

November 14, 2012

State of California
Department of Finance
Ms. Danielle Brandon
915 L Street
Sacramento, CA 95814-3706

RE: ROPS III Meet and Confer Follow-Up

Dear Ms. Brandon;

Thank you for the opportunity to meet with you and Justin yesterday as part of the ROPS III Meet & Confer process related to the Successor Agency to the Yucca Valley RDA. We wanted to follow up with a recap of our conversation as well as submit the complete documents that were referred to in yesterday's meeting.

As a summary to our meeting, please consider the following in response to the DOF's ROPS III determination letter dated October 15, 2012:

Item No. 2 – Southside Phase 1A **\$250,000**

- Due to the original Cooperation agreement between the Town and the Yucca Valley Redevelopment Agency, the Agency believes that this can be considered an eligible expenditure. However, for the sake of expediency in resolving all outstanding issues, the Agency is willing to find alternative sources of revenue for this project, and will remove from this item from future schedules if a comprehensive solution is arrived at.

Item Nos. 6-7 – General Plan Update **\$500,000**

- Underlying Support Document - Cooperation agreement dated Oct 1, 1992 between Town and YV RDA –
 - Agreement provided for the ability of the Town to conduct business for and on the behalf of the YV RDA with full expectation of reimbursement
 - Under existing CRL at the time of Council/Agency action, the project expenditure was appropriate and clearly defined



The Town of
Yucca Valley

57090 Twentynine Palms Highway • Yucca Valley, California 92284
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Meet & Confer Summary

In summarizing our Meet and Confer discussion, we indicated that while we believed there was justification for each of our items on the ROPS III schedule, the Successor Agency to the Yucca Valley RDA is willing to move beyond each individual issue in order to obtain a reasonable and workable global resolution to all of the outstanding items. Using this approach, we feel that Item 2 is resolved. Items 6 and 7 will be resolved with DOF's addition of the requested language that "*Upon receiving a Finding of Completion from DOF, HSC section 34191.4 (c) may cause these items to be enforceable in future ROPS.*"

Item 8 is resolved as presented.

Items 10 and 13 then are the remaining issues, with Item 13 logically following the determination of Item 10. Successful resolution of this item is critical to the Town and will assist the DOF in that it is included on the Successor Agency's Housing Asset Transfer Report, the ROPS III submission, and the Due Diligence Report – Housing Fund. The successful resolution of this item will provide clarity therefore on multiple fronts.

In response to your request for follow-up documentation for Item 10, please find enclosed the complete and executed documents for the following:

1. Exclusive Negotiating Agreement
2. Option Agreement
3. Development and Disposition Agreement
4. Amendment #1 to the Development and Disposition Agreement
5. Letters of Funding Commitment

To recap our response to DOF's objection that a DDA was not executed in 365 days, an understanding of the funding cycle process by the various agencies is essential. Due to program guidelines, HUD funding process requires an Option Agreement that demonstrates adequate site control regarding the project. A DDA would not be drafted prior to the Option Agreement and subsequent notice of award. That is precisely why the Option Agreement extended the term as identified in Section 1.8. The Option Agreement was then drafted and executed in May 2011, within the 365 day requirement required in the ENA. Once executed, the Option Agreement provided the following timeframe as identified in Section 1.8:

The Option shall commence on the Effective Date and subject to Section 16 below shall continue until the earlier of i) the date that is twelve 12 months after the date Optionee receives notice from HUD that Optionee's application or applications as applicable for a fund reservation the Fund Reservation under the HUD Section 202 Program have been denied without right of appeal through HUD 2012 Notice of Funding Availability NOFA funding round each a Denied Fund Reservation the development of a rental apartment complex specially designed for persons or heads of household who are 62 years of age or older Project or ii) five o'clock 500 PM Tuesday December 31 2013 the Option Period.

Finally, we would identify two technical but important points related to this item:

1. Section Q of the ENA provides for a 120 day extension of the performance time by direct authorization by the Agency Executive Director. On two separate occasions, the Town Manager / Agency Executive Director affirmed the Town/Agency support for the project and the extension of performance to December 2013 as provided for in the Option Agreement. In both instances, these letters affirming the Town/Agency support cited the Project's financing plan, including funding sources such as tax credit financing, County HOME funds, and other funding sources as identified in the project pro-formas. These letters of funding commitment are dated May 18, 2011 and December 21, 2011, and are attached as part of the documentation.
2. Both the ENA and the Option Agreements had provisions for "Successors" to the parties. As such, with the dissolution of the RDA and the Town assuming the Successor responsibility for Housing, both these agreements (ENA & Option Agreement) are binding upon and shall inure to the benefit of the permitted successors.

Specifically, Section 8.7 of the Option Agreement states:

Binding on Successors and Assigns Subject to the limitations set forth in Section 8.5 above this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

Therefore, irrespective of the date of RDA dissolution, the Option Agreement between the Yucca Valley RDA and National Community Renaissance of California would be binding on the Town of Yucca Valley as the successor housing agency.

For these reasons, we respectfully request that the DOF recognize the legitimacy of Items 10 and 13 as enforceable obligations of the Agency.

Conclusion

Ms. Brandon, while the Agency can appreciate the difficulty facing the DOF in the wind-down process, the Agency would request consideration from DOF in terms of identifying a reasonable, timely, and global resolution to these outstanding issues. The Agency has provided a path forward that recognizes the objectives of AB 1x 26 and AB 1484 while protecting the legal obligations of the Agency, or Town as successor housing agency and minimizing the risk of injury to our development partner. We trust this perspective is shared by DOF as a result of the Meet & Confer process, and we look forward to any further questions or clarifications that may arise from this review.

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If any further assistance is needed in this matter, please contact me at (760) 369-6585 ext. 232 or via e-mail at cyakimow@yucca-valley.org to discuss.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Yakimow', with a stylized flourish at the end.

Curtis Yakimow
Director of Administrative Services

cc Mark Nuaimi, Executive Director

Follow-up Documentation for Item 10.

1. Exclusive Negotiating Agreement



EXCLUSIVE NEGOTIATION AGREEMENT

National Community Renaissance of California

December 8, 2010

This EXCLUSIVE NEGOTIATION AGREEMENT (“Agreement”) is entered into this 11th day of December, 2010 (“Effective Date”), between the TOWN OF YUCCA VALLEY, a public body, corporate and politic (“Town”), the TOWN OF YUCCA VALLEY REDEVELOPMENT AGENCY, a public body, corporate and politic (“Agency”), and National Community Renaissance of California, a California public benefit non-profit corporation (“Developer”), to provide a specified period of time to attempt to negotiate a disposition and development agreement per the terms and provisions set forth below.

RECITALS

WHEREAS, Agency has approved and adopted the 2009-10 Five Year Implementation Plan, which includes a Housing Compliance Plan that outlines Agency’s affordable housing production requirements for Redevelopment Project Area No. 1 (“Project Area”); and

WHEREAS, Agency intends to achieve its’ affordable housing requirements through direct or indirect action such as partnering with a private entity to build, construct, or substantially rehabilitate residential units within the Project Area; and

WHEREAS, Town owns approximately 3.09 +/- gross acres of vacant real property located north of 29 Palms Highway, west of Dumosa Avenue, and south of Antelope Trail, identified as Assessor Parcel 595-371-11 and the southerly portion of Assessor Parcel 595-361-21, Town of Yucca Valley, County of San Bernardino, State of California as further depicted on Exhibit A attached hereto (the “Site”); and

WHEREAS, the purpose of this Agreement is to establish a specific, limited period of time to negotiate an agreement between Town, Agency and Developer that would govern the Lease or sale of the Site, and the development and operation of an affordable housing development on the Site, all subject to mutually agreeable terms, conditions, covenants, and restrictions negotiated and documented in a Disposition and Development Agreement (“DDA”); and

WHEREAS, Town and Agency desire to work with Developer to: (i) identify development opportunities for the Site, and (ii) identify development costs, responsibilities and schedule, (iii) formulate plans for an affordable housing development (“Project”), (iv) determine if the Site will be leased or sold to the Developer, and (v) if agreed to by the parties to this Agreement, negotiate a DDA; and

WHEREAS, Town, Agency and Developer desire to enter into this Agreement to initiate exclusive negotiations for up to three hundred sixty-five (365) days (“Negotiation Period”) provided that Developer meets certain performance milestones, including without limitation: (i) cooperating with Agency to prepare a Project development program and plan, (ii) undertaking Project due diligence activities; (iii) establishing Project development responsibilities (including a Project development schedule, development budget and financing strategy), (iv) preparing and submitting an application for a HUD 202 loan in an amount which, when combined with other potential financing, would be sufficient to enable Developer to acquire, develop, entitle, construct and operate the Project, and (v) attempting to negotiate and finalize a DDA and other documents related to the sale or lease of the Site and the development of the Project.

NOW, THEREFORE, in consideration of the recitals and mutual covenants and conditions contained herein, the parties hereto agree as follows:

I. NEGOTIATION PERIOD

A. Negotiation Period

The Negotiation Period shall consist of two consecutive terms, subject to Developer's achievement and performance of certain milestones in each period, and shall commence upon the date presented in the Preamble of this Agreement ("Commencement Date"), and shall end on the date that is three hundred sixty-five (365) days following the Commencement Date ("End Date"), unless earlier terminated or extended pursuant to the terms of this Agreement ("Negotiation Period"). This Agreement shall automatically terminate as of the End Date unless extended pursuant to the terms of the Agreement; provided, however, that if the Agreement is earlier terminated pursuant to this Agreement's provisions then such earlier termination date shall be the "End Date" and this Agreement shall be deemed to automatically terminate on such date.

B. First Term: Site Development Plan Preparation and HUD 202 Application

During the first one hundred eighty (180) days of the Negotiation Period ("First Term"), Developer shall conduct due diligence activities and will prepare a Site development program and plan ("Site Development Plan") for Agency review. The Site Development Plan shall include and delineate the following conceptual elements regarding the Project:

1. Anticipated uses, type, and size;
2. Building configuration(s), ingress/egress points, parking areas, open space areas, and building exterior elevations;
3. Relationships with the surrounding uses;
4. Design, construction, and operating features;
5. Anticipated on- and off-site infrastructure improvements;

6. Estimated development costs including soft and hard construction costs, on- and off-site infrastructure improvement costs, and state and local regulatory requirement costs;
7. Funding responsibilities and sources;
8. Site disposition (whether the Site will be leased or sold to the Developer);
9. The parties/entities responsible for development activities;
10. A development schedule;
11. Complete a Phase I review analysis and report on the Site; and,
12. Complete a Site appraisal.

Within the first sixty (60) days of the First Term, Agency may request from Developer any and all documentation reasonably necessary for Agency's assessment of Developer's ability, both practically and financially, to undertake and perform the Project ("Developer Documents"). Developer Documents may include, without limitation, corporate formation or business entity formation documents, financial statements, equity partner commitments, lender commitments, and any other documentation reasonably related to Developer's performance of this Agreement, ability to perform the terms of a DDA, and/or the Project. Developer shall provide Developer Documents to Agency and Developer shall continue to provide new documentation as it is received or as specifically requested by Agency. Agency may request further Developer Documents that it reasonably considers necessary to its assessment at any time during the First Term. During the First Term, Town and Agency shall provide Developer with all reports, plans and information Town and Agency may have for the Site, however, Town and Agency will not guarantee the accuracy of said documents. During the First Term, Developer will also undertake the following:

1. Shall review preliminary title report information for the Site;

2. Shall conduct other due diligence activities as necessary to determine whether or not the Site can accommodate the Project. In conjunction therewith, Developer and its consultants and agents shall have the right to enter upon the Site to conduct tests, studies, and investigations pursuant to an Early Entry Agreement, the form of which is attached hereto and incorporated herein as Exhibit B.
3. Shall coordinate with the Agency the completion of a HUD 202 loan application to be submitted in the Spring of 2011. The information prepared in such application, to the degree possible, shall be in a form that can be utilized in the application process for other financing programs such as County HOME Funds, Tax Credit Financing, and other related affordable housing financing programs. The costs of preparing such application will be borne by the Agency to the degree further described in Section III of this Agreement.

Agency may utilize independent financial or design consulting firms to verify and further analyze the Site Development Plan and/or Developer Documents at Agency's sole expense. Within thirty (30) days of the date of receipt of Developer Documents and/or the Site Development Plan, Agency may provide its preliminary evaluation or comments thereon to Developer. Agency's preliminary determinations on the Site Development Plan may indicate the appropriate level of review under the California Environmental Quality Act ("CEQA"). Developer's failure to satisfactorily cure (as determined in the sole and absolute discretion of Agency) any deficiencies in the Developer Documents and/or the Site Development Plan identified by Agency in the course of preliminary reviews or discussions may result in Agency's rejection of the Developer Documents and/or the Site Development Plan. Consistent with Section IV hereof, no preliminary representations by, or discussions with, Town or Agency staff shall constitute a warranty or guarantee that Town or Agency will accept the Developer

Documents and/or the Site Development Plan; nor shall any such preliminary representations by, or discussions with, Town or Agency staff limit Town's or Agency's police powers or be binding upon the discretion of the Town Council and/or Agency Board.

