full value of both the Purchase Price and the Town Loan, as more particularly described in Section 404, subsection 2.

(§404) Town Loan, Security & Covenants.

Subject to and conditioned upon Developer's satisfaction and continued compliance with the provisions of this Agreement, the Town agrees to provide Developer with a Town Loan for development of the Project as follows:

1. Town Loan. The total estimated cost of the Project is approximately \$18,872,387.00, as further described in the Project Budget. This estimated cost includes the Site acquisition costs and the hard and soft costs of constructing the Project. The Town agrees to provide the Town Loan to Developer in an amount equal to Six Hundred Thirty-Five Thousand, Dollars Even (\$635,000.00) to fund the actual costs for the development, construction and operation of the Project. About \$164,756.00 of the Town Loan proceeds have already been disbursed to Developer by Town for Developer's pre-construction Project costs. The remainder of the Town Loan (approximately \$470,244.00) will be disbursed to Developer prior to, or upon, the Close of Escrow (the "**Remainder Loan Proceeds**").

A. AB 26 Confirmation. The Town has identified a source of funding for the Remainder Loan Proceeds to be paid to Developer in certain revenues expected to be repaid to the former Low/Mod Fund as a result of Low/Mod Funds being borrowed for purposes of paying past SERAF obligations. It is currently unknown what potential impacts AB 26 may have upon these funding sources. Therefore, as further described in Section 404, subsection 3(G), the Remainder Loan Proceeds will be disbursed to Developer only after it has been confirmed that the Town has available funds to continue making disbursements to Developer.

B. Town Loan Only for Project Costs. The Town Loan shall only be utilized for the payment of Developer's costs as necessary to carry out the Project and as reflected in the Project Budget, and Developer shall certify such use to Town. Developer shall demonstrate that the Town Loan disbursement was properly used for these purposes upon reasonable written request of the Town. The Town Loan is based on the attached Project Budget which assumes a successful 9% tax credit application during the term of this Agreement.

C. Refinancing. Developer shall not be in default of the Note and need not seek approval of Town in refinancing any outstanding loan or note secured by the Site if all net proceeds from such refinance are applied against the unpaid balance of the Senior Financing and the Note and the debt service arising from such refinance does not reduce the Residual Cash Flow.

D. Disbursement of Remainder Loan Proceeds. If all conditions to disbursement of Remainder Loan Proceeds have been fulfilled, pursuant to Section 404, subsection 3, the Town shall disburse Remainder Loan Proceeds directly to Developer, or into Escrow for ultimate distribution to Developer, pursuant to (i) the Town's customary practices for disbursing such funds and (ii) verification that such proceeds will be used towards actual Project costs as reflected in the Project Budget. If Remainder Loan Proceeds are required for Project Costs prior to Close of Escrow, Developer shall first request in writing a draw-down on Remainder Loan Proceeds as necessary to pay Town-approved Project costs, provided that Developer has submitted all required documentation reasonably requested by the Agency to demonstrate that the Town Loan proceeds drawn shall be used for actual Project costs as reflected in the Project Budget.

E. Compliance with Law. Developer acknowledges that the Town Loan is subject to all terms and conditions of this Agreement, and any other local, state or federal agency with jurisdiction over the source of these funds and that the Project will be developed, constructed, and operated in accordance with the Town's standards and regulations and this Agreement. It is expressly understood and agreed by the parties that this section does not limit the amount of costs that may be charged or imposed by the Town for the Project or the Project approvals.

F. Affordability Covenant. In exchange for the Town Loan, which shall accrue a below-market interest rate, Developer shall, for a continuous fifty-five (55) year period from the date of issuance of a Certificate of Occupancy for the Project, operate and maintain the Project in compliance with the terms of this Agreement and the Regulatory Agreement, including, but not limited to, providing affordable housing within the Town. The Regulatory Agreement will be recorded concurrent with the Close of Escrow.

2. **Security for Assistance**. Developer's repayment obligations to pay both the full amount of the Town Loan (\$635,000) plus the full Purchase Price (\$940,000) shall be secured as a single debt obligation owing by Developer to the Town, totaling ONE MILLION FIVE HUNDRED SEVENTY-FIVE THOUSAND EVEN DOLLARS (\$1,575,00.00) (the "**Note Amount**").

Developer shall make and give to the Town the following types of security for the Note Amount:

A. Note. Developer's obligation to repay the Note Amount shall be evidenced by a Note having a form and content the same in all material respects to the Note attached hereto and incorporated herein as Exhibit "C". The Note shall provide:

(i) Residual Receipts Loan. That the Note shall be a residual receipts loan and shall be in the Note Amount. Repayment of the Note, including all principal and accrued interest, shall be made in annual payments equal to the Town's proportional share from fifty percent (50%) of Residual Cash Flow, to the extent Residual Cash Flow is available, commencing in the first year after issuance of the Certificate of Occupancy for the Project, and any unpaid amounts shall accrue simple interest at a rate of one-half of one percent (0.5%) per

annum. The unpaid balance of the Note, plus accrued interest, if not paid in full within the fifty-five (55) year term, is due and payable in full at the end of the fifty-five (55) year term.

(ii) That any Default of this Agreement or the Regulatory Agreement by Developer which remains uncured after the period provided for cure under the Agreement shall be a breach of the Note, in which event the entire outstanding principal balance of the Note, plus accrued interest, shall become due and payable by Developer on demand by the Town.

(iii) That the Note shall be secured by a Deed of Trust and Assignment of Rents having a form and content the same in all material respects to the Deed of Trust attached hereto and incorporated herein by reference as Exhibit "D" ("**Deed of Trust**").

(iv) The Note shall be nonrecourse to the Developer.

B. Deed of Trust. Developer's reimbursement obligation as set forth in this Agreement and the Note shall be secured by the Deed of Trust having a form and content the same in all material respects to the document attached hereto and incorporated herein by reference as Exhibit "D". The rights established in this Section and under the Deed of Trust are not intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity.

C. Guaranty. Developer, its General Partner, Related Entity and other affiliates with the Project, if any, shall also guaranty the completion of the development of the Project by executing a written Guaranty, which Guaranty will be submitted into Escrow by the Town, in the form utilized by the Town Attorney, prior to any Close of Escrow and as a condition of Closing.

3. Conditions Precedent to Disbursement of Town Loan. The Town Loan proceeds shall not be disbursed into Escrow for payment to Developer prior to the satisfaction of all the following conditions:

A. The Developer has submitted a financing plan for the Town's approval that identifies all sources of funds with a Developer Fee that does not exceed One Million Two Hundred Thousand Dollars (\$1,400,000.00).

B. The Developer provides the Town with a copy of the executed Guaranty.

C. The Developer has obtained commitments for all necessary construction and other funding required to construct and operate the Project.

D. The Developer has submitted to the Town the documentation of the insurance and performance bonds required under this Agreement and the Related Agreements.

E. Developer has executed and provided Town with the appropriately executed Note and Deed of Trust.

F. The Developer has executed and provided Town with the appropriately executed Regulatory Agreement for recordation on the Site.

G. The Town has secured satisfactory confirmation that a secure revenue source for funding the Remainder Loan Proceeds is, and will remain, available despite the implementation of AB 26. "Satisfactory confirmation" for the purposes of this requirement may include, without limitation: (a) the passing of all applicable statutes of limitations for potential legal challenges to the validity of the Town Loan, and/or (b) obtaining unchallenged, final written approval of the Town Loan from the Town's Oversight Board established pursuant to AB 26 in conjunction with approval from, or waiver of any challenge by, State government agencies with enforcement powers under AB 26, or (c) any other combination of State/local approvals and/or passage of periods for legal challenges as may be deemed by the Town to render the Town Loan secure from legal challenge, or (d) identification of an alternative, lawful funding source of Town funds for payment of the Remainder Loan Proceeds.

5. No Financial Assistance. Except as is expressly provided for in this Agreement, the Town shall have no obligation to provide Developer with additional financial assistance, to make any monetary or financial contributions toward the Project, to pay any development costs, to waive development fees or costs for necessary Town approvals, or to otherwise carry-out or complete the Project.

(§405) General Indemnity

Except as to the negligence, active negligence or willful misconduct of Town, Developer expressly agrees to and shall indemnify, defend, release, and hold Town, its officers, officials, agents, servants, employees, attorneys and contractors harmless from and against, any claim, liability, loss, damage, entry, cost, or expense (including, but not limited to, attorneys' fees, expert fees, and court costs) which arises out of or is in any way connected with Developer's performance under this Agreement and/or Developer's possession and use of the Site. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of the employees, agents, servants, or subcontractors of Developer or its tenants or the tenants' invitees. The parties expressly agree that any payment, attorneys' fees, costs or expense that the Town incurs or makes to or on behalf of an injured employee under Town's self administered workers' compensation is included as a loss, expense or cost for the purpose of this provision. Town shall not be responsible for any acts, errors or omissions of any person or entity except Town and its respective officers, agents, servants, employees or contractors. The parties expressly agree that the obligations of Developer under this Section shall survive the expiration or early termination of the Agreement.

Other than as authorized by the Guaranty, no deficiency judgment may be obtained against the Developer except for actual or constructive fraud, material intentional misrepresentation, intentional bad faith waste of or on the Project and such other matters as are referred to below. Consequently, no deficiency amount may be recovered from Developer under the provisions hereof, except as may be provided herein. Notwithstanding the generality of the foregoing,

however, Developer shall, except as to the negligence, active negligence or willful misconduct of Town, indemnify, defend, protect and hold the Town harmless from and against any and all loss, damage, liability, action, cause of action, cost or expense, including, without limitation, reasonable attorneys fees and expenses incurred by the holder thereof, arising as a result of any (i) fraud or material misrepresentation by the Developer under or in connection with this Agreement or the Related Agreements; (ii) bad faith waste of the real property encumbered by the Deed of Trust; and (iii) losses resulting from the Developer's failure to maintain insurance as required under the provisions of the Deed of Trust. The Developer's obligation to indemnify the Town hereof as aforesaid shall be recourse obligations of the Developer, and in the event of any breach of such obligations, the Town shall have the right to proceed directly against the Developer to recover any and all losses, damages, liability, costs and expenses (including without limitation, reasonable attorneys' fees and expenses) and may bring any action and institute any proceeding to obtain a deficiency judgment in or following foreclosure for any and all such losses, damages, liabilities, costs and expenses resulting from such breach.

(§406) Indemnification and Release from Liabilities Relating to New Legislation.

Developer acknowledges that it is aware of, and has received advice from legal counsel on, the matter of legislation effective June 29, 2011, purporting to limit or disenfranchise the authority of local governments to transfer or control assets that are, or once were, owned by a local redevelopment agency. Specifically, AB 26 and AB1x 27 became effective on June 29, 2011. AB 26 purports to eliminate redevelopment agencies while AB1x 27 allows agencies to continue to exist if they agree to pay to the State a proportional share of \$1.7 billion this year and \$400 million annually in perpetuity. On December 29, 2011, the California Supreme Court in *Community Redevelopment Association v. Matosantos (No. S194861)* upheld the constitutionality of AB 26 and struck-down the constitutionality of ABx1 27, thus, absent further legislation, effecting the abolishment of redevelopment activities. Developer hereby acknowledges the possibility that AB 26 might be interpreted or applied in such a manner as to undermine or invalidate (i) Developer's rights to the Site, and/or (ii) Town's authority to convey the Site to Developer, and/or (iii) the validity of the Town Loan or Remainder Loan Proceeds to be paid to Developer, and/or (iv) the Town's legal authority to enter this Agreement, and/or (v) any other provision of this Agreement. Notwithstanding such risk, Developer hereby agrees to release, indemnify, defend (by Town's choice of counsel), and hold harmless Town, its directors, officers, employees, agents, representatives, heirs, and successors from and against any and all costs, expenses, damages, claims, and liabilities, including reasonable attorney fees, foreseeable or unforeseeable, directly or indirectly arising from any application or impact of AB 26 upon (i) Town's existing rights to the Site or Town Loan, (ii) this Agreement, (iii) Town's authority to convey the Site to Developer, (iv) Developer's authority to acquire the Site, or (v) any other costs or expenses whatsoever that may result to Developer as a result of AB 26. Notwithstanding the foregoing, Developer shall not be required to indemnify or defend Town for any liability Town may have incurred under AB 26 as a direct result of any actions taken by the Town prior to the Effective Date hereof.