If, at the end of the First Term, Agency has not accepted the Site Development Plan and the Developer Documents, this Agreement shall automatically terminate without notice, unless the time for Developer's performance is extended in writing by the Agency Executive Director, in his or her sole and absolute discretion (and with Developer's written agreement to the extension), pursuant to Section VIII.Q of this Agreement.

C. Second Term: DDA Preparation / Environmental Review / Entitlements/Submittal of DDA to Agency Board and Town Council

If the Site Development Plan and Developer Documents are all accepted by Agency, then Town and Agency agree to negotiate exclusively with Developer for an additional one hundred and eighty (180) days of the Negotiation Period ("Second Term") to structure, draft and finalize the DDA, to complete site entitlement consistent with the DDA, to complete necessary environmental review to comply with CEQA, and to present the DDA, entitlements, and environmental determination to the Agency Board and Town Council for consideration.

Without limitation, the parties anticipate that a DDA, if any, would include the following terms: (i) the design of the Project which is proposed by Developer, which design shall be subject to approval by Town and Agency, (ii) the financing of the Project by Developer and Agency, (iii) the lease or sale of the Site to Developer, (iv) the construction of the Project by Developer in accordance with final plans and specifications to be provided by Developer and pursuant to a detailed schedule of performance, and in full compliance with all applicable laws including, but not limited to, those pertaining to the payment of prevailing wages, if applicable, (v) the construction of the Project by the Developer in compliance with all applicable equal

opportunity and prevailing wage standards established by Federal and State law, (vi) the right of Town and Agency to inspect the Project from time to time to assure compliance with the foregoing provisions, (vii) the furnishing by Developer to Agency, upon Agency's request, of conceptual drawings and schematics, final plans and working drawings for the Project and participation in presentations regarding all phases of development, (viii) assurances from Developer that the Project shall be of high quality, (ix) the terms and conditions of the lease or acquisition and sale of the Site, and (x) the restricted use of the Site for Project-only uses. Further, the DDA may provide that Developer shall work in cooperation with Town and use reasonable efforts to provide the residents of the town with employment opportunities in the construction and operation of the Project,

Upon Developer's submission of an executed DDA to Agency, if at all, the Town and Agency will: (i) prepare any required environmental documentation necessary to comply with CEQA, (ii) complete any necessary land use entitlements, and (iii) notice and conduct a public hearing pursuant to Section 33433 of the California Health and Safety Code on the DDA and site entitlements. If additional time is required by Town and Agency to complete the CEQA and entitlement processes, such extension of the Second Term will be based upon the Agency Executive Director's determination of the time required.

If, at the close of the Second Term, Developer has not executed and accepted a DDA with Agency in a form and content that Agency staff and Agency legal counsel are willing to recommend for Agency approval, then this Agreement shall automatically terminate without notice, unless the time for Developer's performance is extended in writing by the Agency Executive Director, in his or her sole and absolute discretion (and with Developer's written agreement to the extension), pursuant to Section VIII. of this Agreement.

D. Exclusivity of Negotiations

During the Negotiation Period Agency shall not negotiate, discuss nor otherwise communicate with any other person or entity, other than Developer, regarding the lease, transfer, sale, or other disposition of the Site or the development of the Project, except for entities or persons which have an interest therein pursuant to applicable law or contractual rights or obligations. During the Negotiation Period, Developer agrees that it will perform the terms of this Agreement diligently, negotiate in good faith at all times hereunder, and commit the financial and time resources required to conduct and complete the activities and milestones outlined in this Agreement.

The obligation to negotiate in good faith requires the respective parties to communicate with each other regarding issues for which agreement has not been reached, and in such communication to follow reasonable negotiation procedures including meetings, telephone conversations and correspondence. The parties understand that final accord on all issues may not be reached. It is also understood that: (i) Agency expects Developer to meet the milestones identified previously in order to enter successive terms, (ii) neither party is under any obligation to reach agreement on the DDA or other documents relating to the lease or sale of the Site, and (iii) Town, Agency and Developer each reserve the right to approve or reject the DDA or such other Project documents, the Project, or any disposition of the Site, as set forth in this Agreement.

E. Agency and Developer Obligations

During the Negotiation Period, Town, Agency and Developer obligations shall include, but not be limited to, the following:

1. Agency Obligations

- a) Provide Developer with documents in Agency's possession that would assist Developer with the due diligence activities described in this Agreement;
- b) Upon its acceptance of the Site Development Plan, if at all, Agency shall duly evaluate the Developer's financial ability to develop the Project, review Developer Documents, and prepare and attempt to finalize a DDA. Developer's financial ability may be established with evidence of the financial strength or credit standing of its principals, and if based on the credit standing of its principals, on the availability of appropriate financing;
- c) Upon its acceptance of the Site Development Plan, if at all, Agency shall duly evaluate the Developer's financial ability to acquire or lease the Site, and prepare and attempt to finalize a purchase or lease agreement. Developer's financial ability may be established with evidence of the financial strength or credit standing of its principals, and if based on the credit standing of its principals, on the availability of appropriate financing;
- d) Provide Developer with timely and reasonable responses from Agency staff;
- e) Provide Developer feedback and clear communication of Agency expectations regarding any and all documentation related to the Site

Development Plan and the Developer Documents submitted by Developer:
and

f) During the Negotiation Period Agency shall not negotiate, discuss nor otherwise communicate with any other person or entity, other than Developer, regarding the development of the Project, except for entities or persons which have an interest therein pursuant to applicable law or contractual rights or obligations. However, Agency may utilize independent financial or design consulting firms to verify and further analyze the Site Development Plan and/or Developer Documents at Agency's sole expense.

g) Provide for certain pre-development costs associated with the HUD 202 due diligence and application filing fees as further described in Section III.

2. Town Obligations

a) Provide Developer with documents in Town's possession that would assist Developer with the due diligence activities described in this Agreement;

b) Upon its acceptance of the Site Development Plan, if at all, Town shall evaluate options regarding the sale or lease of the Site to the Agency, and prepare and attempt to finalize a purchase or lease agreement between the Town and Agency for the Site;

c) Provide Developer with timely and reasonable responses from Town staff, and use reasonable efforts to cause Town staff and associated Town

departments reviewing the purchase or lease agreement to provide timely and reasonable responses;

d) Provide the Developer with an Early Entry Agreement in the form attached hereto as Exhibit B;

e) During the Negotiation Period Town shall not negotiate, discuss nor otherwise communicate with any other person or entity, other than Developer, regarding the lease, transfer, sale, or other disposition of the Site, except for entities or persons which have an interest therein pursuant to applicable law or contractual rights or obligations, however, Town may utilize independent financial or design consulting firms to verify and further analyze the Site Development Plan and/or Developer Documents at Town's sole expense; and

f) Town shall not transfer the Site to an unrelated party during the Negotiating Period.

3. Developer Obligations

a) Exercise all due diligence to investigate the Site;

b) Timely submit site plan(s), interior floor plan(s), building exterior elevations, schematic drawings, parking layout, prospective tenants/end users the tentative Project development schedule, detailed Project development costs (including construction and non-construction costs, such as the proposed purchase price for land), Project pro formas which identify all sources and uses of funds, and other related documents necessary for Agency review and reasonably requested of Developer. All such submittals shall be adequate for the purpose of demonstrating

compliance with Town's design requirements and to assist Town and Agency in conducting a review under CEQA. Furthermore, any such submittals shall be available for use to Agency so long as such use does not conflict with copyright infringement law;

c) A study or market analysis of rental rates for the units as developed with the Project;

d) Timely submit development financing options, projected sources of equity and other capital to develop and operate the Project; and

e) Timely submit Developer Documents and any other evidence reasonably acceptable to Agency that Developer has the financial resources necessary for development.

II. COSTS AND EXPENSES

a) In recognition of the fact that the Developer is a nonprofit 501 (c) (3) corporation working in partnership with the Agency to initiate a high quality low income senior housing development in the project area, and subject to the terms and limitations set forth in this agreement, the Agency agrees to make a loan (the "Predevelopment Loan") to the Developer for the purpose of paying and/or reimbursing certain predevelopment expenses incurred and paid or to be incurred and paid by the Developer with respect to due diligence investigation concerning acquisition of the property and subsequent development, construction and operation of the proposed project.

1. Predevelopment expenses which are eligible for reimbursement are those expenses described on the attached Exhibit "C" and which are actually incurred and/or paid by the Developer to unrelated third parties.

2. Without limiting the generality of the foregoing, eligible predevelopment expenses do not include the Developer's internal, administrative, overhead or similar expenses.
3. Not more than once every thirty (30) days, the Developer may submit a disbursement request to the Agency for reimbursement of the eligible expenses which have been incurred and or paid by the Developer.
 - i. Each request for reimbursement shall be accompanied by copies of invoices, cancelled checks, or other such documentation as may be reasonably necessary, as determined and/or requested by the Agency, to evidence the requested amount of eligible expenses for which payment is sought.
 - ii. The Agency shall review and approve or disapprove each such reimbursement request within fifteen (15) days following its receipt thereof.
 - iii. The Agency shall pay all approved or deemed approved reimbursement expenses within fifteen (15) calendar days following such approval. If a reimbursement request is partially approved and partially disapproved, the Agency shall pay only those approved expenses contained within such reimbursement request.
 - iv. The Agency shall give prompt written notice to the Developer of any disapproved requested reimbursement amounts and the reason for disapproval.

- b) The total amount of the Predevelopment Loan shall not exceed One Hundred Thousand Dollars (\$100,000).
- c) The aggregate amount of predevelopment expenditures paid and/or reimbursed by the Agency shall be deemed to be a loan from the Agency to the Developer made under the terms hereof. If a DDA or similar agreement is ultimately executed by the parties, such Predevelopment Loan shall constitute a portion of any financial assistance which may ultimately be provided by the Agency for the benefit of the proposed project. The Predevelopment Loan will be repayable by the Developer with simple interest at such interest rate as may ultimately be charged on any financial assistance provided by the Agency from residual receipts produced from the operation of the proposed Project. If this Agreement is terminated, or if the acquisition and/or development/construction of the proposed Project does not proceed prior to the termination of this Agreement for any reason other than the Developer's uncured material default of its obligations hereunder or under the DDA, the Agency shall forgive the Predevelopment Loan and discharge the Developer's obligation to repay the same. In such event, the Developer shall assign its interest in all reports, studies and plans pertaining to the proposed Project to the Agency. Such assignment shall be without warranty as to correctness or completeness and shall also be subject to any applicable third party rights in all such materials so assigned. If this Agreement is terminated, or if the acquisition and/or development /construction of the proposed Project does not proceed prior to the termination of this Agreement, either event due to the Developer's uncured material default of its obligations hereunder or under the DDA, then the loan shall be repayable pursuant to the terms of the DDA;

provided, however, that if a DDA or similar agreement has not been executed by the parties, the Developer shall immediately repay to the Agency the total outstanding balance of the Predevelopment Loan.

III. RETENTION OF DISCRETION TO APPROVE THE PROJECT, ENTITLEMENTS AND DDA; NO PRE-COMMITMENT

It is anticipated, without guarantee, that the Project, the DDA and other transfer documents related to the lease or sale of the Site will be presented to the Town Council and the Agency Board for approval. It is also anticipated that the Town Council and/or Planning Commission will be required to review and hold hearing(s) upon the necessary Project entitlements and environmental documentation. The parties understand that Town and Agency are reserving the right to exercise their discretion as to all matters which they are, by law, entitled or required to exercise, at their discretion; nothing in this Agreement shall be construed as having the effect of waiving or limiting Agency's police powers and exercise of discretion. To this end:

A. Approval by Agency of the Final Project as Contained in the DDA

The parties understand that Town and Agency have the complete and unfettered discretion to reject the DDA and other documents related to the lease or sale of the Site without explanation or cause. The risk of loss of all processing, design and developmental costs incurred by Developer prior to DDA approval and execution shall be absorbed entirely by Developer, unless expressly assumed by the terms of this Agreement by Town and Agency.