(§407) Escrow.

1. **Opening Escrow.** Within twenty (20) days after Developer receives notice that it has secured a bona fide award of LIHTC, the Parties shall open an escrow

(“**Escrow**”) with the Escrow Agent identified above, (herein the “**Escrow Agent**”) by causing an executed copy of this Agreement to be deposited with Escrow Agent. Escrow shall be deemed open on the date that a fully executed copy of this Agreement is delivered to Escrow Agent (“**Opening of Escrow**”). Escrow Agent shall provide written notice of the Opening of Escrow date to Developer and Town. This Agreement shall constitute the joint escrow instructions of Town and Developer for the Site, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of Escrow. Escrow Agent is empowered to act under these instructions. Town and Developer shall promptly prepare, execute, and deliver to the Escrow Agent such additional escrow instructions consistent with the terms herein as shall be reasonably necessary. No provision of any additional escrow instructions shall modify this document without specific written approval of the modifications by both Developer and Town.

2. **Time for Closing Escrow.** Escrow shall close no later than the business day following the fulfillment of all conditions and deposits to Escrow required under Section 408 hereto (“**Closing Date**”). Notwithstanding the foregoing, under no circumstances shall Escrow extend more than One Hundred Eighty (180) days following Opening, unless extended by mutual written agreement of the parties. The terms the “**Close of Escrow**” and/or the “**Closing**” are used herein to mean the time the Grant Deed (as hereinafter defined) is recorded in the Office of the County Recorder of San Bernardino County, California. Possession of the Site, shall be delivered to Developer concurrently with the conveyance of title

(§408) Conditions to Close of Escrow for Acquisition.

1. **Developer’s Conditions to Closing.** Developer’s obligation to acquire the Site and to Close Escrow hereunder, shall, in addition to any other conditions set forth herein in favor of Developer, be conditional and contingent upon the satisfaction, or waiver by Developer, of each and all of the following conditions (collectively, “**Developer’s Conditions to Closing**”) within the timeframes stated in Section 407, subsection 2, above:

A. Developer shall have approved the environmental condition of the Site as set forth in Section 411 and Developer shall have approved of title as set forth in Section 409 and the Title Company shall have unconditionally committed to issue the Developer’s title policy to Developer subject only to those title conditions approved by Developer as set forth in Section 411 and subject to the conditions and exceptions recited in the Deed, the Deed of Trust, and the Regulatory Agreement, which documents shall have been deposited into escrow in a recordable form.

B. Town shall have deposited into escrow a certificate (“**FIRPTA Certificate**”) in such form as may be required by the Internal Revenue service pursuant to Section 1445 of the Internal Revenue Code.

C. Developer shall have obtained evidence of financing commitments per Section 410 hereof for the development of the Site in an amount sufficient to develop the Project on the terms and conditions contemplated by the Developer and as set forth in the Project Budget to develop the Project.

D. Developer shall have obtained a reservation of LIHTC from the TCAC in an amount contemplated by the Developer to develop the Project.

E. Town shall have deposited into Escrow the executed Grant Deed.

F. Developer shall have obtained from the Town all required approvals, including site plan review, conditional use, subdivision, building, grading, landscaping, and others for the development of the Site as the Project, and Project shall be “permit ready” – i.e. building permits will issue immediately upon payment of necessary permit fees.

G. Town shall have disbursed the Town Loan into Escrow after satisfying all conditions for disbursement under Section 404, subsection 3.

H. No litigation shall be threatened or pending which seeks to prevent the construction or operation of the Project, or any part thereof, according to the terms set forth in this Agreement.

I. Town shall deposit into Escrow an estoppel certificate certifying that Developer has completed all acts, other than as specified, necessary for conveyance, if such be the fact.

J. At the Closing, the Town shall not be in material Default in any of its obligations set forth in this Agreement and all representations and warranties of Town contained herein shall be true and correct in all material respects, to the best of Town's knowledge.

Any waiver of the foregoing conditions must be express and in writing. In the event that the foregoing conditions have not been satisfied within the times provided therefor herein, either party may terminate this Agreement by delivering a written notice in accordance with Sections 413 and 808 hereof.

2. Town’s Conditions to Closing. Town’s obligation to sell the Site and to Close Escrow hereunder, shall, in addition to any other conditions set forth herein in favor of Town, be conditional and contingent upon the satisfaction, or waiver by Town, of each and all of the following conditions (collectively, “Town’s Conditions to Closing”) within the timeframes stated in Section 407, subsection 2, above:

A. Developer shall have obtained evidence of financing commitments pursuant to Section 410 for the acquisition and development of the Site and Town shall have approved such commitments.

B. Developer shall have obtained a reservation of LIHTC from the TCAC.

C. Developer shall have timely submitted to Town plans and drawings for all improvements to be constructed on the Site, including for site plan review, conditional use, building, grading, landscaping and other plans and drawings, as provided in

Section 502, and all necessary plans shall have been reviewed or revised as required by the Developer and Town, and final.

D. Developer shall not have made or attempted to make a Transfer in violation of Section 303, provided that Town shall give notice of any violation of Section 303 and afford Developer the opportunity to cure the violation.

E. Developer shall have deposited into escrow the Guaranty, Note, Deed of Trust, Notice of Affordability Restrictions, and Regulatory Agreement in an executed and recordable format where applicable.

F. At the Closing, Developer shall not be in material Default in any of its obligations set forth in this Agreement and all representations and warranties of Developer contained herein shall be true and correct in all material respects, to the best of Developer's knowledge.

G. The Town shall have secured satisfactory confirmation that (i) it holds fee title to the Site in such a manner that the Town may transfer title to the Developer without violation of, or incurring liability under, AB 26, and (ii) that the transfer of the Site to Developer will not otherwise be adjudicated as void or unenforceable, or subject to unwinding, pursuant to the provisions of AB 26. "Satisfactory confirmation" for the purposes of this Section includes, without limitation: (a) the passing of all applicable statutes of limitations for potential legal challenges to the validity of the proposed sale of the Site to Developer, or (b) obtaining unchallenged, final written approval of the Site's sale from the Town's Oversight Board established pursuant to AB 26 in conjunction with approval from, or waiver of any challenge by, State government agencies with enforcement powers under AB 26, or (c) any combination of State/local approvals and passage of periods for legal challenges as may be deemed by the Town to render the Site's disposition secure from legal challenge, *and* (d) one of the foregoing shall place the Title Company in a position to issue a final ALTA policy of title insurance insuring the transfer of the Site's title to Developer. The parties hereby acknowledge that the intent of this condition is to ensure the legality of the Site's disposition proposed hereunder and to protect the Town's General Fund monies from any liability that may relate to, or arise from, the Site's conveyance should it be found a violation of AB 26.

Any waiver of the foregoing conditions must be express and in writing. In the event that Developer fails to satisfy Town's foregoing conditions or defaults in the performance of its obligations hereunder, Town may terminate this Escrow.

3. Both Parties' Conditions to Closing. Prior to the Closing Date, Developer and Town shall execute and deliver a certificate ("Taxpayer ID Certificate") in such form as may be required by the IRS pursuant to Section 6045 of the Internal Revenue Code, or the regulations issued pursuant thereto, certifying as to the description of the Site, Date of Closing, gross price, and taxpayer identification number for Developer and Town. Prior to the Closing, Developer and Town shall cause to be delivered to the Escrow Agent such other items, instruments and documents, and the parties shall take such further actions, as may be necessary or desirable in order to complete the Closing. At the Closing neither party shall be in breach of its obligations hereunder.

(§409) Title Matters.

1. Condition of Title. Town shall convey to Developer fee interest in the entire Site, subject only to: (i) this Agreement, conditions in the Grant Deed, the Deed of Trust, the Guaranty, the Notice of Affordability Restrictions and the Regulatory Agreement; (ii) current taxes, a lien not yet payable; (iii) quasi-public utility, public alley and public street easements of record approved by Developer, which approval shall not be unreasonably withheld; and (iv) covenants, conditions and restrictions, reciprocal easements, and other encumbrances and title exceptions approved by Developer under this Section 409.

2. Town Not to Encumber Site. Town hereby warrants to Developer that it has not and will not, from the Effective Date of this Agreement through Close of Escrow, transfer, sell, hypothecate, pledge, or otherwise encumber the Site without express written permission of Developer or as otherwise specified in this Agreement (i.e., authority of Town to transfer the Site to a Housing Authority).

3. Approval of Title Exceptions. No later than 140 days following the Effective Date hereof, Town shall deliver to Developer an ALTA survey of the Site and a preliminary title report or reports (collectively, the "Title Report") with respect to the title to the Site, together with legible copies of the documents underlying the exceptions ("Exceptions") set forth in the Title Report. The Developer shall have the right to reasonably approve or disapprove the Exceptions. The Developer shall have sixty (60) days from the date of its receipt of the Title Report to give written Notice to the Town and Escrow Agent of the Developer's approval or disapproval of any of such Exceptions set forth in the Title Report, within its reasonable discretion. Developer's failure to provide Notice of its approval of the Title Report within such time limit shall be deemed disapproval of the Title Report. If the Developer delivers Notice to the Town of its disapproval of any Exceptions in the Title Report, the Town shall have the right, but not the obligation, to give its written notice to Developer and to Escrow Agent within 30 days that it will, no later than the date of Closing, remove any disapproved Exceptions or to deliver Notice to the Developer providing assurances satisfactory to the Developer within said time period that such Exception(s) will be removed on or before the Closing. If the Town cannot or does not elect to remove any of the disapproved Exceptions within that period, Town shall provide Notice of such fact to Developer and Developer shall have thirty (30) days after receiving such Notice to either give the Town written Notice that the Developer elects to proceed with the purchase of the Site subject to the disapproved Exceptions or to give the Town written Notice that the Developer elects to terminate this Agreement and the Developer's failure to give timely written Notice shall be deemed as an election to terminate this Agreement. Fee simple title subject only to the Exceptions to title approved by the Developer as provided herein shall hereinafter be referred to as the "Condition of Title." The Developer shall have the right to approve or disapprove any further Exceptions reported by the Title Company after the Developer has approved the Condition of Title for the Site (which are not created by the Developer). The Town shall not voluntarily create any new exceptions to title following the Date of Agreement.

4. Title Policy. At the Close of Escrow, Escrow Agent shall furnish Developer with an ALTA Policy of Title Insurance ("Title Policy") for the Developer's interest, wherein the Title Company shall insure that title to the Site shall be vested in Developer, containing no Exception to such title which has not been approved or waived by Developer in

accordance with this Section. The Title Policy shall include any available additional title insurance, extended coverage or endorsements that Developer has reasonably requested. The Town shall pay only for that portion of the title insurance premium attributable to the standard coverage. Developer shall pay for the premium for any additional title insurance, extended coverage or special endorsements.

(§410) Evidence of Financial Capability.

No later than ninety (90) following Developer obtaining a reservation of LIHTC, Developer shall submit to Town Manager for approval evidence reasonably satisfactory to the Town Manager that Developer has the financial capability necessary for the development of the Project on the Site pursuant to this Agreement. Such evidence of financial capability shall include all of the following:

1. Updated cost estimates for Developer's total cost of developing the Project (including both "hard" and "soft" costs).
2. An update of the Construction Loan solicitations obtained by Developer to finance the development of the Project, or such other documentation reasonably satisfactory to the Town Manager sufficient to demonstrate that Developer has adequate funds available and committed to finance the development of the Project.
3. An executed letter of intent with a Qualified Tax Credit Investor that demonstrates that Developer has adequate funds available and/or committed to cover the difference between the total development costs of the Project (subparagraph (1) above) and the proceeds of the Construction Loan commitment (subparagraph (2) above) and the Town Loan.
4. A copy the draft contract between Developer and its general contractor for all of the improvements required to be constructed by Developer hereunder, certified by Developer to be a true and correct copy thereof.

Developer covenants and agrees to take all action, furnish all information, give all consents and pay all sums reasonably required to keep the Construction Loan commitment in full force and effect and shall comply in all material aspects with all conditions thereof, and shall promptly execute, acknowledge and deliver all applications, credit applications and data, financial statements, and documents in connection therewith.

(§411) Condition of Site.

1. **Disclaimer of Warranties.** Upon the Close of Escrow, Developer shall acquire the Site in its "AS-IS" condition and shall be responsible for any defects in the Site, whether patent or latent, including, without limitation, the physical, and geotechnical condition of the Site. Town makes no representation or warranty concerning the physical, geotechnical or other condition of the Site, the suitability of the Site for the Project, or the present use of the Site, and specifically disclaims all representations or warranties of any nature concerning the Site made by Town or its employees, agents and representatives. The foregoing disclaimer includes, without limitation, topography, climate, air, water rights, utilities, present and future zoning, soil, subsoil, the purpose for which the Site is suited, or drainage. Moreover, Town makes no

representation or warranty concerning the compaction of soil upon the Site, nor of the suitability of the soil for construction. Developer assumes all liabilities that arise from post-Closing events.

2. Right to Enter Site, Indemnification. Developer shall have the right to enter upon the Site to conduct soils, engineering, or other tests and studies, to perform preliminary work or Site investigation or for any other purposes to carry out the terms of this Agreement. The Developer shall have the right, at its sole cost and expense, to engage its own environmental consultant (the "Environmental Consultant") and other consultants to make such investigations of the Site as the Developer deems necessary, including any soils, geotechnical and other testing of the Site. Developer shall indemnify, defend and hold Town harmless from and against any claims, injuries or damages arising out of or involving any such entry or activity as provided in Section 505. Any such activity shall be undertaken only after securing any necessary permits from the appropriate governmental agencies and providing Town with certificates of insurance evidencing the coverages required in Section 505. The Developer shall reasonably approve or disapprove of the physical and environmental condition of the Site as described in Section 412.4 below.

3. Hazardous Materials. Developer understands and agrees that in the event Developer incurs any loss or liability concerning Hazardous Materials (as hereinafter defined) and/or oil wells and/or underground storage tanks and/or pipelines whether attributable to events occurring prior to or following the Closing, then Developer may look to current or prior owners of the Site, but under no circumstances shall Developer look to Town for any liability or indemnification regarding Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, except if such loss or liability is the result of Town's failure to disclose the existence of any known Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines. Developer, and each of the entities constituting Developer, if any, from and after the Closing, hereby waives, releases, remises, acquits and forever discharges Town, and its directors, officers, employees, and agents, and its respective heirs, successors, personal representatives and assigns, of and from any and all Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs, as those terms are defined below, and from any and all actions, suits, legal or administrative orders or proceedings, demands, actual damages, punitive damages, loss, costs, liabilities and expenses, which concern or in any way relate to the physical or environmental conditions of the Site, the existence of any Hazardous Material thereon, or the release or threatened release of Hazardous Materials therefrom, whether existing prior to, at or after the Closing. It is the intention of the parties pursuant to this release that any and all responsibilities and obligations of Town, and any and all rights, claims, rights of action, causes of action, demands or legal rights of any kind of Developer, its successors, assigns or any affiliated entity of Developer, against the Town, arising by virtue of the physical or environmental condition of the Site, the existence of any Hazardous Materials thereon, or any release or threatened release of Hazardous Material therefrom, whether existing prior to, at or after the Closing, are by this Release provision declared null and void and of no present or future force and effect as to the parties; provided, however, that no parties other than the Indemnified Parties (defined below) shall be deemed third party beneficiaries of such release. **In connection therewith, Developer and each of the entities constituting Developer, expressly agree to waive any and all rights which said party may have under Section 1542 of the California Civil Code which provides as follows:**

“A general release does not extend to claims which the creditor does not know or suspect to exist in his/ her favor at the time of executing the release, which if known by him/her must have materially affected his/her settlement with the debtor.”

DEVELOPER'S INITIALS: 

TOWN'S INITIALS: 

Developer and each of the entities constituting Developer, shall, from and after the Closing, defend, indemnify and hold harmless Town and its officers, directors, employees, agents and representatives (collectively, the “**Indemnified Parties**”) from and against any and all Environmental Claims, Environmental Cleanup Liability, Environmental Compliance Costs, and any other claims, actions, suits, legal or administrative orders or proceedings, demands or other liabilities resulting at any time from the physical and/or environmental conditions of the Site, unless resulting from the Indemnified Parties’ negligence or willful misconduct, but only to the extent first arising or occurring after the Closing or from the existence of any Hazardous Materials or the release or threatened release of any Hazardous Materials of any kind whatsoever, in, on or under the Site occurring after the Closing, including, but not limited to, all foreseeable and unforeseeable damages, fees, costs, losses and expenses, including any and all attorneys’ fees and environmental consultant fees and investigation costs and expenses, directly or indirectly arising therefrom, and including fines and penalties of any nature whatsoever, assessed, levied or asserted against any Indemnified Parties to the extent that the fines and/or penalties are the result of a violation or an alleged violation of any Environmental Law. Developer further agrees that in the event Developer obtains, from former or present owners of the Site or any other persons or entities, releases from liability, indemnities, or other forms of hold harmless relating to the subject matter of this Section, Developer shall use its diligent efforts to obtain for Town the same releases, indemnities and other comparable provisions.

For purposes of this Section, the following terms shall have the following meanings:

a. “Environmental Claim” means any claim for personal injury, death and/or property damage made, asserted or prosecuted by or on behalf of any third party, including, without limitation, any governmental entity, relating to the Site or its operations and arising or alleged to arise under any Environmental Law.

b. “Environmental Cleanup Liability” means any cost or expense of any nature whatsoever incurred to contain, remove, remedy, clean up, or abate any contamination or any Hazardous Materials on or under all or any part of the Site, including the ground water thereunder, including, without limitation, (A) any direct costs or expenses for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith and (B) any cost, expense, loss or damage incurred with respect to the Site or its operation as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, treatment, cleanup or abatement.

c. “Environmental Compliance Cost” means any cost or expense of any nature whatsoever necessary to enable the Site to comply with all applicable Environmental

Laws in effect. "Environmental Compliance Cost" shall include all costs necessary to demonstrate that the Site is capable of such compliance.

d. "Environmental Law" means any federal, state or local statute, ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions of permits, licenses and other operating authorizations relating to (A) pollution or protection of the environment, including natural resources, (B) exposure of persons, including employees, to Hazardous Materials or other products, raw materials, chemicals or other substances, (C) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical sub-stances from industrial or commercial activities, or (D) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal.

e. "Hazardous Material" is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is: (A) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (B) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 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); (C) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (D) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Sections 25501(j) and (k) and 25501.1 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (E) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (F) "used oil" as defined under Section 25250.1 of the California Health and Safety Code; (G) asbestos; (H) listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (I) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (J) designated as a "toxic pollutant" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1317; (K) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (42 U.S.C. § 6903); (L) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (42 U.S.C. § 9601); (M) defined as "Hazardous Material" pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 *et seq.*; or (N) defined as such or regulated by any "Superfund" or "Superlien" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, as now, or at any time here-after, in effect.

Notwithstanding any other provision of this Agreement, Developer's release and indemnification as set forth in the provisions of this Section, as well as all provisions of this Section, shall survive the termination of this Agreement and shall continue in perpetuity.

4. Due Diligence. Starting from the Effective Date hereof and ending ninety (90) days following the Opening of Escrow ("Due Diligence Period"), Developer may inspect the Site in order to determine whether to approve the physical condition of the Site as described in Section 412, subsection 2, above. Town shall cooperate and provide such information in Town's possession reasonably necessary for Developer to conduct its due diligence review during the Due Diligence Period. The Developer's failure to deliver written Notice of its approval within such time limit shall be deemed disapproval of the physical and environmental condition of the Site. In the event Developer does not approve of the condition of the Site by written notice to Town prior to the expiration of the Due Diligence Period, this Agreement shall terminate, and, except as otherwise expressly stated in this Agreement, neither party shall have any further rights or obligations to the other party.

(§412) Matters Pertaining to Escrow.

1. Escrow Costs. On the Date of Closing, the Escrow Agent shall advise the Town and the Developer in writing of the fees, charges, and costs necessary to clear title and close escrow, and of any documents which have not been provided by said party and which must be deposited in Escrow to permit timely Closing. On or before, but not later than 1:00 p.m. of the business day prior to the Date of Closing, Town shall deposit into Escrow payment to Escrow Agent of Town's share of costs as determined by the Escrow Agent and any balance of Remainder Loan Proceeds that have not already been paid to Developer. On or before, but not later than 1:00 p.m. of the Date of Closing, Developer shall execute and acknowledge as may be required and deposit into Escrow such payment to Escrow Agent of Developer's share of costs as determined by the Escrow Agent.

2. Recordation and Disbursement of Funds. Upon the completion by the Town and Developer of the deliveries and actions specified in these Escrow instructions precedent to Closing, the Escrow Agent shall be authorized to buy, affix and cancel any documentary stamps and pay any transfer tax and recording fees, if required by law, and thereafter cause to be recorded in the appropriate records of San Bernardino County, California, the Grant Deed, the Regulatory Agreement, the Notice of Affordability Restrictions, the Deed of Trust and any other appropriate instruments delivered through this Escrow, if necessary or proper to, and provided that the fee title interest can, vest in Developer in accordance with the terms and provisions herein. Concurrent with recordation, Escrow Agent shall deliver the Title Policy to Developer insuring title and conforming to the requirements of Section 409, subsection 4. Following recordation, the Escrow Agent shall deliver copies of said instruments to Developer and Town.

3. Allocation of Costs. The Escrow Agent is authorized to allocate costs as follows: Town shall pay the cost of the Title Policy as provided above while Developer shall pay premiums for any additional insurance, extended coverage or special endorsements. Developer shall pay the documentary transfer tax as well as all recording fees. Developer and Town shall each pay one-half of all Escrow and similar fees, except that if one party defaults under this Agreement, the defaulting party shall pay all Escrow fees and charges. Each party shall pay its own attorneys' fees.

4. Proration and Adjustments. Ad valorem taxes and assessments on the Site for the current year shall be prorated by the Escrow Agent as of the date of Closing with the Town responsible for those levied, assessed or imposed prior to Closing and the Developer responsible for those after Closing. If the actual taxes are not known at the date of Closing, the proration shall be based upon the most current tax figures. When the actual taxes for the year of Closing become known, Developer and Town shall, within thirty days thereafter, reprorate the taxes in cash between the parties. Insurance will not be assigned through Escrow; rather, Town will cancel any existing insurance policy and Developer will provide new insurance.