B. Review and Approval by Town and Agency of all Discretionary Findings and Conclusions

The duty of Town and Agency to execute the DDA shall be conditioned upon the successful review and approval of all necessary findings and conclusions which the Town

Council and/or Agency Board are required to make, including all necessary findings and determinations required under the CEQA, state and local land use provisions, and the California Community Redevelopment Law. As to any matter which Town or Agency may be required to exercise its unfettered discretion in advancing the Project to completion, nothing herein, nor to be contained in the DDA, shall obligate Town or Agency to exercise its discretion in any particular manner, and any exercise of discretion reserved hereunder or required by law, shall not be deemed to constitute a breach of Town or Agency duties under this Agreement.

C. No Pre-Commitment by Town or Agency

By its execution of this Agreement, except as set forth herein, neither Town nor Agency are committing themselves or agreeing to undertake any activity requiring the subsequent exercise of discretion by Town or Agency, or any department thereof including, but not limited to, the approval and execution of a DDA, the approval of any development proposal or land use regulation governing the Site, the provision of financial assistance for the development of any public or private interest in real property, or any other such act or approval.

This Agreement does not constitute a disposition of property and does not require a public hearing. Agency execution of this Agreement is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by Town and Agency as to any proposed DDA and all proceedings and decisions in connection therewith.

IV. THE DEVELOPER

A. Developer Experience

As a condition precedent to Agency execution of this Agreement, Developer shall have submitted to Agency a detailed description of the development experience of Developer and its principals, associates, employees, partners, and joint ventures.

A. Offices of Developer

The principal offices of Developer are located at:

9065 Haven Avenue, Suite 100
Rancho Cucamonga, California 91730
Telephone: 909.483.2444
Facsimile: 909.483.2448

B. Project Manager

The Project Manager for Developer will be Julie Mungai. Other employees, consultants, or representatives who are will be directly involved in the Project will be determined by Developer and submitted to Agency upon any such determination.

C. Full Disclosure

Upon request of Agency, Developer shall provide full disclosure of the identity of its principals, officers, stockholders, partners, joint ventures, and all other pertinent information concerning Developer.

D. Assignment

Developer shall not assign this Agreement without Town and Agency's prior written consent, which consent may be withheld in their sole and absolute discretion. Any Assignment Town and Agency have approved shall not be effective unless and until Developer submits a signed assignment and assumption agreement in a form and with content reasonably approved by Agency legal counsel.

V. ENVIRONMENTAL REQUIREMENTS

Agency and Developer acknowledge and agree that all environmental documentation required pursuant to CEQA and local regulations for development of the project on the Site will need to be prepared and, at the time it is necessary to prepare such documentation (which is contemplated to occur as part of the Second Term), Developer shall assist Agency with the

preparation of all such necessary environmental documents as required by CEQA and local regulations, for certification or adoption by Town. Developer agrees to cooperate with Town and Agency, as requested, to determine the environmental impact of the Project and to assist Agency with the preparation of any other additional documents as may be needed to complete environmental review for the Project; provided, however, that Agency shall not reimburse Developer for costs incurred by Developer in assisting Agency with preparing such documentation.

VI. GENERAL PROVISIONS

A. Legal Actions; Governing Law; Service of Process

In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover actual damages for any default, or to obtain any other remedy consistent with the purposes of this Agreement; provided, however, that Paragraph C of this Section VII of this Agreement shall supersede any conflicting provisions of this Paragraph A. Such legal actions must be instituted and maintained in the Superior Court of the County of San Bernardino, State of California, or in any other appropriate court in that county. The laws of the State of California shall govern the interpretation and enforcement of this Agreement. In the event that any legal action is commenced by Developer against Town or Agency, service of process shall be made by personal service upon the Town Manager or Secretary of Agency, or in such other manner as may be provided by law. In the event that any legal action is commenced by Town or Agency against Developer, service of process on Developer shall be made by personal service upon Developer or in such other manner as may be provided by law, and shall be valid whether made within or without the State of California.

B. 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.

C. Specific Performance as Developer's Exclusive Remedy

Subject to Developer's right to terminate this Agreement in accordance with the terms of Paragraph E of this Section VII, Developer's exclusive remedy for an uncured Town or Agency default under this Agreement is to institute an action for specific performance of the terms of this Agreement, and in no event shall Developer have the right, and Developer expressly waives the right, to seek monetary damages of any kind (including but not limited to actual damages, economic damages, consequential damages, or lost profits) from Town or Agency in the event of a default by any party under this Agreement or any action related to this Agreement.

D. Attorney's Fees

Except as specifically provided in Section III hereof, the parties hereto acknowledge and agree that each such party shall bear its own legal costs incurred in connection with the negotiation, approval, and execution of this Agreement.

E. Termination Rights

Notwithstanding the Negotiation Period, all parties may terminate this Agreement if the one party has materially defaulted in its obligations herein set forth, and the terminating party has provided the defaulting party with written notification of such determination, and the defaulting party has refused or failed to cure same prior to the expiration of the cure period below. The written notification shall set forth the nature of the actions required to cure such default if curable. The defaulting party shall have ten (10) days from the date of the written notification to

cure such default, or where such cure cannot reasonably be completed within ten (10) days the defaulting party shall promptly commence to cure the default to completion. If such default is not cured within the ten (10) days, or such cure is not diligently prosecuted to completion in the sole and absolute discretion of the non-defaulting party, the termination shall be deemed effective. For purposes of this paragraph, the parties hereby acknowledge that time is of the essence. Each party shall also have the right to terminate this Agreement in the event that: (i) Agency or Developer determines that the Project is infeasible, based on financial or environmental impact considerations, the public interest, delays, or any other reasonable basis for believing that Developer might not perform this Agreement or the Project in a satisfactory manner; or (ii) Agency and Developer reach an impasse in their negotiation of the DDA which cannot be resolved after good faith efforts; or (iii) Town and Developer reach an impasse in their negotiations of the purchase or lease agreement of the Site which cannot be resolved after good faith efforts.

F. Indemnity

Developer shall indemnify, protect, defend and hold harmless both Town and Agency, including their respective elected officials, officers, employees, representatives, members, and agents from and against any and all challenges to this Agreement, or any and all losses, liabilities, damages, claims or costs (including attorneys' fees) arising from Developer's negligent acts, errors, or omissions with respect to its obligations hereunder, excluding any such losses arising from the sole negligence or sole willful misconduct of Town, Agency or the conduct of third parties not under contract to or associated with, and outside the control of, Developer. This indemnity obligation shall survive the termination of this Agreement. Town and Agency shall have sole discretion in selecting its defense counsel.

Notices personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices delivered by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery shall be deemed effective on the receipt. Notices mailed in the manner provided above shall be deemed effective on the second business day following deposit in the United States mail. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as either party may from time to time designate by formal notice given in accordance with this Section G.

H. Nonliability of Agency/Town Officials and Employees

No member, official, employee, or contractor of Town or Agency shall be personally liable to Developer in the event of any default or breach by Town or Agency for any amount, which may become due to Developer or on any obligations under the terms of this Agreement.

No board member, manager, partner, officer, employee or agent of Developer shall be personally liable to Town or Agency in the event of any default or breach by Developer or for any amount which may become due to Town or Agency on any obligation under the terms of this Agreement.

I. Enforced Delay; Extension of Times of Performance

In addition to specific provisions of this Agreement, performance by either party (who is not then otherwise in material default) shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, supernatural causes, acts of the public enemy, terrorism, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplies, acts of the other party, acts or failure to act of Town, Agency or any other public or governmental agency or entity, including, without limitation,

unreasonable delays in the processing and issuance of required permits for the Project required by Developer or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform, for up to a maximum cumulative period of one hundred eighty (180) days. Notwithstanding the foregoing, inability to secure satisfactory financing, tenant commitments, or market and economic conditions shall not entitle Developer to an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within ten (10) days of knowledge of the commencement of the cause. In addition, times of performance under this Agreement may be extended by mutual written agreement by Town, Agency and Developer.

J. 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. The Section and Paragraph headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement.

K. Entire Agreement, Waivers, and Amendments

This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. The waiver by Town or Agency of any breach of Developer hereunder, or the failure on the part of Town or Agency to enforce any right it may have hereunder, shall not constitute a waiver of any other or subsequent, similar, or different breaches, or a waiver of Agency's or Town's power to enforce such rights. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the party to be charged, and all amendments and modifications hereto must be in writing and signed

by the appropriate authorities of Town and Agency and Developer. Without limiting the foregoing, the parties understand that the results of this Agreement may lead to future agreements or obligations, which shall only become valid (if at all) upon full execution of such future agreements.

L. Counterparts

This Agreement may be executed in counterparts, each of which, after all the parties hereto have signed this Agreement, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

M. Successors

Subject to the limitations on Assignments above, this Agreement shall be binding upon and shall inure to the benefit of the permitted successors of each of the parties hereto.

N. Further Assurances

The parties hereto each agree, without further consideration, to execute such other and further documents, and to perform such other and further acts, as may be reasonably necessary or proper in order to consummate the transactions set forth in and contemplated by this Agreement.

O. Severability

In the event any section or portion of this Agreement shall be held, found, or determined to be unenforceable or invalid for any reason whatsoever, the remaining provisions shall remain in effect, and the parties hereto shall take further actions as may be reasonably necessary and available to them to effectuate the intent of the parties as to all provisions set forth in this Agreement.

P. Time is of the Essence

Time is of the essence for each of the parties' obligations under this Agreement.

Q. Extension by Agency Executive Director

The Agency Executive Director is authorized, in his or her sole and absolute discretion, to extend pursuant to a written agreement with Developer, the time for Developer's performance under this Agreement for a cumulative period of up to one hundred twenty (120) days.

R. Confidentiality

Developer acknowledges and agrees that Town and Agency are public entities with a responsibility and, in many cases, a legal obligation to conduct business in a manner open and available to the public. Accordingly, any information provided by Developer to Town or Agency with respect to the Site, the Project or Developer may be disclosed to the public either purposely, inadvertently, or as a result of a public demand or order.

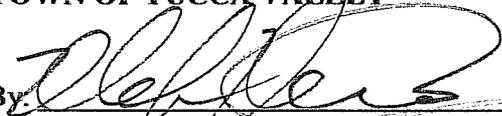
[Signatures contained on following page]

IN WITNESS WHEREOF, Town, Agency and Developer have executed this Agreement on the respective dates set forth below.

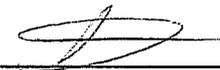
"TOWN"

Dated: 11/10/11

TOWN OF YUCCA VALLEY

By: 
Mark Nuaimi, Town Manager

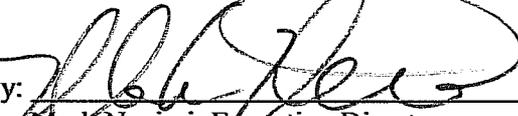
ATTEST:

By: 
Janet M. Anderson, City Clerk

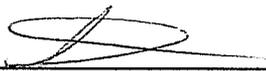
"AGENCY"

Dated: 11/10/11

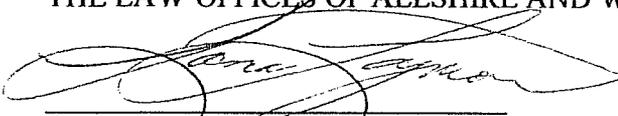
**TOWN OF YUCCA VALLEY
REDEVELOPMENT AGENCY**

By: 
Mark Nuaimi, Executive Director

ATTEST:

By: 
Janet M. Anderson, Agency Secretary

APPROVED AS TO FORM:
THE LAW OFFICES OF ALESHIRE AND WYNDER


Lona N. Laymon, Agency & Town Counsel

Dated: 12/9/10

“DEVELOPER”

NATIONAL COMMUNITY RENAISSANCE of CALIFORNIA, a California public benefit non-profit corporation

By:  _____

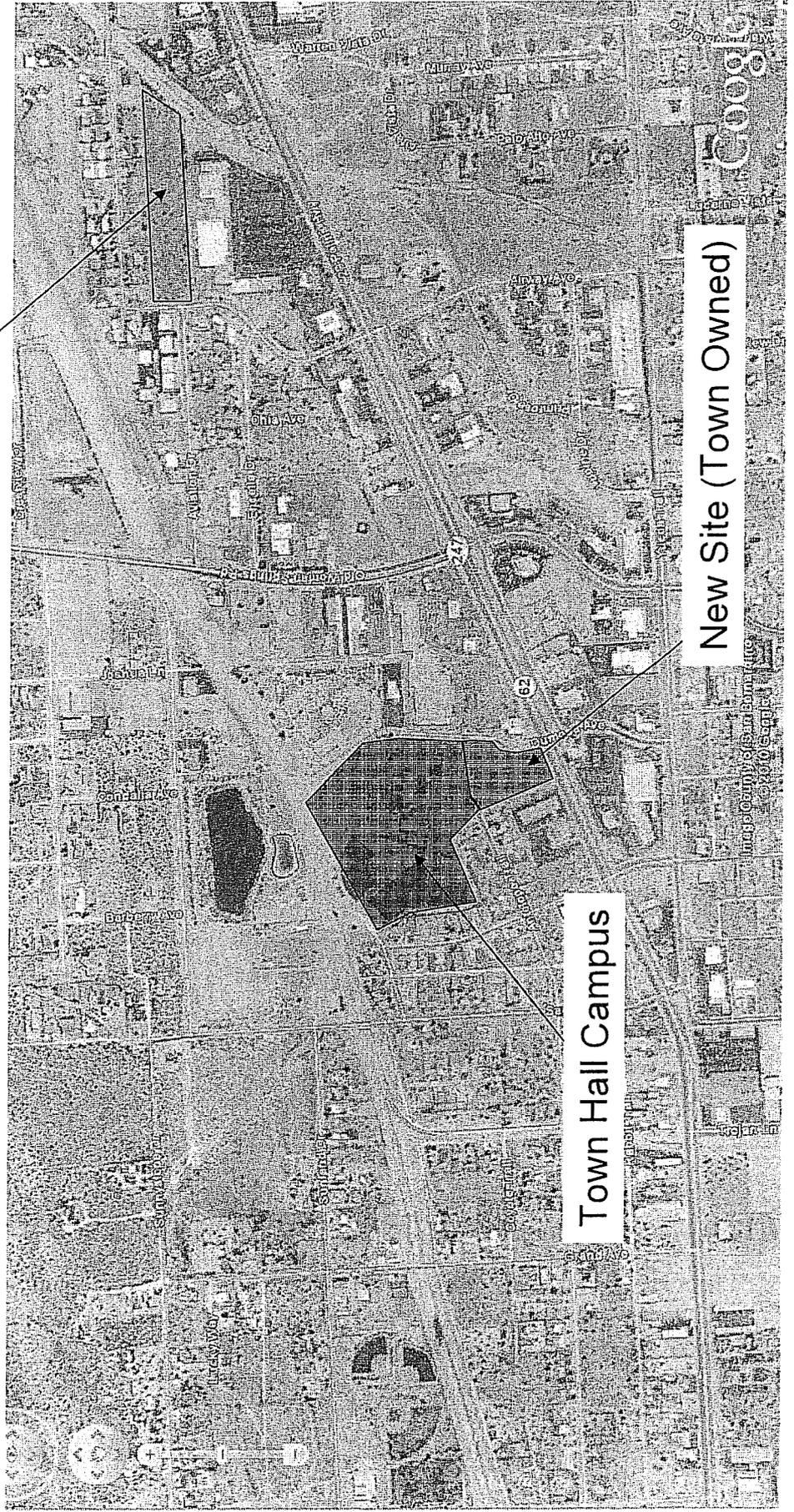
Title: Chief Financial Officer

Richard J. Whittingham, CPA
Chief Financial Officer

EXHIBIT A
DEPICTION OF THE SITE

Regional Perspective

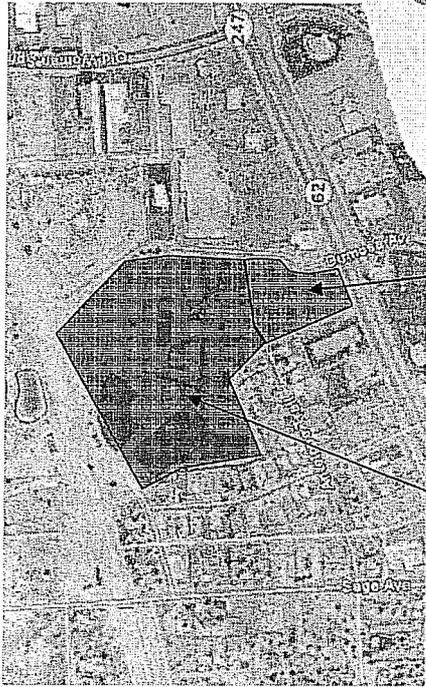
Site 1 (from RFQ)



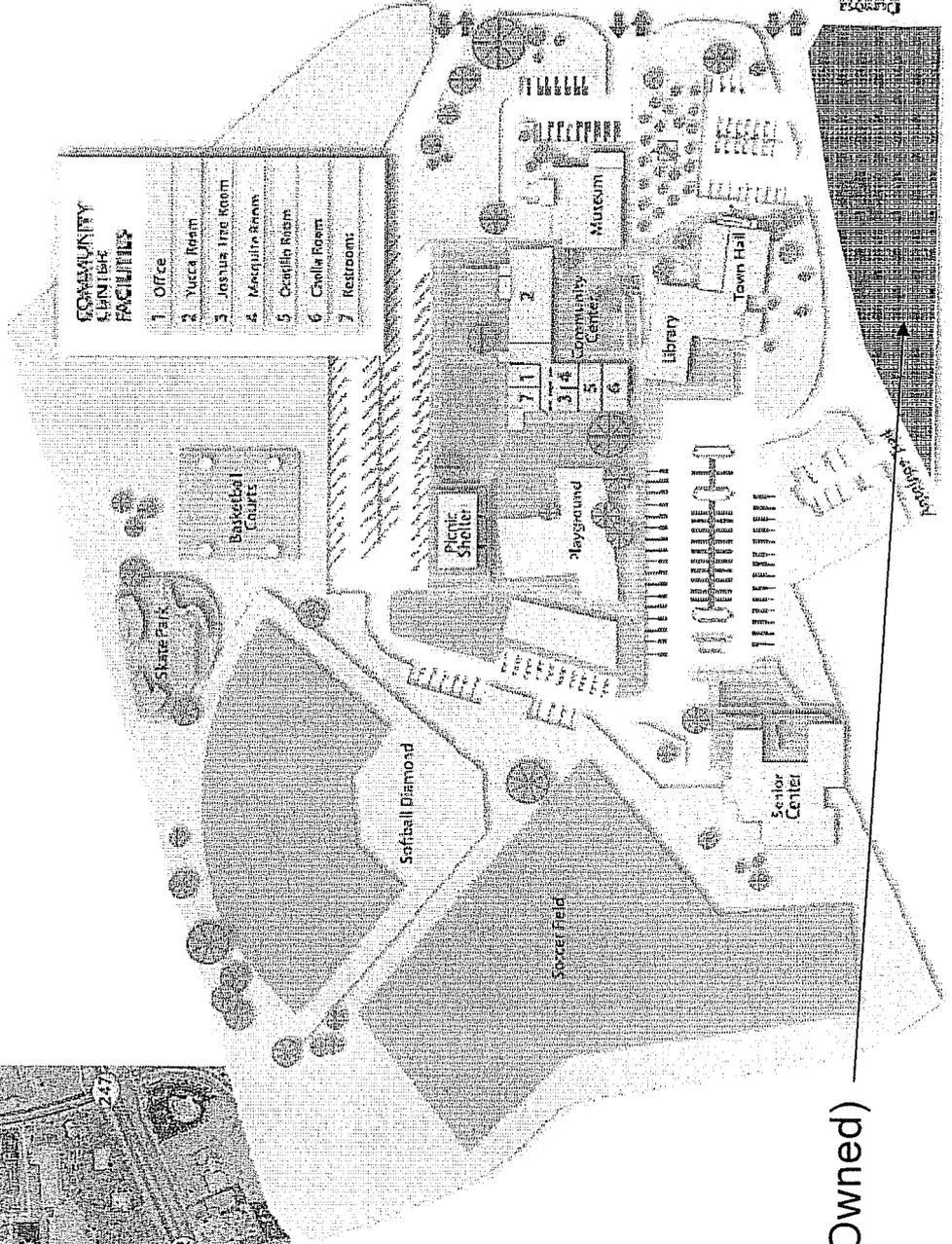
Town Hall Campus

New Site (Town Owned)

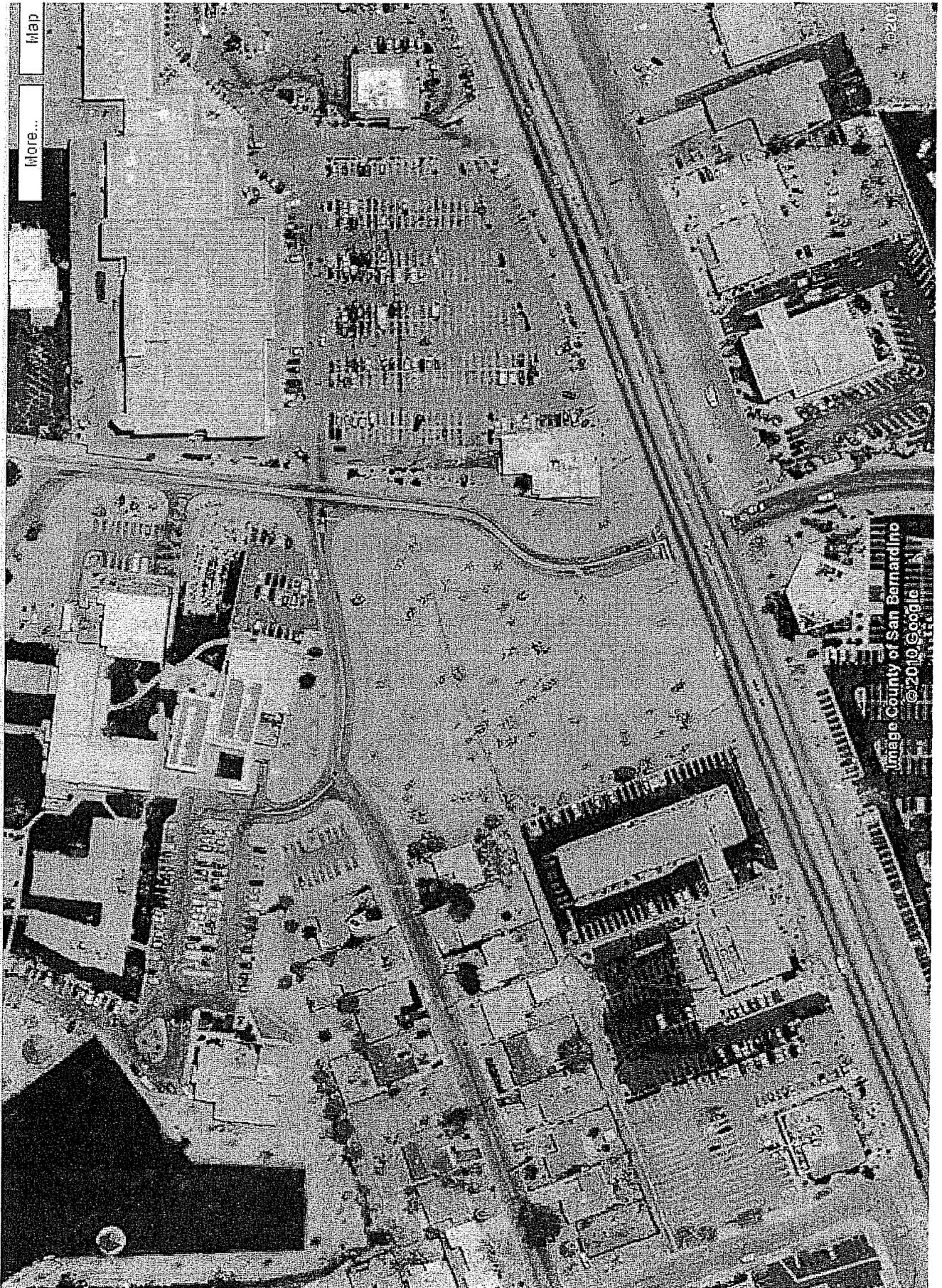
Town Hall Amenities



Town Hall Campus



New Site (Town Owned)



Map

More...

Imago County of San Bernardino
©2010 Google

EXHIBIT B

EARLY ENTRY AGREEMENT

This Early Entry Agreement ("Agreement") is entered into as of December 7, 2010, by and among the TOWN OF YUCCA VALLEY, a California municipal corporation ("Town"), the TOWN OF YUCCA VALLEY REDEVELOPMENT AGENCY, a public body, corporate and politic ("Agency"), and NATIONAL COMMUNITY RENNAISSANCE of CALIFORNIA ("Developer"), with reference to the following facts:

RECITALS

A. Town is the owner of certain real property, described on Exhibit "1" hereto ("Site").

B. Town and Agency have executed, or will execute, concurrent with the execution of this Agreement, that certain Exclusive Negotiation Agreement with Developer ("ENA"), pursuant to which Town, Agency and Developer will negotiate the possible sale or lease of the Site to Developer for Developer's development of the Site for an affordable housing development and related infrastructure ("Project").