5. Extraordinary Services of Escrow Agent. It is understood that Escrow fees and charges contemplated by this Agreement incorporate only the ordinary services of the Escrow Agent as listed in these instructions. In the event that the Escrow Agent renders any service not provided for in this Agreement or that there is any assignment of any interest in the subject matter of this Escrow or that any controversy arises hereunder, or that the Escrow Agent is made a party to, or reasonably intervenes in, any litigation pertaining to this Escrow or the subject matter thereof, then the Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs and expenses occasioned by such default, controversy or litigation.

6. Escrow Agent's Right to Retain Documents. Escrow Agent shall have the right to retain all documents and/or other things of value at any time held by it hereunder until such compensation, fees, costs and expenses shall be paid. The undersigned hereby jointly and severally promise to pay such sums upon demand.

7. Responsibilities in the Event of Controversies. If any controversy documented in writing arises between Developer and Town or with any third party with respect to the subject matter of this Escrow or its terms or conditions, the Escrow Agent shall not be required to determine the same, to return any money, papers or documents, or take any action regarding the Site prior to settlement of the controversy by a final decision of a court of competent jurisdiction or written agreement of the parties to the controversy. The Escrow Agent shall be responsible for timely notifying Developer and Town of the controversy. In the event of such a controversy, the Escrow Agent shall not be liable for interest or damage costs resulting from failure to timely close escrow or take any other action unless such controversy has been caused by the failure of the Escrow Agent to perform its responsibilities hereunder.

8. Information Report. The "Reporting Person" within the meaning of Treasury Regulation Section 1.6045-4(e)(5) with respect to the transactions contemplated by this Agreement shall be Escrow Agent. The name and address of Escrow Agent is set forth on the first page of this Agreement. It is agreed that Escrow Agent is an eligible person under Section 1.6045-4(e)(5)(ii) of said Regulations. Escrow Agent hereby agrees to be responsible for complying with the reporting and other requirements of Internal Revenue Code Section 6045(e) and the income tax regulations promulgated thereunder. Pursuant to said regulations, the address for the transferor and transferee are as set forth for Town and Developer respectively in Section 901 below, and the identifying information regarding the real estate transferred is the legal description for the Site or portion thereof being transferred. Escrow Agent agrees to file the form required by said regulations between the end of the calendar year in which the Close of Escrow occurs and February 28 of the following calendar year. Developer and Town agree (i) to

cooperate with Escrow Agent and with each other in completing any report and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including, without limitation, Internal Revenue Service Form 1099-S as such may be hereafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereafter promulgated by the Treasury Department with respect thereto; (ii) that Developer and Town, their respective employees and attorneys, and Escrow Agent and its employees may disclose to the Internal Revenue Service, this Agreement or the transaction contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045(e); (iii) that neither Developer nor Town shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information; and (iv) to retain this Agreement for at least four (4) years following the close of the calendar year in which the Close of Escrow occurs.

(§413) Termination of Escrow.

1. **Termination.** If Escrow fails to timely close as provided above, Escrow shall terminate automatically without further action by Escrow Agent or any party, and Escrow Agent is instructed to return all funds and documents then in Escrow to the respective depositor of the same with Escrow Agent; provided that any document which has been signed by a party who is not to receive the return of such document, shall be marked “void and of no force or effect” by Escrow Agent before it is delivered. Cancellation of Escrow, as provided herein, shall be without prejudice to whatever legal rights Developer or Town may have against each other arising from the Escrow or this Agreement.

2. **Termination Resulting from Implementation of AB 26.** If it is determined that the terms of this Agreement, either in whole or in part, would (i) constitute a violation of AB 26, or (ii) that AB 26 renders provisions of this Agreement null and void, or (iii) that AB 26 potentially exposes one or both parties hereto to a bona fide risk of liability should the terms of this Agreement be performed, either party may terminate Escrow. In lieu of terminating Escrow, the parties may elect, based on mutual agreement, to negotiate revisions to this Agreement or to the Project if reasonable modifications to this Agreement or the Project would abrogate potential violations of, or liability under, AB 26.

(§500) DEVELOPMENT OF THE SITE.

(§501) Scope of Development.

The Site shall be developed by Developer as provided in the Scope of Development, the Regulatory Agreement, the Specific Plan, and the plans and permits approved by Town and City pursuant to Section 502.

(§502) Development Plans, Final Building Plans and Environmental Review.

1. **Approved Specific Plan; CEQA Compliance; Proposed Development’s Consistency With Plan and Codes.** A Specific Plan for the Project has been prepared pursuant to the provisions of the California Government Code, Title 7, Division 1,

Chapter 3, Article 8, and Sections 65450 through 65457. Town warrants and represents that the City's General Plan and Zoning Ordinance permit Developer's proposed development, and construction, operation, and use of the Site as provided in this Agreement including, without limitation, the Scope of Development and approved Specific Plan, subject only to those development approvals yet to be obtained, including Site Plan Review and subdivision approval (if required). It is expressly understood by the parties hereto that Town makes no representations or warranties with respect to approvals required by any other governmental entity or with respect to approvals hereinafter required from Town, Town reserving full police power authority over the Project. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items, nor a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions.

2. Evolution of Development Plan. Concurrently with the approval of this Agreement, the Town has approved the Developer's Basic Concept Drawings and the Specific Plan. No later than ninety (90) days after the Effective Date hereof, Developer shall submit to the Town any further preliminary (if needed), and thereafter final, drawings and specifications for development of the Site in accordance with the Scope of Development, and all in accordance with the Town's regulatory requirements. The term preliminary and final drawings shall be deemed to include site plans, building plans and elevations, grading plans, if applicable, landscaping plans, parking plans, signage, a description of structural, mechanical, and electrical systems, and all other plans, drawings and specifications. Final drawings will be in sufficient detail to obtain a building permit. Said plans, drawings and specifications shall be consistent with the Scope of Development and the various development approvals referenced hereinabove, except as such items may be amended by mutual consent of Town and Developer. Plans (concept, preliminary and construction) shall be progressively more detailed and will be approved if a logical evolution of plans, drawings or specifications previously approved. Plans in sufficient detail to obtain all discretionary land use approvals, including for site plan approval, conditional use permit, and other actions requiring Planning Commission approval, shall be submitted and processed concurrently for the Site.

3. Developer Best Efforts to Obtain Approvals. Developer shall exercise its best efforts to timely submit all documents and information necessary to obtain all development and building approvals from the Town in a timely manner. Not by way of limitation of the foregoing, in developing and constructing the Project, Developer shall comply with all applicable development standards in Town's Municipal Code and Development Code, and shall comply with all building code, landscaping, signage, and parking requirements, except as may be permitted through approved variances and modifications.

4. Town Cooperation. Subject to Developer's compliance with (i) the applicable Town development standards for the Site, and (ii) all applicable laws and regulations governing such matters as public hearings, site plan review and environmental review, Town agrees to provide reasonable assistance to Developer, at no cost to Town, in the processing of Developer's submittals required under this Section. Town's failure to provide necessary approvals or permits within such time periods, after and despite Developer's reasonable efforts to submit the documents and information necessary to obtain the same, shall constitute an Enforced Delay.

5. Disapproval. The Town shall approve or disapprove any submittal made by Developer pursuant to this Section within thirty (30) days after such submittal. All submittals made by Developer will note the 30-day time limit, and specifically reference this Agreement and this Section. Any disapproval shall state in reasonable detail in writing the reason for the disapproval, and the changes which the Town reasonably requests be made. Developer shall make the required changes and revisions and resubmit for approval as soon as is reasonably practicable but no more than fifteen (15) days after the date of disapproval. Thereafter, Town shall have an additional thirty (30) days for review of the resubmittal, but if the Town disapproves the resubmittal, then the cycle shall repeat, until the Town's approval has been obtained. The foregoing time periods may be amended by mutual written agreement of the parties.

6. Development Fees. Notwithstanding any assistance to be provided by the Town under this Agreement, Developer shall be solely responsible for payment of all Development Fees.

7. CEQA. A Mitigated Negative Declaration has been approved for the Specific Plan and the Project and was filed with the County Clerk's Office per the requirements of CEQA and its Guidelines. Without limitation of the foregoing, Developer specifically acknowledges and agrees that the Developer shall satisfy all conditions necessary to ensure that the Project conforms to all applicable CEQA requirements, including all mitigation measures and requirements of the Mitigated Negative Declaration. The Developer agrees to supply information and otherwise assist Town, upon Town's request, to determine the environmental impact of the proposed development and to allow Town to prepare and process such environmental documents, if any, as may need to be completed for the development pursuant to the requirements of CEQA.

8. Dedication of Rights-of-Way for Public Improvements. Developer shall give and dedicate such rights-of-way, easements, agreements, licenses, and other grants of rights ("Dedications") to the Town as are reasonably required to accomplish the survey, design, construction, inspection, testing, operation, maintenance, and repair of public improvements. It is understood and agreed by Developer that such Dedications may include, but are not limited to, fee parcels, and permanent or temporary rights-of-way or easements for public purposes (including street and utility use, traffic intersection improvements, slope, drainage, maintenance, construction, entry and/or access, and encroachment permits). Developer agrees that the making of such Dedications are part of the consideration provided by Developer for this Agreement, that Developer shall not seek, nor have a right to seek, any compensation from the Town for such Dedications, and that Developer shall not pursue any legal action for compensation, including inverse condemnation or eminent domain, with regard to such Dedications.

9. No Exemption from Taxes. This Agreement shall not exempt, and shall not be interpreted as exempting, Developer, Holder, or any person claiming through either of them, from the payment of, or from being subject to the levy of: (i) ad valorem property taxes imposed on the Site under Article XIII A of the California Constitution; (ii) special taxes imposed on the Site; (iii) special assessments imposed on the Site; (iii) any taxes payable under the California Bradley-Burns Uniform Local Sales & Use Tax Law, Revenue and Taxation Code §7200, et seq.; or (iv) any other taxes, assessments, fees, exactions, or charges any portion of

which are allocated to, or received by, the Town and which are imposed due to the ownership, use, or possession of the Site or interest therein or due to the construction or operation of the Project. This Agreement shall not exempt, and shall not be interpreted as exempting, Developer, Holder, or any person claiming through either of them, from inclusion in any maintenance district, assessment district, community facilities district, other special district, or other method of public financing as may be allowed under the laws of the State of California or of the United States. The Town acknowledges that Developer intends to obtain a Property Tax Exemption pursuant to Revenue and Taxation Code § 214(g). Nothing in this Agreement shall prohibit the Developer from obtaining a Property Tax Exemption and until such time as such exemption has been obtained, Developer shall pay all Property Taxes levied on the Site.

10. Ownership of Plans. All development plans, construction drawings, construction plans, architect's plans and other plans and drawings relating to the development of the Project shall be and remain the sole property of Developer, unless otherwise specified herein.

(§503) Developer Responsibilities During Project Construction.

The Developer shall be solely responsible for all actions necessary for the development of the Project and cause all construction of the Project to be performed in accordance with this Agreement, the Scope of Development and the Project Budget, as modified from time to time, as well as in accordance with all other applicable provisions of this Agreement and the Related Agreements and all applicable laws and regulations. The cost of constructing all of the improvements required to be constructed for the Project shall be borne by Developer.

Because the Town Loan to Developer qualifies as public funding in the form of a below-market interest rate loan for a project with occupancy of at least 40 percent low-income housing units for the 55-year term of the Regulatory Agreement, the parties do not believe that the Project would be considered to be a "public work" "paid for in whole or in part out of public funds," as described in California Labor Code Section 1720 *et seq.*, ("**Prevailing Wage Law**"). Further, the parties hereto believe that the Site is being conveyed to the Developer at fair market value and that no financial assistance or public monies are being provided to Developer with respect to the Project such that the Project is not subject to the Prevailing Wage Law. Notwithstanding the foregoing, Developer fully accepts the risk that construction or development of the Site may qualify as a "public work" "paid for in whole or in part out of public funds," such that it would cause Developer to be required to pay prevailing wages for any aspect of the development. Developer fully bears any and all risk that Prevailing Wage Laws may be found to apply to the Project. To this end, Developer acknowledges and agrees that should any third party, including but not limited to the Director of the Department of Industrial Relations ("DIR"), require Developer or any of its contractors or subcontractors to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the DIR under Prevailing Wage Law for all or any of the assistance provided hereunder, then Developer shall indemnify, defend, and hold Town harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature) or other proceedings, and shall assume all obligations and liabilities for the payment of such wages and for compliance with the provisions of the Prevailing Wage Law. The Town makes no representation that any construction completed by Developer is or is not subject to Prevailing Wage Law.

In addition, in developing the Site, Developer shall water the ground as reasonably required by Town, and take such other actions as Town shall reasonably require to minimize the impact of construction and airborne debris on nearby property.

(§504) Continual Performance; Progress Reports.

Once construction is commenced, it shall be diligently pursued to completion, and shall not be abandoned for more than thirty (30) consecutive days, except when due to an Enforced Delay. Developer shall keep the Town informed of the progress of construction and shall submit monthly written reports of the progress of the construction to the Town in the form required by the Town.

(§505) Indemnification During Construction.

During the periods of construction on the Site and until such time as the Town has issued a Release of Construction Covenants with respect to the construction of the improvements thereon, the Developer agrees to and shall indemnify and hold the Town harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from 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 which shall occur on the Site and which shall be directly or indirectly caused by any acts done thereon by, or any errors or omissions of, the Developer or its agents, servants, employees, or contractors. The Developer shall not be responsible for (and such indemnity shall not apply to) any acts, errors, or omissions of the Town, or its agents, servants, employees, or contractors. The Town shall not be responsible for any acts, errors, or omissions of any person or entity except the Town and its agents, servants, employees, or contractors, subject to any and all statutory and other immunities. The provisions of this Section shall survive the termination or expiration of this Agreement.

(§506) Insurance.

Except as provided in this Section, prior to the entry by Developer on the Site pursuant to Section 411, subsection 4, and prior to the commencement of any construction by Developer on the Project, Developer shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to Town, during the entire term of such entry or construction (unless otherwise required for a longer period hereunder), the following policies of insurance:

1. Developer's Casualty Insurance. Developer shall, at its sole expense, obtain and/or cause to be maintained by any tenant on the Site, and shall keep in force on all buildings and improvements constructed as part of the Project until the expiration of this Agreement, and all time frames required hereunder, including all time frames contained within the Regulatory Agreement, a policy of standard "all risk" fire and extended coverage insurance, with vandalism and malicious mischief endorsements, to the extent of one hundred percent (100%) of full replacement value against "all risks of physical loss" including without limitation a guaranteed replacement cost and code compliance coverage endorsement (excluding earthquake coverage, boiler and machinery insurance coverage, heating, air conditioning equipment, and other equipment of such nature), and insurance against loss or damage to personal property located on the Site by fire and other hazards covered by such insurance

(without any deductible clause unless approved in writing by the Town). In the event any tenant on the Site fails to maintain coverage to the extent of one hundred percent (100%) of full replacement value for the Site, then Developer shall maintain such additional or gap insurance to satisfy the requirements of this Section. All such insurance shall be payable to Town. Such insurance policy and each portion thereof shall be in the broadest and most comprehensive form available in the market at the time such policy is issued or amended. Such policy shall, if required by the Town, contain an agreed value clause sufficient (as determined by Town) to eliminate any risk of Town's coinsurance.

2. Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for the Developer and the Town against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Developer in the course of carrying out the work or services contemplated in this Agreement.

3. Automobile Insurance. A policy of automobile liability insurance written on a per occurrence basis in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per accident for bodily injury and property damage covering owned, leased, hired, and non-owned vehicles.

4. Builder's Risk Insurance. A policy of "Builder's Risk" insurance covering the full replacement value of all of the improvements to be constructed by Developer pursuant to this Agreement plus Developer's personal property and equipment. Developer shall procure the builder's risk insurance policy prior to commencing construction.

All of the above policies of insurance, except the Builder's Risk Insurance, shall be primary insurance and shall name the Town and its officers, employees, and agents as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against Town and its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing thirty (30) days prior written notice to Town. In the event any of said policies of insurance are cancelled, Developer shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the Town Manager. No work or services under this Agreement shall commence until the Developer has provided Town with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by Town.

The policies of insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances.

Developer shall provide in all contracts with contractors, subcontractors, architects, and engineers that said contractor, subcontractor, architect, or engineer shall maintain the same

policies of insurance required to be maintained by Developer pursuant to this Section, unless waived or modified by the Risk Manager.

The Developer agrees that the provisions of this Section shall not be construed as limiting in any way the extent to which the Developer may be held responsible for the payment of damages to any persons or property resulting from the Developer's activities or the activities of any person or persons for which the Developer is otherwise responsible.

5. Developer's Liability Insurance. Developer shall, at its sole expense, obtain and keep in force until the expiration of the Regulatory Agreement, a policy of commercial general liability insurance in an occurrence form providing for broad form property damage coverage, broad form contractual coverage, personal injury, bodily injury, and advertising injury coverage with employee exclusion as to each named insured deleted, and products and complete operations coverage, insuring Developer, and naming Town, its officials, employees and agents, as additional named insureds, against any liability arising out of or in connection with Developer's possession of the Site and the use of the Site and all improvements thereon by any person, Town's activities in connection with the Project, or any other claim arising out of or relating to the Project or work on the Site, or the maintenance of the Project after completion of construction. Such insurance policies shall have (a) a combined single limit for both bodily injury or death in an amount not less than Three Million Dollars (\$3,000,000.00) and (b) a limit for both bodily injury or death in one accident or occurrence or for property damage in an amount not less than Two Million Dollars (\$2,000,000.00), which amounts shall be increased from time to time as reasonably required by the Town. (Umbrella policies may be used to satisfy Developer's coverage obligations.) Such insurance policy and each portion thereof shall be in the broadest and most comprehensive form available in the market at the time such policy is issued or amended. The insurance to be provided by Developer may provide for a deductible or self-insured retention of not more than Twenty-Five Thousand Dollars (\$25,000), with such maximum amount to increase at the same rate as the periodic increases in the minimum amount of total insurance coverage set forth above. The policy shall insure performance by Developer of indemnity provisions of Section 405 of this Agreement. The limits of said insurance shall not limit the liability of Developer hereunder.

Insurance Policies. All of Developer's insurance shall be primary insurance written in a form satisfactory to Town by companies licensed in California, or otherwise acceptable to and approved by Town (which must be Class IX A- or better as rated by Best's Insurance Reports) and shall specifically provide that such policies shall not be subject to cancellation or other change except after at least thirty (30) days prior written notice of Town. Copies of the policies, together with satisfactory evidence of payment of premiums shall be deposited with Town on or prior to the date hereof, and upon each renewal of such policies, which shall be effected not less than thirty (30) days prior to the expiration date of the term of such coverage.

Other Insurance Provisions. Said policy or policies, as applicable, shall combine aggregate limits for Bodily Injury, Property Damages, Personal Injury, and Advertising Injury, in the amounts specified above, that apply specifically to and can only be exhausted in connection with claims arising out of or relating to the Property. If any claim, event, or loss occurs during the policy period which will or may decrease the aggregate amount of insurance

coverage available under the policy, Developer shall immediately secure additional coverage sufficient to provide total aggregate limits at least equal to the amounts set forth above on a going forward basis. Should any part of the coverage required above be provided by “excess” or “umbrella” policies, those policies shall specifically provide that the coverage under those policies shall “drop down” as to both defense and indemnity obligations in the event of insolvency of the primary or underlying carrier. Such “excess” or “umbrella” policies shall also contain all the other provisions required by this Agreement.

(§507) Town and Other Governmental Agency Permits.

Before commencement of construction or development of any buildings, structures, or other works of improvement upon the Site which are Developer’s responsibility under the applicable Scope of Development, Developer shall at his own expense secure or cause to be secured any and all permits which may be required by Town or any other governmental agency affected by such construction, development or work. Developer shall not be obligated to construct if any permit is not issued despite good faith effort by Developer. If there is delay beyond the usual time for obtaining any such permits due to no fault of Developer, the time for obtaining permits shall be extended to the extent such delay prevents any action which could not legally or would not in accordance with good business practices be expected to occur before such permit was obtained. Developer shall pay all normal and customary fees and charges applicable to such permits and any fees or charges hereafter imposed by Town that are standard for and uniformly applied to similar projects in the Town.

(§508) Rights of Access.

Representatives of the Town shall have the reasonable right to access the Site without charges or fees, at any time during normal construction hours during the period of construction and upon reasonable notice to Developer, for the purpose of assuring compliance with this Agreement, including but not limited to the inspection of the construction work being performed by or on behalf of Developer. Such representatives of Town shall be those who are so identified in writing by the Town Manager. Each such representative of Town shall identify himself or herself at the job site office upon his or her entrance to the Site, and shall provide Developer, or the construction superintendent or similar person in charge on the Site, a reasonable opportunity to have a representative accompany him or her during the inspection. Town shall indemnify, defend, and hold Developer harmless from any injury or property damage caused or liability arising out of Town’s exercise of this right of access.

(§509) Applicable Laws.

Developer shall carry out the construction of the improvements to be constructed by Developer in conformity with all applicable laws, including all applicable federal and state labor laws.

(§510) Nondiscrimination During Construction.

Developer, for himself and his successors and assigns, agrees that in the construction of the improvements to be constructed by Developer, it shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin.

(§511) Taxes, Assessments, Encumbrances and Liens.

Developer shall pay, prior to delinquency, all real estate taxes and assessments assessed or levied subsequent to conveyance of title. Until the date Developer is entitled to the issuance by Town of a Release of Construction Covenants, Developer shall not place or allow to be placed thereon any mortgage, trust deed, encumbrance or lien (except mechanic's liens prior to suit to foreclose the same being filed) prohibited by this Agreement. Developer shall remove or have removed any levy or attachment made on the Site, or assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, or to limit the remedies available to Developer in respect thereto.

(§512) Rights of Holders of Approved Security Interests in Site.

1. Definitions. As used in this Section, the term "mortgage" shall include any mortgage, whether a leasehold mortgage or otherwise, deed of trust, or other security interest, or sale and lease-back, or any other form of conveyance for financing. The term "holder" shall include the holder of any such mortgage, deed of trust, or other security interest, or the lessor under a lease-back, or the grantee under any other conveyance for financing.