C. Developer has requested the right to enter onto and about the Site to perform certain work specified herein, and Town is willing to allow such entry on the terms and conditions hereinafter specified.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein and for other valuable consideration, the sufficiency and receipt of which are hereby acknowledged by the parties hereto, the parties covenant and agree as follows:

1. Grant of License. Town hereby grants to Developer and its employees, agents, consultants, and contractors ("Related Parties") a license for the term set forth in Paragraph 3 ("License") to enter upon the Site between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, for the purposes of inspecting, surveying and testing, including geotechnical, soils and environmental tests, on said Site ("Permitted Work") in connection with the proposed use or lease thereof for development of the Project. Notwithstanding the above, at least forty-eight (48) hours prior to any of the Related Parties entering the Site, Developer shall notify Town of its intention of the same. Said notice shall be provided by facsimile, addressed to the person listed in Section 9.8 hereof at the number provided therein. Town may reject any proposed entry, in the exercise of its reasonable discretion, by providing telephonic notification to Developer at least twenty-four (24) hours prior to Developer's proposed entry, to the person listed in Section 9.8 hereof, at the number provided therein, which notice shall specify the reason for such rejection.

Town has full right, title and authority to grant Developer the License for the Permitted Work, and no third party permission or consent is needed in connection therewith. Such License shall be non-revocable for the Term defined in Paragraph 3 below, except as otherwise set forth herein. Town specifically agrees that Developer shall have access to and be entitled to inspect all portions of the Site, including without limitation, any structures located thereon, provided, however, that neither Developer nor any of the Related Parties shall interfere with any other real or personal property, or enter upon any other real property, without first obtaining the written consent of the owner(s) or manager(s) of such other real or personal property.

2. Revocation. Town may revoke this License upon two (2) days written notice to Developer delivered in accordance with Subparagraph 9.8 below in the event: (i) in the reasonable judgment of Town, such revocation is necessary to protect the public health, safety,

or welfare pursuant to the exercise of Agency's police powers; or (ii) Developer is in violation of the terms of this Agreement, the ENA or any applicable law, statute, ordinance, rule, or regulation pertaining to the Permitted Work or Developer's or the Related Parties' entry upon the Site pursuant to this Agreement, and Developer has failed to cure such violation within two (2) days following Developer's receipt of notice of such violation from Town.

3. Term. The term of the License shall commence on full execution hereof and shall terminate on the earlier of (i) the execution of a disposition and development agreement as described in the ENA, or (ii) the termination of the ENA pursuant to the terms and conditions set forth in the ENA.

4. Repair and Restoration of Site. Developer shall repair any damage it causes to the Site in the course of conducting its investigations pursuant hereto and shall restore the Site to the condition existing prior to Developer's or Related Parties' entry onto the Site, unless this requirement is waived by Town Manager in his or her sole and absolute discretion.

5. Compliance with Laws. Developer shall obtain, at its sole cost and expense, all governmental permits and authorizations required by any governmental agencies for the Permitted Work. Developer shall comply with, and shall cause all of its Related Parties to comply with, all applicable governmental laws, rules, regulations and requirements governing the Permitted Work. Prior to Developer's or any of the Related Parties' entry onto the Site to perform any Permitted Work, Developer shall have prepared, obtained approval from Town.

5.1 Notice of Potential Existence of Cultural Resources. Without limiting the generality of the foregoing, Developer is hereby notified and understands that there may be cultural resources located on the Site. Developer acknowledges and is aware that state laws require that Developer take specific actions (including cessation of work and notification of a "most likely descendant") if cultural resources are found. Developer represents and warrants that

its work on the site shall comply with applicable laws in this regard. In the event that Developer finds cultural resources during its activity under this License, it shall immediately cease work and notify the Town Manager. Further work shall not commence unless and until Town investigates and determines a course of action.

6. Indemnity. Developer shall protect, defend, indemnify and hold harmless Town and Town's respective officers, officials, members, employees, agents, and representatives (any of the foregoing shall be known individually as "Indemnitee" and collectively as "Indemnitees"), and each of them, jointly and severally, against and from any and all claims, demands, causes of action, damages, costs, expenses, losses and liabilities, at law or in equity, of every kind or nature whatsoever related to Developer's exercise of its rights hereunder, including attorneys' fees and expert witness fees, but excluding those resulting from environmental contamination of the Site or other defects on the Site existing prior to Developer's entry thereon or not otherwise caused by Developer or any of the Related Parties, but including, without limitation, injury to or death of any person or persons and damage to or destruction of any property, threatened, brought or instituted ("Claims"), arising out of or in any manner directly or indirectly connected with the entry upon the Site by Developer or any of its Related Parties and the performance of the Permitted Work, including without limitation:

(a) any damage to the Site and any liability to any third party incurred by reason of any acts or omission of, or any commission of any negligent or tortious acts, by Developer or its Related Parties;

(b) any mechanics' or materialmen's liens, claims, demands, actions or suits arising (directly or indirectly) from (i) any work performed or materials supplied to or for Developer, or (ii) any activities of any of its Related Parties on or relating to the Site (including, without limitation, any claims by any of such Related Parties); and

(c) any costs of removing Developer or its Related Parties from the Site after the expiration of the term hereof unless Developer is otherwise entitled to possession of the Site at such time.

Town shall have sole discretion in selecting its defense counsel.

7. Insurance. Developer shall procure and maintain during the term of this Agreement, including any holdover period, commercial general liability insurance in an amount not less than Two Million Dollars (\$2,000,000). Town and Agency and Town's and Agency's respective officers, officials, members, employees, agents, and representatives shall be named additional insureds on such policy/ies. Developer's insurance required hereunder shall (i) be primary insurance and not contributory with any other insurance Town may have; (ii) not contain any special limitations on the scope of protection afforded to Town and Agency and its officers, partners, officials, members, employees, agents, and representatives; (iii) be "date of occurrence" and not "claims made" insurance; (iv) apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; (v) shall provide that the policy shall not be cancelled by the insurer or Developer unless there is a minimum of thirty (30) days prior written notice to Developer and Town; and (vi) shall be written by a good and solvent insurer rated with a BEST rating of no less than B+ Class X, licensed by or having admitted status in the State of California, and registered with the California State Department of Insurance. The deductible or self-insured retention must be declared to Town Manager, who in his/her sole discretion may require the insurer to reduce such deductible or self-insured retention (but in no event shall such deductible or self-insured retention be required to be reduced below Ten Thousand Dollars [\$10,000]) with respect to Town and Town's respective officers, officials, members, employees, agents, and representatives; or Developer may be required to procure a bond guaranteeing payment of losses and related

investigation, claims administration, and defense expenses. Developer shall furnish or cause to be furnished to Town Manager, prior to the entry on the Site pursuant to this Agreement, certificates of insurance with bear original signatures of authorized agents and which reflect insurer' names and addresses, policy numbers, coverage limits, deductibles and self-insured retentions. Additionally, Developer shall furnish certified copies of all policy endorsements required herein. All certificates and endorsements must be received and approved by Town before work commences. Town reserves the right to require at any time complete, certified copies of any or all required insurance policies and endorsements. Prior to any such entry, Developer shall also provide evidence reasonably satisfactory to Town Manager that Developer or any contractor with whom Developer has contracted for the performance of work on or around the Site carries workers' compensation insurance as required by law.

8. Transfer of Site to Agency. Town and Developer acknowledge that the Town intends to convey the Site's fee title to the Agency, which conveyance is proposed and likely to occur before the conclusion of the second term stated in Section II of the ENA. Upon such conveyance of the Site to Agency, Agency shall automatically assume all rights and obligations of the Town set forth in this Agreement, and Town's conveyance of the Site to Agency shall automatically assign to the Agency all rights and obligations hereunder. Upon Town's conveyance of the Site to Agency, the Agency shall thus automatically take the place of the "Town" for all purposes of this Agreement.

9. Miscellaneous.

9.1 Authority. Each signatory hereto warrants to the other party that it has authority to sign on behalf of the party for whom it purports to sign.

9.2 Attorney's Fees. In the event any party hereto brings suit to enforce the terms of this Agreement or on account of breach hereof, the party not prevailing in such suit shall

pay all reasonable costs and expenses incurred by the other party in such suit, including, without limitation, court costs, attorneys' fees, and expert witness fees.

9.3 Entire Agreement. This Agreement sets forth the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior discussions, negotiations, understandings or agreements relating thereto.

9.4 Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.

9.5 Litigation Matters. The Municipal and Superior Courts of the State of California in the County of San Bernardino shall have the exclusive jurisdiction of any litigation between the parties arising out of this Agreement. This Agreement shall be governed by, and construed under, the laws of the State of California. Service of process on Town shall be made in the manner required by law for service on a public entity. Service of process on Developer shall be made in any manner permitted by law and shall be effective whether served within or outside of California.

9.6 Non-liability of Agency Officers and Employees. No officer, official, member, employee, agent, or representative of Town shall be personally liable to Developer, or any successor or assign of same, in the event of any default or breach by Town, or for any amount which may become due to Developer, or any successor or assign of same, or for breach of any obligation of the terms of this Agreement.

9.7 Covenant Against Discrimination. Developer covenants for itself, its heirs, executors, assigns, and all persons claiming under or through it, that there shall be no discrimination against any person on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the performance of this Agreement.

9.8 Notices. All notices required to be delivered under this Agreement or under applicable law shall be personally delivered, or delivered by United States mail, prepaid, certified, return receipt requested, or by reputable document delivery service that provides a receipt showing date and time of delivery. Notices personally delivered or delivered by a document delivery service shall be effective upon receipt. Notices delivered by mail shall be effective at 5:00 p.m. on the second business day following dispatch. Notices shall be delivered to the following addresses:

To Agency: Town of Yucca Valley
57090 29 Palms Highway
Yucca Valley, CA 92284
Attn: Mark Nuaimi – Town Manager
Telephone: 760.369.6585
Facsimile: 760.369.7207

With a copy to: The Law Firm of Aleshire and Wynder, LLP
18881 Von Karman Avenue, Suite 400
Irvine, CA 92612
Attn: Lona N. Laymon
Telephone: (949) 223-1170

To Developer: National Community Renaissance
9065 Haven Avenue, Suite #100
Rancho Cucamonga, CA 91730
Attn: Richard J. Whittingham, CFO
Telephone: 909.483.2444
Facsimile: 909.483.2448

With a copy to: Edward A. Hopson
655 A No. Mountain Ave.
Upland, CA 91786

Telephone: (909) 920-6464
Facsimile: (909) 920-3727

Changes in the address to be used for receipt of notices shall be effected in accordance with this Paragraph 9.8.

9.9 Time of Essence. Time is of the essence in the performance of the Agreement.

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

"TOWN"

Dated: 11/10/11

TOWN OF YUCCA VALLEY

By: 
Mark Nuaimi, Town Manager

ATTEST:

By: 
Janet M. Anderson, Agency Clerk

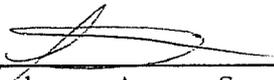
"AGENCY"

Dated: 11/10/11

TOWN OF YUCCA VALLEY
REDEVELOPMENT AGENCY

By: 
Mark Nuaimi, Executive Director

ATTEST:

By: 
Janet M. Anderson, Agency Secretary

APPROVED AS TO FORM:
THE LAW OFFICES OF ALESHIRE AND WYNDER

Lona N. Laymon, Agency & Town Counsel

“DEVELOPER”