2. No Encumbrances Except Mortgages to Finance The Project. Notwithstanding the restrictions on transfer in Section 303, mortgages required for any reasonable method of financing of the construction of the improvements are permitted before issuance of a Release of Construction Covenants but only for the purpose of securing loans of funds used or to be used for financing the acquisition of the Site, for the construction of Project improvements thereon, and for any other expenditures necessary and appropriate to develop the Site under this Agreement, or for restructuring or refinancing any for same, so long as the refinancing does not exceed the then outstanding balance of the existing financing, including any additional costs for completion of construction, whether direct or indirect, based upon the estimates of architects and/or contractors. The Developer (or any entity permitted to acquire title under this Section) shall notify the Town in advance of any mortgage, if the Developer or such entity proposes to enter into the same before issuance of the Release of Construction Covenants. The Developer or such entity shall not enter into any such conveyance for financing without the prior written approval of the Town, which shall not be unreasonably withheld, conditioned or delayed. Any lender approved by the Town shall not be bound by any amendment, implementation, or modification to this Agreement subsequent to its approval without such lender giving its prior written consent thereto. In any event, the Developer shall promptly notify the Town of any mortgage, encumbrance, or lien that has been created or attached thereto prior to issuance of a Release of Construction Covenants, whether by voluntary act of the Developer or otherwise.

3. Developer's Breach Not to Defeat Mortgage Lien. Developer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage made in good faith and for value as to the Site, or any part thereof or interest therein, but unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against

the holder of any such mortgage of the Site whose interest is acquired by foreclosure, trustee's sale or otherwise.

4. Holder Not Obligated to Construct or Complete Improvements. The holder of any mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Site or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

5. Notice of Default to Mortgages, Deed of Trust or other Security Interest Holders. Whenever Town shall deliver any notice or demand to Developer with respect to any breach or default by Developer hereunder, Town shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage who has previously made a written request to Town therefor, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the holder unless such notice is given.

6. Right to Cure. Each holder (insofar as the rights of Town are concerned) shall have the right, at its option, within ninety (90) days after the receipt of the notice, to:

A. obtain possession, if necessary, and to commence and diligently pursue said cure until the same is completed, and

B. add the cost of said cure to the security interest debt and the lien or obligation on its security interest; provided that in the case of a default which cannot with diligence be remedied or cured within such ninety (90) day period, such holder shall have additional time as reasonably necessary to remedy or cure such default.

In the event there is more than one such holder, the right to cure or remedy a breach or default of Developer under this Section shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of Developer under this Section.

No holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first having expressly assumed Developer's obligations to Town by written agreement satisfactory to Town with respect to the Site or any portion thereof in which the holder has an interest. The holder must agree to complete, in the manner required by this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the Town that it has the qualifications and financial responsibility necessary to perform such obligations. Any holder properly completing such improvements shall be entitled, upon written request made to Town, to a Release of Construction Covenants from Town.

7. Town's Rights upon Failure of Holder to Complete Improvements. In any case where one hundred eighty (180) days after default by Developer in completion of construction of improvements under this Agreement, the holder of any mortgage creating a lien

or encumbrance upon the Site or improvements thereon has not exercised the option to construct afforded in this Section or if it has exercised such option and has not proceeded diligently with construction, Town may, after ninety (90) days' notice to such holder and if such holder has not exercised such option to construct within said ninety (90) day period, purchase the mortgage, upon payment to the holder of an amount equal to the sum of the following:

A. The unpaid mortgage debt plus any accrued and unpaid interest (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any);

B. All expenses incurred by the holder with respect to foreclosure, if any;

C. The net expenses (exclusive of general overhead), incurred by the holder as a direct result of the ownership or management of the Site, such as insurance premiums or real estate taxes, if any;

D. The costs of any improvements made by such holder, if any; 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 debt and such debt had continued in existence to the date of payment by the Town.

In the event that the holder does not exercise its option to construct afforded in this Section, and Town elects not to purchase the mortgage of holder, upon written request by the holder to Town, Town agrees to use reasonable efforts to assist the holder selling the holder's interest to a qualified and responsible party or parties (as determined by Town), who shall assume the obligations of making or completing the improvements required to be constructed by Developer, or such other improvements in their stead as shall be satisfactory to Town. The proceeds of such a sale shall be applied first to the holder of those items specified in subparagraphs A through E hereinabove, and any balance remaining thereafter shall be applied as follows:

(i) First, to reimburse Town, on its own behalf and on behalf of the City, for all costs and expenses actually and reasonably incurred by Town, including but not limited to payroll expenses, management expenses, legal expenses, and others.

(ii) Second, to reimburse Town, on its own behalf and on behalf of the City, for all payments made by Town to discharge any other encumbrances or liens on the Site or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees.

(iii) Third, to reimburse Town, on its own behalf and on behalf of the City, for all costs and expenses actually and reasonably incurred by Town, in connection with its efforts assisting the holder in selling the holder's interest in accordance with this Section.

(iv) Fourth, any balance remaining thereafter shall be paid to Developer.

8. Right of Town to Cure Mortgage, Deed of Trust or Other Security Interest Default. In the event of a default or breach by Developer (or entity permitted to acquire title under this Section) of a mortgage prior to the issuance by Town of a Release of Construction Covenants for the Site or portions thereof covered by said mortgage, and the holder of any such mortgage has not exercised its option to complete the development, Town may cure the default prior to completion of any foreclosure. In such event, Town shall be entitled to reimbursement from Developer or other entity of all costs and expenses incurred by Town in curing the default, to the extent permitted by law, as if such holder initiated such claim for reimbursement, including legal costs and attorneys' fees, which right of reimbursement shall be secured by a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subject to:

A. Any mortgage for financing permitted by this Agreement; and

B. Any rights or interests provided in this Agreement for the protection of the holders of such mortgages for financing;

provided that nothing herein shall be deemed to impose upon Town any affirmative obligations (by the payment of money, construction or otherwise) with respect to the Site in the event of its enforcement of its lien.

9. Right of Town to Satisfy Other Liens on the Site After Conveyance of Title. After the conveyance of title and prior to the recordation of a Release of Construction Covenants for construction and development, and after the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Site or any portion thereof, the Town shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site or any portion thereof to forfeiture or sale.

(§513) Release of Construction Covenants.

Upon the completion of all construction required to be completed by Developer on the Site, Town shall furnish Developer with a Release of Construction Covenants for the Site upon written request therefor by Developer. The Release of Construction Covenants shall be executed and notarized so as to permit it to be recorded in the office of the Recorder of San Bernardino County. A Release of Construction Covenants shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of the construction and development of the improvements required by this Agreement upon the Site and of full compliance with the terms of this Agreement with respect thereto. A partial Release of Construction Covenants applicable to less than the entire Site shall not be permitted.

After the issuance of a Release of Construction Covenants, 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 with respect to the Site, except that such party shall be bound by the covenants, encumbrances, and easements contained in the Deed and the Regulatory Agreement. After issuance of a Release

of Construction Covenants, the Town shall not have any rights or remedies under this Agreement with respect to the Site, except as otherwise set forth or incorporated in the Deed or the Regulatory Agreement.

Town shall not unreasonably withhold a Release of Construction Covenants. If Town refuses or fails to furnish a Release of Construction Covenants within thirty (30) days after written request from Developer or any entity entitled thereto, Town shall provide a written statement of the reasons Town refused or failed to furnish a Release of Construction Covenants. The statement shall also contain Town's opinion of the action Developer must take to obtain a Release of Construction Covenants. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, or other minor so-called "punch list" items, Town will issue its Release of Construction Covenants upon the posting of a bond in an amount representing one hundred fifty percent (150%) of the fair value of the work not yet completed or other assurance reasonably satisfactory to Town.

A Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Release of Construction Covenants is not notice of completion as referred to in the California Civil Code Section 3093. Nothing herein shall prevent or affect Developer's right to obtain a Certificate of Occupancy from the Town before the Release of Construction Covenants is issued.

(§514) Estoppels.

No later than thirty (30) days after the request of Developer or any holder of a mortgage or deed of trust, Town shall, from time to time and upon the request of such holder, execute and deliver to Developer or such holder a written statement of Town that no default or breach exists (or would exist with the passage of time, or giving of notice or both) by Developer under this Agreement, if such be the determination of the Town, and certifying as to whether or not Developer has at the date of such certification complied with any obligation of Developer hereunder as to which such holder may inquire. The form of any estoppel letter shall be prepared by the holder or Developer and shall be at no cost to Town.

(§600) USES AND MAINTENANCE OF THE SITE

(§601) Uses of the Site.

The Developer covenants and agrees for itself, its successors and assigns, which covenants shall run with the land and bind every successor or assign in interest of Developer, that during development of the Site pursuant to this Agreement and thereafter, neither the Site nor the improvements, nor any portion thereof, shall be improved, used or occupied in violation of any applicable governmental restrictions or the restrictions of this Agreement. Furthermore, Developer and its successors and assigns shall not initiate, maintain, commit, or permit the maintenance or commission on the Site or in the improvements, or any portion thereof, of any nuisance, public or private, as now or hereafter defined by any statutory or decisional law applicable to the Site or the improvements, or any portion thereof. Developer further covenants and agrees on behalf of itself and its successors and assigns to devote, use, operate and maintain

the Site in accordance with this Agreement, the Deed of Trust, the Notice of Affordability Restrictions, the Regulatory Agreement, the Guaranty and the other documents recorded against the Residential Units pursuant to the provisions of this Agreement.

Notwithstanding anything to the contrary or that appears to be to the contrary in this Agreement, Developer hereby covenants, on behalf of itself, and its successors and assigns, which covenants shall run with the land and bind every successor and assign in interest of Developer, that Developer and such successors and assigns shall use the Site solely for the purpose of constructing, maintaining and operating a project meeting the requirements and restrictions of this Agreement, including, without limitations, restriction of the rental and occupancy of the Residential Units only to Qualified Tenants for a rent not in excess of an Affordable Rent for the period specified herein.

1. Ceremonies. To ensure proper protocol and recognition of the Town Council members, Developer shall cooperate with Town staff in the organization of any Project-related groundbreakings, grand openings or any such inaugural events or ceremonies sponsored by Developer to celebrate the development which is the subject of this Agreement. Additionally, Developer shall allow Town to place appropriate signage reflecting Town's participation in the Project on Site. Said signage shall be placed on the Site upon approval of this Agreement and shall remain onsite until the commencement of the operation of the Project

(§602) Affordable Housing.

1. Construction of Affordable Housing. The Developer covenants and agrees to construct a maximum of seventy-five (75) Residential Units, including one (1) Manager's Unit, in conformity with the Scope of Development. All of the Residential Units, other than the Manager's Unit, shall be restricted to rental at an Affordable Rent and for occupation by Qualified Tenants, as described herein. The location, size and specifications of the Residential Units shall be as set forth in the Scope of Development and as further designated by the Town. All Residential Units, other than the Manager's Unit, shall be subject to and shall be leased in compliance with the tenant selection criteria described in the Regulatory Agreement.

2. Residential Unit Requirements. All Residential Units constructed pursuant to this Agreement shall be occupied at all times only by the household of the Qualified Tenant who has rented that Residential Unit. Developer covenants to cooperate with Town in taking all steps necessary to implement this requirement with respect to all Qualified Tenants. The restrictions upon rental and use of each Residential Unit shall continue for a period of fifty-five (55) years from the recordation of the Release of Construction Covenants.

3. Leasing of Residences by Developer.

A. **Marketing Program.** Prior to issuance of building permits for any portion of the Project, Developer shall prepare and obtain Town's approval (which shall not be unreasonably withheld) of a marketing and leasing program ("**Approved Marketing Program**") for the selection of tenants for the Residential Units at the Project. The Residential Units shall thereafter be marketed in accordance with the Approved Marketing Program as the same may be amended by Developer from time to time with Town's prior written approval, which shall not be

unreasonably withheld. Quarterly during the initial lease-up period, and annually thereafter, Developer shall provide Town with a report with respect to Residential Units under lease, leases in default, the status of implementation of the Approved Marketing Program, and such other information as Town may reasonably request. Town agrees to exercise reasonable efforts to assist Developer in connection with implementation of the Approved Marketing Program; provided, Town shall not be under any obligation to incur any out-of-pocket expenses in connection therewith.

B. Restricted Residences. As set forth above, each of the Residential Units shall be rented to a Qualified Tenant for a rental rate which does not exceed an Affordable Rent for the applicable Residential Unit.

C. Annual Tenancy Report. Developer shall provide Town annually, by March 1, with a report on Project occupancy for each Residential Unit, including information concerning the number of months during which each Residential Unit was occupied and the income category of each tenant household occupying a Residential Unit. The annual report and Developer's records related to each tenancy shall be subject to inspection and audit upon Town's written request.

(§603) Nondiscrimination in Employment

The Developer covenants and agrees for itself, its successors and assigns and any successor-in-interest to the Site or part thereof, that all persons employed by or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by Developer without regard to 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. §200, et seq., the Federal Equal Pay Act of 1963, 29 U.S.C. §206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. §621, et seq., the Immigration Discrimination in Employment Act of 1967, 29 U.S.C. §621, et seq., the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324b, et seq., 42 U.S.C. §1981, the California Fair Employment and Housing Act, California Government Code §12900, et seq., the California Equal Pay Law, California Labor Code §1197.5, California Government Code §11135, the Americans with Disabilities Act, 42 U.S.C. §12101, et seq., and all other anti-discrimination laws and regulations for the United States and the State of California as they now exist or may hereafter be amended.

(§604) Obligation to Refrain from Discrimination

Developer shall refrain from restricting the rental, sale, lease, sublease, transfer, use, development, occupancy, tenure, or enjoyment of the Site (or any part thereof) on the basis of race, color, creed, religion, sex, marital status, ancestry, national origin, familial status, physical disability, mental disability, or medical condition (including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), the Human Immune Deficiency Virus (HIV), or condition related thereto), of any person or group of persons, and shall comply with the applicable anti-discrimination provisions of the Americans with Disabilities Act (42 U.S.C. §12101, et seq.) and the California Fair Employment and Housing Act (Cal. Government Code

§12900, et seq.) as they exist on the date of this Agreement or as they may thereafter be amended, repealed and reenacted, or otherwise modified. They shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed.

(§605) Maintenance of Improvements.

Developer covenants and agrees for itself, its successors and assigns, and every successor in interest to the Site or any part thereof, that, after Town's issuance of its Release of Construction Covenants the Developer shall be responsible for maintenance of all improvements that may exist on the Site from time to time, including without limitation buildings, parking lots, lighting, signs, and walls, in reasonable condition and repair, and shall keep the Site free from any accumulation of debris or waste materials. The Developer shall also maintain all landscaping required pursuant to Developer's approved landscaping plan in a healthy condition, including replacement of any dead or diseased plants. The foregoing maintenance obligations shall run with the land in accordance with and for the term of the Regulatory Agreement. Developer's further obligations to maintain the Site, and Town's remedies in the event of Developer's default in performing such obligations, are set forth in the Regulatory Agreement. Developer hereby waives any notice, public hearing, and other requirements of the public nuisance laws and ordinances of the Town that would otherwise apply, except as specified in said Regulatory Agreements. Upon the sale of any portion of the Site, Developer (but not Developer's successor) shall be released from the requirements imposed by this Section, and the financial liability therefor, as to the portion of the Site conveyed.

(§606) Notice of Affordability Restrictions.

Prior to, and as a condition of, Closing of Escrow upon the Site, the Developer shall submit for recordation upon the Site a "**Notice of Affordability Restrictions**" drafted to provide notice to prospective occupants or owners of the Site that this Agreement and the Related Agreements affect title to the Property such that the Site is restricted to Qualified Tenants of Low, Lower, Very Low or Extremely Low Income who are Senior Citizens. Reference should be made to the Regulatory Agreement for a more detailed description of all matters described in the Notice. The Notice of Affordability Restrictions shall be in a form approved by the Town Attorney, which approval shall not be unreasonably withheld, delayed or conditioned.

(§607) Regulatory Agreements and Declaration of Restrictive Covenants.

The Regulatory Agreement shall be recorded against the Site prior to any occupancy by a Qualified Tenant. The Regulatory Agreement shall run with title to the Site, shall be binding upon the Developer, its successors and its assigns, and shall be in a form substantially similar in all material respects to the form of the Regulatory Agreement set forth in Exhibit "F". It is understood by the parties that lenders of Senior Financing will require that any other regulatory agreement or deed of trust issued and recorded pursuant to LIHTC financing, San Bernardino County HOME financing, or other Senior Financing shall all be recorded against the Site and that Town's Regulatory Agreement will be subordinate to said Senior Financing regulatory agreements and any Senior Financing deeds of trust recorded upon the Site. To this end, the

Town will agree to execute one or more subordination agreement(s), subject to the reasonable review and acceptance thereof by the Town's legal counsel, in order to effectuate subordination of the Town's interests to the Senior Financing.

(§700) SENIOR FINANCING; TCAC/LIHTC AND COUNTY HOME FUND REQUIREMENTS

(§701) Compliance with LIHTC/TCAC Requirements.

If reasonable changes to this Agreement are required by the entities providing LIHTC funding, the parties agree to effectuate such changes in order to be in compliance with the requirements. The Town Manager is authorized, without further approval of the Town Council, to make changes to this Agreement and the Related Agreement as required to satisfy the requirements of LIHTC or TCAC; provided that changes to this Agreement that increase the Town's potential legal liabilities or financial obligations hereunder in an amount potentially exceeding \$25,000 shall require Town Council approval.

To the extent required by TCAC or LIHTC regulations, the Town's Deed of Trust and other Related Agreements shall be subordinated to LIHTC instruments recorded upon the Site in conjunction with the Project, which LIHTC instruments are deemed to be "Senior Financing".

(§702) Compliance with San Bernardino County HOME Requirements.

The Developer has been awarded an allocation of San Bernardino County "HOME" Funds in the amount of \$1,622,830.00 to be dedicated to Project construction. To the extent required by the County HOME program, the Town's Deed of Trust and other Related Agreements shall be subordinated to HOME instruments recorded upon the Site in conjunction with the Project, which HOME instruments are deemed to be "Senior Financing" for purpose hereof.

(§703) Construction & Permanent Loans as Senior Financing.

Within 90 days of Developer obtaining a reservation of LIHTC, Developer agrees to deliver to Town and obtain the approval of Town of irrevocable written commitments from financial institutions licensed to do business in California and acceptable to the Town agreeing to make a Construction Loan and a Permanent Loan to Developer and secured by a deed of trust recorded upon the Site. The amount of the commitment shall not be less than the amount of the construction contract, plus all consultant and loan fees, "points," commissions, charges, furnishings, fixtures, taxes, interest start-up and other costs and expenses of developing the Site, less the amount of Developer's equity contribution, if any, to the cost of construction. The construction commitment shall be on the usual and customary commercial terms and conditions of the lender providing the Construction and/or Permanent Loan(s).

The Town agrees that this Agreement, the Note, the Deed of Trust, the Regulatory Agreement, shall be made junior and subordinate to liens given in connection with the Construction Loan obtained by the Developer as part of the Senior Financing, including any refinancing thereof established and obtained pursuant to and in compliance with the provisions of this Agreement and the TCAC requirements. However, it is expressly understood and agreed between the parties that the affordability covenants set forth in the Regulatory Agreement shall not be subordinated

to the Developer's Permanent Loan and shall run with the Site.

(§704) Town Instruments Junior to Senior Financing.

The Town agrees that this Agreement, the Note, the Deed of Trust, the Regulatory Agreement, shall be made junior and subordinate to liens given in connection with the Senior Financing, including any refinancing thereof established and obtained pursuant to, and in compliance with, the provisions of this Agreement. The Town Manager is hereby authorized and directed to execute such subordination agreements, inter-creditor agreements, stand-still agreements, modifications to this Agreement, the Note, the Deed of Trust, and the Regulatory Agreement and/or other documents as may be requested by the Senior Lender(s) to evidence subordination to the Senior Financing or accommodation with requirements of the TCAC and/or HOME programs, without further authorization from the Town Council, provided that such agreements contain written provisions that the Town Manager and Town Attorney finds are consistent with the standard requirements imposed by the Senior Financing, the tax credit investor, and the subordination requirements contained in this Agreement. The Parties acknowledge that the Deed of Trust and Regulatory Agreement shall only be subordinate to the Senior Financing instruments. With respect to lien priority, the Town's Deed of Trust shall be recorded upon the Site in a position of not lower than third in lien priority following other secured loan or deed of trust instruments included in the Senior Financing.

(§800) DEFAULTS, REMEDIES AND TERMINATION

(§801) Defaults, Right to Cure and Waivers.

Subject to any Enforced Delay, failure or delay by either party to timely perform any covenant of this Agreement constitutes a default under this Agreement, but only if the party who so fails or delays does not commence to cure, correct or remedy such failure or delay within thirty (30) days after receipt of a written notice specifying such failure or delay, and does not thereafter prosecute such cure, correction or remedy with diligence to completion.

The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice, unless the default cannot be reasonably cured within such thirty days in which case the defaulting party shall have a reasonable time to effect such cure so long as the defaulting party is diligently acting to do so in as timely a fashion as is reasonable. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

Developer's General Partner and Related Entity shall have the right but not the obligation to cure any default of Developer under this Agreement and Town agrees to accept any cure tendered by Developer's General Partner and Related Entity on behalf of Developer within the cure periods stated in this section.

Except as otherwise provided in this Agreement, waiver by either party of the performance of any covenant, condition or promise, shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by either party of the

time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right as to any default shall not operate as a waiver of any default or of any rights or remedies or to deprive 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.

(§802) No Waiver.

Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

(§803) Legal Actions.

1. Institution of Legal Actions. In addition to any other rights or remedies, and subject to the requirements of Section 801, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Legal actions must be instituted and maintained in the Superior Court of the County of San Bernardino, State of California, in any other appropriate court in that county, or in the Federal District Court in the Central District of California.

2. Applicable Law and Forum. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

3. Acceptance of Service of Process. In the event that any legal action is commenced by Developer against Town, service of process on Town shall be made by personal service upon the Town Clerk of Town or in such other manner as may be provided by law.

In the event that any legal action is commenced by Town against Developer, service of process on Developer shall be made in such manner as may be provided by law and shall be valid whether made within or outside of the State of California.

(§804) Rights and Remedies are Cumulative.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

(§805) Specific Performance.

In addition to any other remedies permitted by this Agreement, if either party defaults hereunder by failing to perform any of its obligations herein, each party agrees that the other shall be entitled to the judicial remedy of specific performance, and each party agrees (subject to its reserved right to contest whether in fact a default does exist) not to challenge or contest the

appropriateness of such remedy. In this regard, Developer specifically acknowledges that Town is entering into this Agreement for the purpose of assisting in the development of the Site and not for the purpose of enabling Developer to speculate with land.

(§807) Attorneys' Fees.

If either party to this Agreement is required to initiate or defend any action or proceeding in any way arising out of the parties' agreement to, or performance of, this Agreement, or is made a party to any such action or proceeding by the Escrow Agent or other third party, such that the parties hereto are adversarial, the prevailing party, as between the Developer and Town only, in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees from the other. As used herein, the "prevailing party" shall be the party determined as such by a court of law, pursuant to the definition Code of Civil Procedure Section 1032(a)(4), as it may be subsequently amended. Attorneys' fees shall include attorneys' fees on any appeal, and in addition a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

(§808) Termination After Closing.