Dated: _____

**NATIONAL COMMUNITY RENAISSANCE of
CALIFORNIA, a California public benefit non-
profit corporation**

By: _____

Title: _____

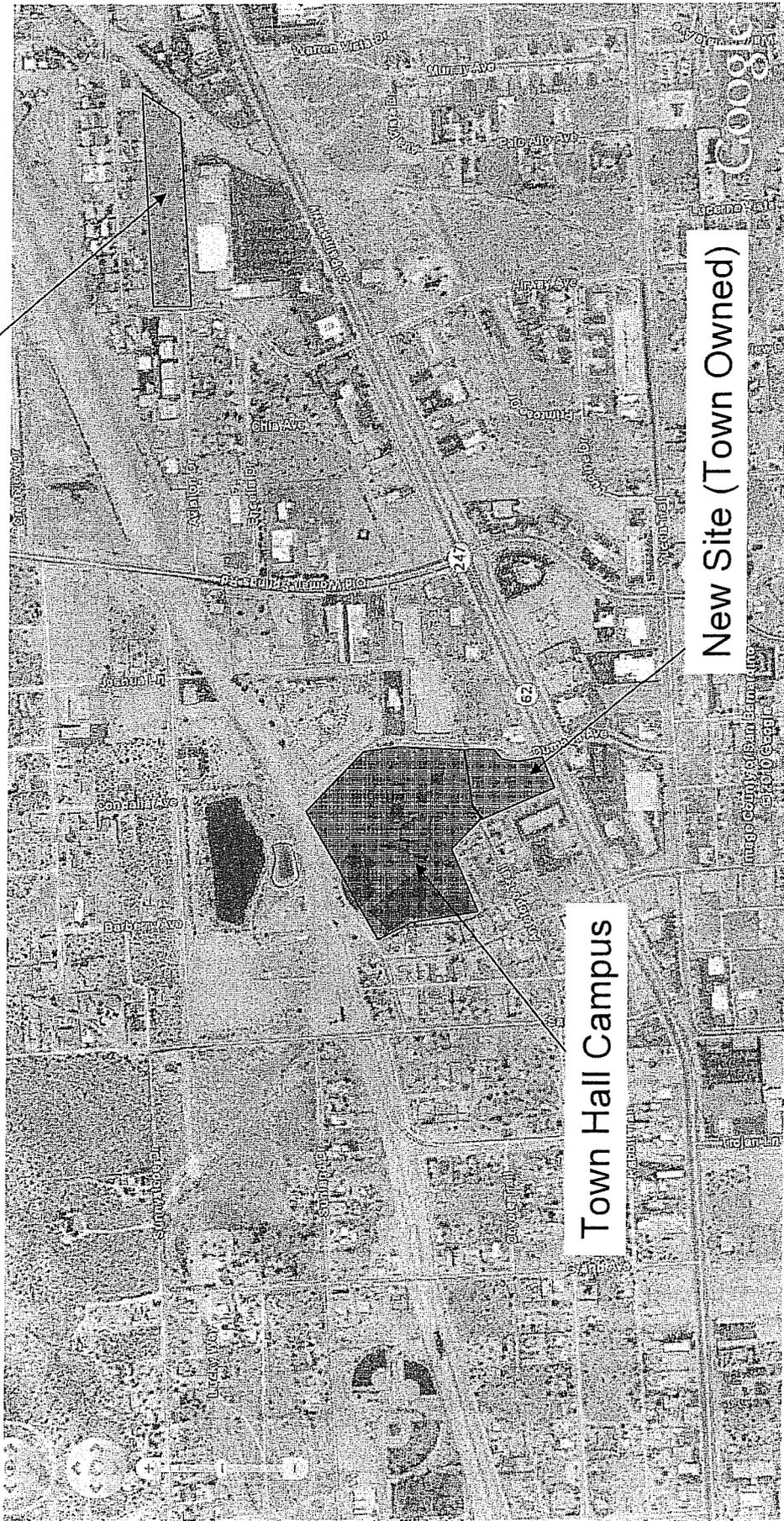
EXHIBIT "1"

DEPICTION OF SITE

[TO BE INSERTED]

Regional Perspective

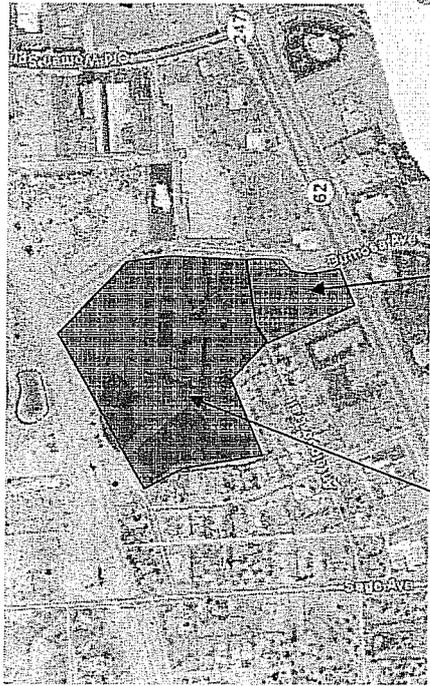
Site 1 (from RFQ)



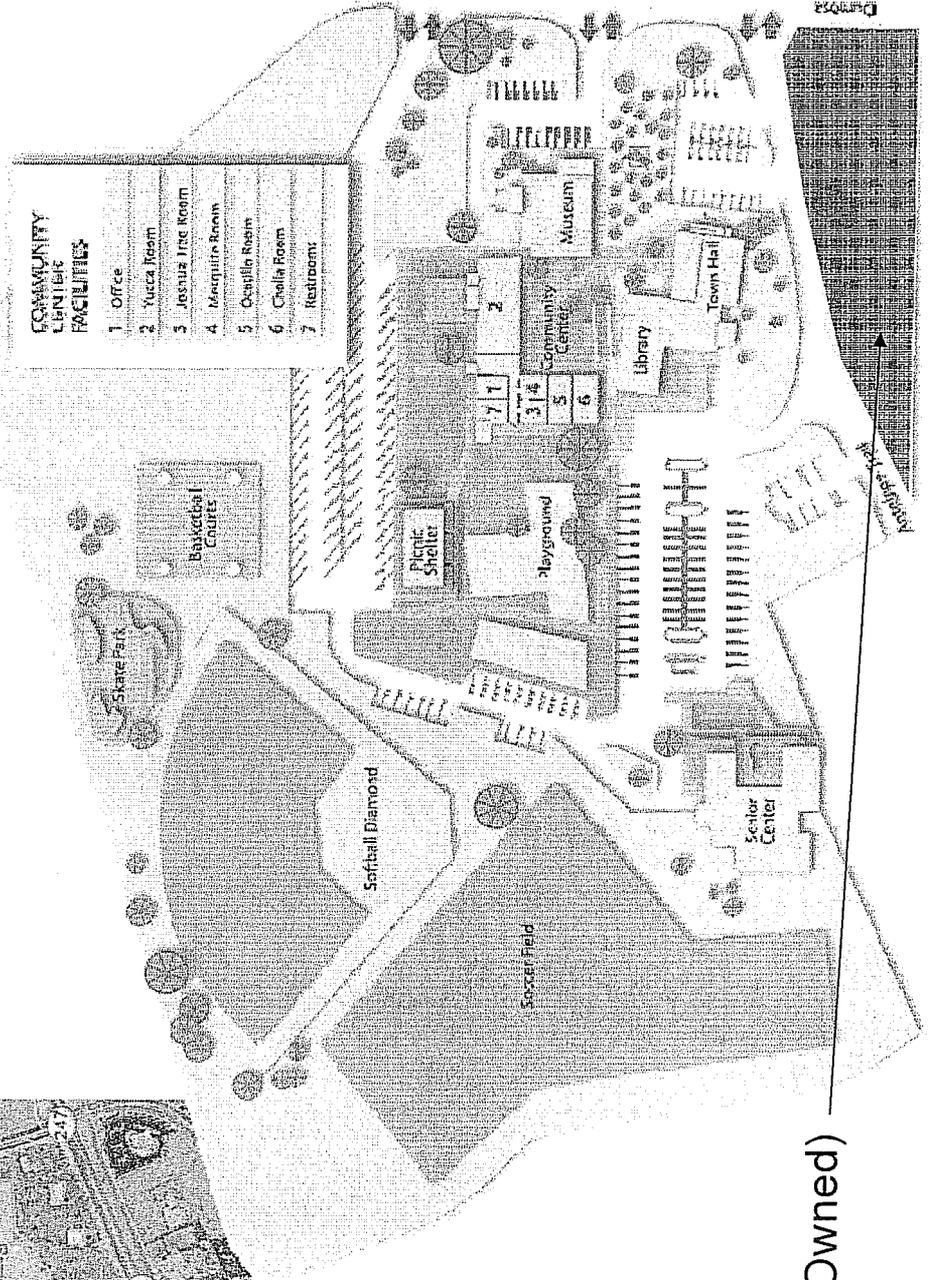
Town Hall Campus

New Site (Town Owned)

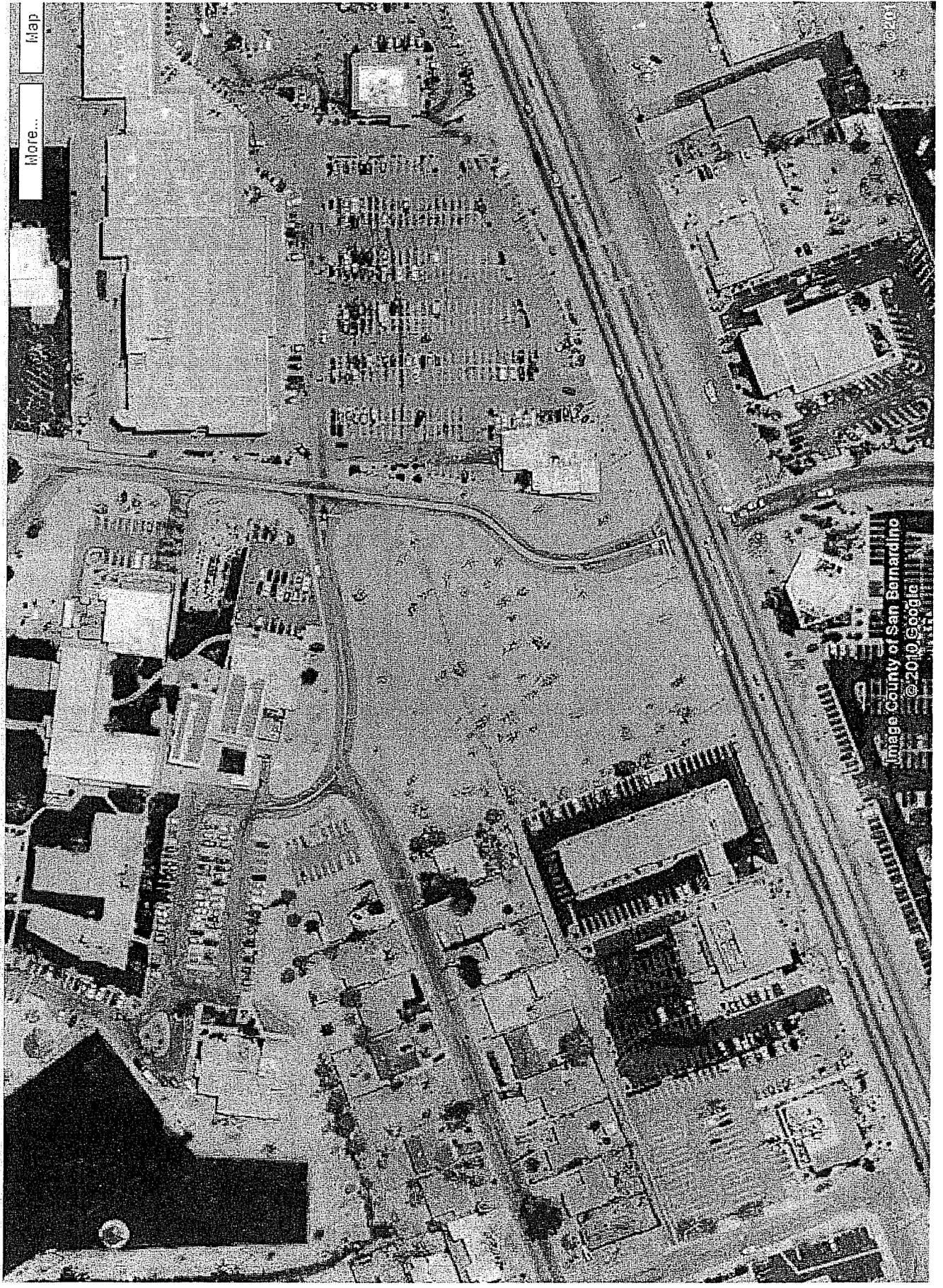
Town Hall Amenities



Town Hall Campus



New Site (Town Owned)



Map

Note...

Image Courtesy of San Bernardino
© 2010 Google

EXHIBIT C

PRE-DEVELOPMENT EXPENDITURES SCHEDULE

Town of Yucca Valley Senior Project
 Pre-Development Budget
 12/2/2010

Description	Amount to get to HUD 202 Application	Amount to get to full entitlement for HOME and Tax Credit Application
Appraisal	6,500	6,500
Consultant HUD Section 202 Application	25,000	75,000
Architecture and Engineering - conceptual design	50,000	250,000
Geotechnical Engineer (Soils report)		10,000
Entitlement fees/Design review fees		50,000
Phase I/Phase II Environmental	6,500	6,500
Archeological/Biological reports		10,000
Acoustical and Traffic Reports		15,000
Market Study		8,500
Legal Fees	8,500	30,000
TCAC Deposit fees (9% TCAC application - upon award)		55,000
Contingency	3,500	50,000
TOTAL	100,000	566,500

EXHIBIT D
AGREEMENT PROJECT SCHEDULE

Exclusive Negotiating Agreement Project Schedule

MILESTONE	DESCRIPTION
Within 60 Days of Effective Date (_____, 2010) of ENA	
Environmental	Conduct an environmental Phase I and II if necessary for HUD 202 application
Appraisal	Conduct property appraisal for HUD 202 application
Project Development Schedule	Submit projected development/construction schedule for the proposed development.
Due Diligence	Conduct all necessary due diligence for site development
Site Development Plan Submittal (A)	Developer to Submit site conceptual development plans and elevations for review.
Within 90 Days of Effective Date of ENA	
Conceptual Plan Review (A)	Staff reviews conceptual site plans for compliance with applicable codes and regulations – for submittal with HUD 202 application
Project Development Costs (A)	Developer to submit revised projected development costs and sources of funds after conceptual plan review for HUD 202 application
Option Agreement (A)	Developers Legal Counsel to draft Option agreement in format required by HUD for site control and commitment of Agency funds
Option Agreement (A)	Agency to review and approve Option Agreement
HUD 202 Application (A)	Submit completed HUD 202 Application by published deadline
Entitlement Processing	Developer to begin preparing plan documents for Entitlement processing for County HOME funds and Tax Credit Applications
Community Outreach	Developer and Agency to hold design charettes/focus groups/community outreach meeting/tours of developer existing properties
Market Study	Developer to commission a market study to determine market suitability of proposed project
Environmental reports	Developer to conduct all necessary environmental testing for entitlement processing (soils, traffic, acoustical, biological, archeological e.t.c)
DDA Negotiation	Agency and Developer to begin negotiating terms of DDA – initial draft
Within 120 Days of Effective Date of ENA	
Submittal of entitlement documents	Submit complete entitlement package
Entitlement documents Review	Staff reviews plans for compliance with applicable codes and regulations - CEQA and NEPA processing.