A. Termination By Town. The Town may terminate this Agreement upon the occurrence of any of the following events:

(i). Developer (or any successor in interest) assigns or attempts to assign the Agreement or any rights therein or in the Site in violation of this Agreement;

(ii). Developer (or any successor in interest) becoming insolvent or Developer (or any successor in interest) voluntarily or involuntarily making an assignment or transfer for the benefit of creditors other than the Town, and/or the voluntary or involuntary appointment of a receiver, custodian, liquidator or trustee of Developer's property and/or the Site;

(iii). Developer is in Default of this Agreement and fails to cure such Default within the time set forth in Section 801; or

(iv). Town is not able to acquire sufficient assurances (i) of the validity and/or enforceability of this Agreement or its ability to pay Remainder Loan Proceeds as a result of AB 26 (or any other law), or (ii) that the Town holds valid, transferrable title to the Site despite implementation of AB 26 (or any other law); or

(v) Developer is unable to secure LIHTC funding in either the 2012 or 2013 year(s); or

(vi) Developer is unable to obtain Construction Financing or secure Tax Credits after making four (4) consecutive applications.

If, after the occurrence of any of the above-entitled events, the Town elects, in its sole discretion, to terminate this Agreement, then all rights of Developer and any person or entity claiming by or through Developer arising under this Agreement or with regard to the Site as may arise under this Agreement shall immediately cease and be terminated, except that any obligations of the Developer to indemnify or reimburse the Town shall continue in full force and effect and the Town shall have all of the remedies to enforce a breach or a Default of this Agreement as may be provided hereunder and under the law.

B. Termination by Developer. In the event that the Developer is not in Default under this Agreement, Developer may terminate this Agreement upon the occurrence of any of the following:

(i) Town is in Default of any material provision of this Agreement and fails to cure such Default within the time set forth in Section 801; or

(ii) Town fails to fund the Town Loan (or what remains as outstanding payable to Developer) at the time and in the amounts required by this Agreement; or

(iii) Developer is unable to secure LIHTC funding in either the 2012 or 2013 year(s).

C. Limitations Imposed by Senior Financing. Notwithstanding anything to the contrary contained in this Agreement or in the Related Agreements, the rights of the parties to declare defaults hereunder and exercise their respective rights and remedies described herein or in the Related Agreements shall be subject in all cases to the conditions and limitations imposed thereon by the Senior Financing. In the event of any conflict between the rights and remedies of the parties provided under this Agreement or the Related Agreements and the limitations on such rights and remedies under any subordination or intercreditor agreement entered into in connection with the Senior Financing documents, such limitations shall be deemed controlling provided they are consistent with the standard requirements imposed by Fannie Mae or Freddie Mac, as applicable, on subordinate cash flow obligations.

(§900) GENERAL PROVISIONS

(§901) Notices, Demands and Communications Between the Parties.

Except as expressly provided to the contrary herein, any notice, consent, report, demand, document or other such item to be given, delivered, furnished or received hereunder shall be deemed given, delivered, furnished, and received when given in writing and personally delivered to an authorized agent of the applicable party, or upon delivery by the United States Postal Service, first-class registered or certified mail, postage prepaid, return receipt requested, or by a national "overnight courier" such as Federal Express, at the time of delivery shown upon such receipt; or by facsimile, if such facsimile is followed by a notice sent out the same day by mail; in any case, delivered to the address, addresses and persons as each party may from time to time by written notice designate to the other and who initially are:

Town: Town of Yucca Valley
 57090 Twentynine Palms Highway

Yucca Valley, CA 92284
Attn: Town Manager

Copy to: Aleshire & Wynder, LLP
18881 Von Karman Avenue, Suite 1700
Irvine, CA 92612
Attn: Town Attorney

Developer: Yucca Valley Senior Housing Partners, L.P.
9065 Haven Ave., Suite 100
Rancho Cucamonga, CA 91730
Attn: Richard J. Whittingham, CFO

Copy to: Law Office of Edward A. Hopson
655A North Mountain Ave
Upland, CA 91786
Attn: Edward A. Hopson

(§902) Nonliability of City and Town Officials and Employees; Conflicts of Interest; Commissions.

1. **Personal Liability.** No member, official, employee, agent or contractor of Town shall be personally liable to Developer in the event of any default or breach by Town or for any amount which may become due to Developer or on any obligations under the terms of the Agreement; provided, it is understood that nothing in this Section 902 is intended to limit Town's liability.

2. **Financial Interest.** No member, official, employee or agent of Town shall have any financial interest, direct or indirect, in this Agreement, nor participate in any decision relating to this Agreement which is prohibited by law.

3. **Commissions.** Neither the Town nor the Developer has retained any broker or finder or has paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement. No party shall be liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Agreement, and each party agrees to hold the other harmless from any claim by any broker, agent, or finder retained by such party.

4. **Nonliability of Partners of Developer.** Other than as required by the Guaranty, no partner of Developer, or member, shareholder, partner, officer, director, employee, agent, or attorney of any partner of Developer shall be personally liable to Town in the event of any default or breach by Town or for any amount which may become due to Town or on any obligations under the terms of the Agreement.

(§903) Enforced Delay: Extension of Times of Performance.

Time is of the essence in the performance of this Agreement. Notwithstanding the foregoing, in addition to specific provisions of this Agreement, performance by either party hereunder shall

not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots, systemic failure of the financial markets, floods; earthquakes; fires; casualties; supernatural causes; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; subsurface conditions on the Site and unknown soils conditions; governmental restrictions or priority litigation; unusually severe weather; acts of the other party; acts or the failure to act of a public or governmental agency or entity (except that acts or the failure to act of Town shall not excuse performance by Town unless the act or failure is caused by the acts or omissions of Developer); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. In the event of such a delay (herein “**Enforced Delay**”), the party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the Enforced Delay, and shall commence to run from the time of the commencement of the cause, provided notice by the party claiming such extension is sent to the other party within ten (10) days of the commencement of the cause.

The following shall not be considered as events or causes beyond the control of Developer, and shall not entitle Developer to an extension of time to perform: (i) Developer’s failure to obtain financing for the Project (except as provided in Section 401), (ii) Developer’s failure to negotiate agreements with prospective Qualified Tenants or management for the Project, or (iii) changes in economic conditions.

Times of performance under this Agreement may also be extended by mutual written agreement by Town and Developer. The Town Manager of Town shall have the authority on behalf of Town to approve extensions of time not to exceed a cumulative total of one hundred eighty (180) days with respect to the development of the Site.

(§904) Books and Records.

1. Developer to Keep Records. Developer shall prepare and maintain all books, records and reports necessary to substantiate Developer’s compliance with the terms of this Agreement or reasonably required by the Town.

2. Right to Inspect. Either party shall have the right, upon not less than seventy-two (72) hours notice, at all reasonable times, to inspect the books and records of the other party pertaining to the Site as pertinent to the purposes of this Agreement.

3. Ownership of Documents. Copies of all drawings, specifications, reports, records, documents and other materials prepared by Developer, its employees, agents and subcontractors, in the performance of this Agreement, which documents are in the possession of Developer and are not confidential shall be delivered to Town upon request in the event of a termination of this Agreement, however, Developer shall be entitled to reimbursement from Town for the cost to prepare any drawings, specifications, reports, records, documents and other materials prepared by Developer’s subcontractors as a result of the exercise by Town of its rights hereunder. Any drawings, specifications, reports, records, documents and other materials prepared by Developer’s subcontractors shall be delivered without representation or warranty by Developer. The Town shall have an unrestricted right to use such documents and materials as if it were in all respects the owner of the same. Developer makes no warranty or representation

regarding the accuracy or sufficiency of such documents for any future use by Town, and Developer shall have no liability therefor.

(§905) Assurances to Act in Good Faith.

Town and Developer agree to execute all documents and instruments and to take all action, including making a deposit of funds in addition to such funds as may be specifically provided for herein, and as may be required in order to consummate conveyance and development of the Site as herein contemplated, and shall use their best efforts, to accomplish the closing and subsequent development of the Site in accordance with the provisions hereof. Town and Developer shall each diligently and in good faith pursue the satisfaction of any conditions or contingencies subject to their approval.

(§906) Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement. This Agreement includes all attachments attached hereto, which are by this reference incorporated in this Agreement in their entirety.

(§907) Entire Agreement, Waivers and Amendments.

With the exception of that certain Exclusive Negotiating Agreement between the Related Entity and Town dated December 21, 2010, this Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and this Agreement supersedes all negotiations and 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, unless specified otherwise herein, must be in writing and signed by the appropriate authorities of Town or Developer, as applicable, and all amendments hereto must be in writing and signed by the appropriate authorities of Town and Developer.

(§908) Severability.

In the event any term, covenant, condition, provision or agreement contained herein is held to be invalid, void or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the validity or enforceability of any term, covenant, condition, provision or agreement contained herein.

(§909) Time for Acceptance of Agreement by Town.

This Agreement, when executed by Developer and delivered to Town, must be authorized, executed and delivered by Town, after consideration at a public hearing. After execution by Developer, this Agreement shall be considered an irrevocable offer until such time as Town is authorized to execute and deliver the Agreement.

(§910) Execution.

1. 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.

2. Town represents and warrants that: (i) it is a general law city duly organized and existing under the laws of the State of California; (ii) by proper action of Town, Town has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and (iii) the entering into this Agreement by Town does not violate any provision of any other agreement to which Town is a party.

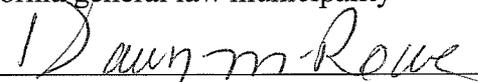
3. Developer represents and warrants that: (i) it is duly organized and existing under the laws of the State of California; (ii) by proper action of Developer, Developer has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and (iii) the entering into this Agreement by Developer does not violate any provision of any other agreement to which Developer is a party.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of execution by the Town.

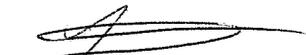
"TOWN"
TOWN OF YUCCA VALLEY,
A California general law municipality

Date 03/20/2012



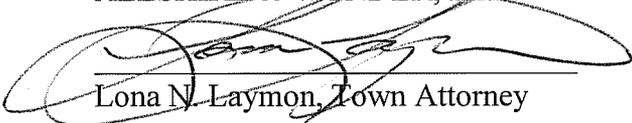
Mayor Dawn Rowe

ATTEST:



Janet Anderson, Town Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP



Lona N. Laymon, Town Attorney

"DEVELOPER"
YUCCA VALLEY SENIOR HOUSING PARTNERS L.P.,
a California Limited Partnership,
By its General Partner:

THE SOUTHERN CALIFORNIA HOUSING
DEVELOPMENT CORPORATION OF THE INLAND
EMPIRE, a California non-profit public benefit corporation

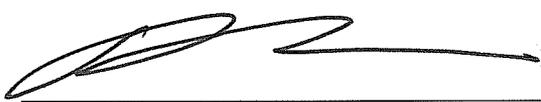
Date 3/20/2012



Name: Richard I. Whittingham, CPA
Chief Financial Officer

And, its Related Entity:
NATIONAL COMMUNITY RENAISSANCE OF
CALIFORNIA, a California public benefit corporation

Date 3/20/2012



Name: Richard I. Whittingham, CPA
Chief Financial Officer

[End of Signatures]

EXHIBIT A

Legal Description of Site

EXHIBIT B

Scope of Development

EXHIBIT C

Promissory Note

EXHIBIT D

Deed of Trust

EXHIBIT E

Grant Deed

EXHIBIT F

Regulatory Agreement

EXHIBIT G

Release of Construction Covenants

EXHIBIT H

Project Budget