Within 150 Days of Effective Date of ENA	
Draft Development Agreement	Complete negotiations and draft Development Agreement.
Funding Partners and Structure	Submit letter identifying lenders and proof of ability to obtain financing.
Market Study	Submit a market study containing a forecast of regional and local real estate market conditions and anticipated performance of proposed product types.
Revised Proforma	Submit refined proforma and development schedule based on revised site plans and elevations
Final Revisions	Finalize revisions to development proposal and all relevant materials
Within 180 Days of Effective Date of ENA	
Town Council approval of DDA	Present development proposal and Development Agreement to Agency and/or Council for final review and approval.
Planning Commission/Town Council approvals	Present development design proposal/entitlements for approval/CEQA & NEPA clearance
Financing Applications	
County of San Bernardino HOME funds	Apply in Summer 2011 or when published by County
HUD 202 Pre-development Funds	Apply in Summer 2011 or when published by HUD if applicable
9% Tax credits Application	Apply in July 2011 or March 2012 depending on completion of entitlement processing and HUD 202 Application
4% Tax Credits	Apply in 2011 upon completion of Entitlements and HUD 202 Award
Tax Exempt Bonds	Apply in 2011 upon completion of Entitlements and HUD 202 Award

(A) Timing may be changed depending on when HUD Section 202 NOFA is published

Follow-up Documentation for Item 10.

2. Option Agreement and Staff Report



REDEVELOPMENT AGENCY STAFF REPORT

To: Honorable Chair & Agency Board
From: Curtis Yakimow, Treasurer
Date: May 12, 2011
For Agency Meeting: May 17, 2011

Subject: Senior Affordable Housing Development Financial Commitment Resolution and Option Agreement

Prior Agency Review: The Agency authorized the release of the Request for Qualifications at its meeting of June 15, 2010. The Agency approved the selection of National Community Renaissance of California (CORE) as the development entity to deliver an affordable senior housing opportunity. The Agency reviewed site alternatives at its meeting of November 16, 2010 and recommended the Dumosa site as the preferred site for the proposed Project. The Agency authorized an Exclusive Negotiating Agreement (ENA) with CORE on December 21, 2010.

Recommendation: It is recommended that the Board:

- 1. Adopt the resolution providing a financial assistance commitment to CORE subject to a Disposition and Development Agreement (DDA) in the amount of \$3.2 million in accordance to the standard terms and conditions in the referenced Letter of Financial Commitment for the proposed Senior Affordable Housing Project, and direct staff to forward a Letter of Commitment to CORE for inclusion in the HUD 202 application;
2. Approve the Option Agreement providing site control of the Dumosa/Hwy 62 property to CORE for the proposed Senior Affordable Housing Project.

Executive Summary: Redevelopment law requires agencies to spend no less than 20% of tax increment for affordable housing programs. Affordable housing programs can take on many forms, from repair programs, to rehabilitation, to acquisition and rehabilitation, and include construction of new affordable units.

There have been no affordable units produced in the Project Area since the Redevelopment Plan was adopted in 1992. Since the Redevelopment Plan was adopted through 2008-2009, the Agency was required to produce 44 affordable units and 18 very low income units.

Based upon the projection of 147 units anticipated to be constructed in the project area

Reviewed By: [Signatures]
Town Manager, Town Attorney, Mgmt Services, Dept Head

X Department Report, Ordinance Action, X Resolution Action, Public Hearing, Consent, Minute Action, Receive and File, Study Session

through 2013-2014, 23 of these units would need to be affordable with 10 of these units affordable to very low income households. Therefore the Agency has a projected need of 67 affordable units to be developed through the end of 2013-2014.

To meet this need, the Agency has progressed with the initial development of a 75-unit affordable housing complex for very low to low income seniors on the Town's Dumosa site.

When completed, this development would greatly assist the Agency in meeting both near and long term affordable housing goals.

The proposed actions will provide the Agency funding and site control commitments necessary for the completion of the grant application that will be submitted to HUD under HUD's Section 202 Notice of Funding Availability (NOFA) 2010-11 funding round, due June 1, 2011. The Option Agreement and commitment to provide funding are both conditional upon the Agency and CORE entering a final DDA and holding a public hearing pursuant to Health & Safety Code Section 33433. Nothing in the actions proposed today limits or waives the Agency's or Town's exercise of discretion with respect to the DDA and/or future public hearings.

Order of Procedure:

- Request Staff Report
- Agency Questions of Staff
- Request Public Comment
- Agency Discussion
- Motion/Second
- Discussion on Motion
- Call the Question (Roll Call Vote)

Discussion:

Since receiving Agency Board direction in December 2010, CORE, Agency and Town staff has worked diligently in meeting the accelerated timelines associated with the various funding opportunities available to the project. Given the scope and quality of the proposed affordable housing project, it would not be possible for the Agency to construct such an asset without the leveraging of other funding sources. The key funding source in the initial pro forma for the project is HUD's Section 202 Notice of Funding Availability (NOFA) 2010-11. If successful in the award, this grant will provide over half of the funding resources at \$12.2 million of the \$23.0 million of the project costs as indicated in the pro forma summary below. The full pro forma and cost detail is included as an attachment to this staff report.

Yucca Valley/CORE
Sr. Housing Project - Dumosa/SR 62
Pro Forma - Sources

SOURCES: PERMANENT

Permanent Loan	\$0	0%
Towne of Yucca Valley	\$1,681,726	7%
LIHTC Equity	\$7,735,266	33%
County of San Bernardino HOME funds	\$1,580,000	7%
Deferred Dev Fee	\$0	0%
AHP	\$0	0%
HUD 202	\$12,205,978	53%
TOTAL	\$23,202,970	100%

HUD Section 202 Application Process

As with any state or federal grant, the competition for grant dollars is extremely competitive with multiple agencies vying for limited dollars. As such, in order to be competitive in the process and have a real possibility of achieving an award, the submitting agency's application must meet or exceed as many of the HUD Section 202 point qualifications as possible. The HUD section 202 point criteria are attached for the Boards review.

In summary, the essential criteria to be addressed in the completed application include the following:

<u>Criteria</u>	<u>Possible Points</u>
1. Capacity of the Applicant	23
2. Need of the Community	12
3. Soundness of Approach	49
a. Transit Served	
b. Amenity Served	
c. Readiness	
d. Commitment of Funds	
e. Job Creation	
4. Leverage of Resources	6
5. Achieving Results	10
6. <u>Bonus Points</u>	<u>2</u>
Total Points Possible	102

Throughout this preliminary project design process, Agency staff and CORE have been committed to completing an application that is as competitive as possible. To that end, there has been considerable effort toward achieving maximum points.

Financing and Site Control Factors

As indicated in the criteria listing above, two specific factors that HUD will look for in the application is the financial commitment by the Agency, and the ability of the applicant (CORE) to demonstrate site control. The definitions of meeting these criteria are detailed and specific to HUD, and must follow their standard application form. Accordingly, this financial commitment and option agreement is developed for the sole purpose of the HUD Section 202 application.

Financial Commitment

In terms of financial commitment, it is recommended that the Agency authorize a \$3.2 million loan towards the Sr. Housing Project. This amount is derived from the project pro forma and is based on the leveraging amount required by HUD to attain maximum scoring on those criteria. Additionally, it is recommended that the land required for the project be donated to the project for \$1.

This approach will limit the amount of Gap Funding required from the Agency to the recommended \$3.2 million. In addition, it is the intent of the Agency and CORE to actively seek San Bernardino County HOME funds in the amount of \$1.5m to further reduce the financial commitment of \$3.2 m to \$1.7m. Finally, the project costs include an allocation for project contingency. Any savings in project costs would offset the Agency contribution to the project.

The recommended financing commitment is structured as a loan to be subject to a final Disposition and Development Agreement that both the Agency and CORE would enter into in order for the project to move forward. If the Agency and CORE cannot agree or execute a DDA, the financial commitment terminates. The final DDA will provide the comprehensive language and all protections necessary to ensure that the funds are utilized, securitized, and structured to the satisfaction of the Agency, CORE and HUD.

Option Agreement

Similar to the financial commitment criteria, HUD also requires complete site control to ensure that should an award be granted, there are limited grounds for the project not to move forward. The proposed option agreement is crafted to meet the requirement of the HUD grant application, while leaving the necessary protections in place should the grant award not be given. As with the financial commitment arrangement, the Option Agreement

is subject to the completion and execution of a DDA, again in an acceptable form to the Agency, CORE and HUD. In the absence of such a DDA, the Option Agreement will not be in effect.

The proposed actions will allow the Agency to provide CORE with the necessary commitments and formal documents to include in the June 1, 2011 HUD Section 202 grant application, while providing assurance to the Agency that both the financial commitment and site control are subject to a broader DDA yet to be developed and the holding a public hearing pursuant to Health & Safety Code Section 33433. Nothing in the actions proposed in this item limits or waives the Agency's or Town's exercise of discretion with respect to the DDA and/or future public hearings.

Alternatives: None Recommended.

Fiscal Impact: If approved, the Agency would be committing \$3.2 million in financial assistance loans and sale of the Dumosa/SR62 property to the proposed senior affordable housing project upon the following actions:

- *HUD Notice of Funding Award.*
- *Execution of a DDA acceptable to the Agency, CORE, and HUD.*
- *Completion of all legally required public hearings and actions.*
- *Completion of all standard conditions and requirements typically related to similar developments.*

Further, it is the intent of the Agency and CORE to actively seek San Bernardino County HOME funds in the amount of \$1.5m to further reduce the financial commitment of \$3.2 m to \$1.7m. Finally, the project costs include an allocation for project contingency. Any savings in project costs would offset the Agency contribution to the project.

Attachments: Resolution
Attachment A to the Resolution (Letter of Financial Commitment)
Option Agreement
Project Pro Forma and detail
HUD 202 Scoring Criteria

RESOLUTION

RESOLUTION NO. RDA-11-

A RESOLUTION OF THE REDEVELOPMENT AGENCY, OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, PROVIDING A FINANCIAL COMMITMENT TO NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA, FOR INCLUSION IN AN APPLICATION IN RESPONSE TO HUD'S SECTION 202 NOTICE OF FUNDING AVAILABILITY (NOFA) 2010-11 PURSUANT TO A FORTHCOMING DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE AGENCY AND NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA

WHEREAS, the Yucca Valley Redevelopment Agency (Agency) receives restricted tax increment fund revenues which are applied to Redevelopment programs, and

WHEREAS, the Agency receives restricted tax increment fund revenues which are applied to Affordable Housing Programs pursuant to State Redevelopment Law, and

WHEREAS, the Agency has an obligation according to California Redevelopment Law to provide affordable housing opportunities to low and moderate income residents within the project area, and

WHEREAS, National Community Renaissance of California (CORE), a non-profit housing development corporation, develops and manages affordable housing for very-low, low- and moderate income residents and promotes neighborhood revitalization and stabilization throughout the region, and

WHEREAS, CORE has entered into an Exclusive Negotiating Agreement related to the potential development of an affordable senior housing project to be located at the Agency's vacant property located at the intersection of Dumosa and S.R. 62; and

WHEREAS, the Agency and CORE have been working for the last year on a proposal to develop 75-units of affordable senior housing and the Agency has committed significant resources to make this project a reality, and

WHEREAS, Development of this affordable senior housing project will assist the Town in meeting its housing requirement as mandated by state regulations, and

WHEREAS, Development of this affordable senior housing project will improve access to senior services for our residents – co-locating the development adjacent to the Town Senior Center, library, museum, community center, and adjacent retail opportunities, and

WHEREAS, the Housing and Urban Development Department issued a Notice of Funding Availability (NOFA) for HUD's Fiscal Year 2010 Section 202 Supportive Housing for the Elderly Program, and this NOFA announces the availability of funding for up to approximately \$371 million for HUD's Section 202 Program for FY2010. HUD's Section 202 Program is authorized by section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), as amended, and

WHEREAS, the scoring criteria related to the Notice of Funding Availability (NOFA) for HUD's Fiscal Year 2010 Section 202 Supportive Housing for the Elderly Program requires a demonstration of financial commitment by participating sponsors, and

WHEREAS, the Agency desires to assist CORE in establishing the most competitive application in response to Notice of Funding Availability (NOFA) for HUD's Fiscal Year 2010 Section 202 Supportive Housing for the Elderly Program,

NOW, THEREFORE, THE REDEVELOPMENT AGENCY OF THE TOWN OF YUCCA VALLEY DOES RESOLVE AS FOLLOWS.

Section 1. The Redevelopment Agency will provide a financial assistance commitment to CORE pursuant to a Disposition and Development Agreement in the amount of \$3.2 million in accordance to the form, standard terms and conditions in the Letter of Financial Commitment included as Attachment A to this resolution, for the proposed Senior Affordable Housing Project, and direct staff to forward a Letter of Commitment indicating same to CORE for inclusion in the HUD 202 application.

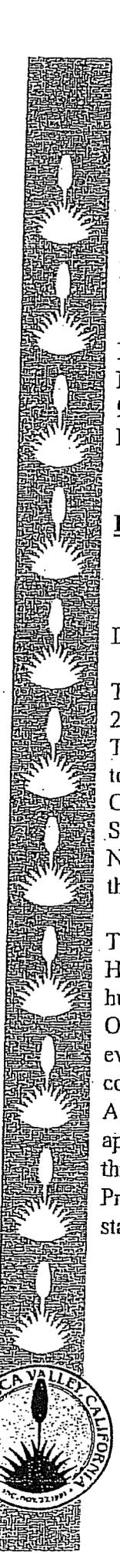
PASSED, APPROVED AND ADOPTED THIS 17th day of May 2011.

CHAIR

ATTEST:

SECRETARY

Attachment A to the Resolution (Letter of Financial Commitment)



May 18, 2011

Mr. Orlando J. Cabrera
National Community Renaissance of California
9065 Haven Avenue, Suite #100
Rancho Cucamonga, CA 91730

RE: Yucca Valley RDA Senior Housing Funding Commitment

Dear Mr. Cabrera:

The Yucca Valley Redevelopment Agency (Agency) is excited to see the HUD Section 202 application moving forward to completion and submittal by the June 1, 2011 deadline. The Housing Fund of the Agency is dedicated to providing affordable housing alternatives to the Yucca Valley community, and believes that National Community Renaissance of California's (National CORE's) proposed project development in the pending HUD Section 202 application (Project) that will be submitted to HUD under HUD's Section 202 Notice of Funding Availability (NOFA) 2010-11 funding round will successfully advance the housing objectives of the Agency.

To this end, on behalf of the Agency, I am pleased to inform you that Agency Low/Mod Housing loans in an aggregate amount not to exceed \$3,200,000 (Three million two hundred thousand dollars) and Agency property (the "Property"), as identified in a separate Option Agreement executed or to be executed between the Agency and National CORE as evidence of National CORE's site control for the HUD Section 202 NOFA application, are committed by the Agency for the Project subject to the standard terms stated herein. The Agency will transfer the Property for \$1.00 (One dollar), which property is currently appraised at \$941,000 (Nine hundred forty one thousand dollars). If all the requirements of this commitment are satisfied, the loans and the Property will be made available to the Project's developer and Section 202 Sponsor, National CORE; subject to the provisions stated in this funding commitment.



The Town of
Yucca Valley

57090 Twentynine Palms Highway • Yucca Valley, CA 92386
760/369-7207 • FAX 760/369-0626

This funding commitment is issued pursuant to and in reliance upon information presented in the HUD Section 202 NOFA in connection with HUD's 2010-11 funding round. It is also based upon National CORE's agreement that the Project will consist of not less than 75 units of affordable rental housing. This housing will be for seniors age 62 or older who are qualified as very low income with household income not exceeding 50% of Area Median Income (AMI), adjusted for household size, for San Bernardino County. To accomplish this goal, the grant documents for the land will contain appropriate restrictions on the use of the Project and rent charges in connection with the occupancy of the Project units by qualified seniors and their families, as applicable.

The loan term for the monetary contribution will be for a period of 55 years at a simple interest rate of 1%. The loan will be a residual receipts loan and no mandatory periodic payments will be due during the term of the loan. No loan origination or other loan processing fees will be charged to National CORE, with the exception of possible legal fees of the Agency's legal counsel(s). It is National CORE's or National CORE's designated borrower's responsibility to ensure that the Agency's legal counsel is provided with all the necessary documentation in a timely and professional manner.

As collateral for the loan, the Agency will take a mortgage and security position on the real property as identified in a Disposition and Development Agreement between the Agency and National CORE (the "DDA"), affecting the Property. This security position will not be any more junior than a third mortgage unless the Agency agrees otherwise in writing. A change in ownership of the Project or in the legal form of the owner of the Project, the placing of additional encumbrances on the Project without the prior written consent of the Agency, failure to maintain the eligible use of the Project as identified in the DDA, or default under senior mortgage loans, shall be among the events of default under the Agency Loan.

This funding commitment is subject to the following conditions to the satisfaction of the Agency:

1. Selection of the Project by HUD for a Conditional Funding Reservation through HUD's Section 202 program;
2. Successful development and execution of a Disposition and Development Agreement (DDA) between the Agency and National CORE related to the conveyance of the Property and further development of the Project in a form acceptable to the Agency, National CORE and HUD. Such DDA shall contain the usual and customary terms of such agreements entered into by the Agency for affordable housing projects, provisions for the donation/conveyance of the property as identified in the DDA, requirement that the Project be developed and operated by National CORE as an affordable housing rental project for a period of not less than fifty-five years, and other such customary provisions consistent with HUD Section 202 Program requirements;

3. Exercise of an Option Agreement between the Agency and National CORE for National CORE to acquire the Property pursuant to the terms and conditions of the DDA;
4. Successful completion of a statutorily required public hearing and report based upon California Health & Safety Code Section 33433 related to the disposition and conveyance of the donated property;
5. Submission to and approval by the Agency of a complete final funding request, which must include:
 - a. Updated development and operating pro-formas including a complete sources and uses of funds statement;
 - b. Evidence of a firm commitment to all acquisition, construction and permanent mortgage financing from those entities and in those amounts shown on the development pro-forma, and on such terms as are acceptable to the Agency.
6. Submission of satisfactory evidence that all legal, design, regulatory, and environmental requirements for the Project are fulfilled and all approvals and site surveys required for the Project are obtained;
7. Submission of and approval by the Agency of evidence of a satisfactory funding commitment for the Project's financing plan, including other financing sources such as tax credit financing, County of San Bernardino HOME funds, and any other funding sources as identified in the Project's pro forma;
8. Submission to and approval by the Agency of a final construction budget with bid prices from the selected general contractor.

Closing and funding of this financing commitment will be conditioned upon the fulfillment of all standard terms and conditions of this funding commitment, the successful development and execution of the DDA, and upon satisfactory submission of all documents required by a closing agenda to be prepared by the Agency's counsel for this loan and land donation to the Project.

This funding commitment will be in effect from the date accepted by National CORE as evidenced below, and shall continue until the earlier of (i) the date that is twelve (12) months after the date National CORE receives notice from HUD that National Core's application or applications (as applicable) for a fund reservation under the HUD Section 202 Program has/have been denied (without right of appeal) through HUD's 2012 Notice of Funding Availability ("NOFA") funding round (each a "Denied Fund Reservation") for the Project development, or (ii) five o'clock (5:00) P.M., Tuesday, December 31, 2013. National CORE shall provide Agency with copies of each HUD notice of a Denied Fund Reservation or a copy of the HUD notice of an approved or awarded Fund Reservation (the "Fund Reservation Approval Notice"), as applicable, within ten (10) calendar days of National CORE's receipt of same.

The Agency looks forward to the submission of the HUD Section 202 NOFA application and subsequent HUD selection for a Conditional Funding Reservation for this critical project in Yucca Valley. Through its completion, the Agency will be able to provide a greatly desired housing alternative to some of the neediest in the community.

Sincerely,

Yucca Valley Redevelopment Agency

Mark N. Nuaimi

Executive Director

This Funding Commitment shall be deemed accepted when it has been signed and a copy returned to the Yucca Valley Redevelopment Agency.

National Community Renaissance of California

Date

Option Agreement

OPTION AGREEMENT

This OPTION AGREEMENT ("Agreement") is made and entered into as of this ____ day of May, 2011 ("Effective Date") by and between YUCCA VALLEY REDEVELOPMENT AGENCY, a public body, corporate and politic ("Optionor"), and NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA, a California nonprofit public benefit corporation ("Optionee"), based on the following recital of facts:

R E C I T A L O F F A C T S

- A. Optionor is the owner in fee of that certain real property located in the Town of Yucca Valley (the "Town"), County of San Bernardino, State of California and more particularly described in Exhibit "A" attached hereto (the "Agency Property"). Optionor desires to sell a portion of the Agency Property for the purpose of development of affordable rental housing thereon by a private developer. Said portion of the Agency Property is described by a metes and bounds legal description that is shown in Exhibit "B" attached hereto (the "Option Property").
- B. Optionee is a private nonprofit developer of affordable rental housing and is interested in developing elderly rental housing in the Town by using as its primary source of financing an elderly housing development the United States Department of Housing and Urban Development ("HUD") Section 202, Supportive Housing for the Elderly, capital advance program (the "HUD Section 202 Program"), as promulgated by the Housing Act of 1959, as amended (the "202 Act").
- C. Optionor and Optionee desire to enter into this Agreement to provide Optionee with a right of option to purchase and acquire the Option Property from Optionor upon the terms and conditions as set forth in this Agreement.
- D. Such option to purchase the Option Property is provided subject to the further terms, conditions and restrictions which may hereinafter be negotiated and accepted by the Optionor and Optionee and included in a final Disposition and Development Agreement between the Optionor and Optionee ("DDA") for the conveyance and development of the Option Property. This Agreement provides only for an option to purchase, and not for a final conveyance of the Option Property, which final conveyance shall only be made after a public hearing and report based upon California Health & Safety Code Section 33433 ("Section 33433") and as otherwise required by law, and only pursuant to the execution of the DDA. Therefore, Optionee's option to purchase the Option Property is strictly subject to the parties' successful entering of such DDA and the Optionor's exercise of discretion in the course of such Section 33433 hearing.

A G R E E M E N T

NOW, THEREFORE, based on the foregoing Recital of Facts, which are incorporated herein by this reference, and in connection of the payment by Optionee to Optionor

of the sum of One Dollar U.S. (\$1.00), the receipt and sufficiency of which are hereby acknowledged, Optionor and Optionee hereby agree as follows:

1. OPTION TO ACQUIRE OPTION PROPERTY.

- 1.1 Grant of Option. Optionor grants to Optionee, and Optionee accepts from Optionor, an option to purchase the Option Property upon the terms and conditions as set forth and contained in this Agreement (the "Option").
- 1.2 Option Period. The Option shall commence on the Effective Date and, subject to Section 1.6 below, shall continue until the earlier of (i) the date that is twelve (12) months after the date Optionee receives notice from HUD that Optionee's application or applications (as applicable) for a fund reservation (the "Fund Reservation") under the HUD Section 202 Program has/have been denied (without right of appeal) through HUD's 2012 Notice of Funding Availability ("NOFA") funding round (each a "Denied Fund Reservation") the development of a rental apartment complex specially designed for persons or heads of household who are 62 years of age or older ("Project") or (ii) five o'clock (5:00) P.M., Tuesday, December 31, 2013 (the "Option Period"). Optionee shall provide Optionor with copies of each HUD notice of a Denied Fund Reservation or a copy of the HUD notice of an approved or awarded Fund Reservation (the "Fund Reservation Approval Notice"), as applicable, within ten (10) calendar days of Optionee's receipt of same.
- 1.3 Application of Consideration to Purchase Price. If the Option or any extension thereof is exercised in accordance with the terms of this Agreement, the consideration paid hereunder by Optionee to Optionor shall apply towards the Purchase Price (as defined below).
- 1.4 Purchase Price. If the Option is exercised by Optionee, the purchase price ("Purchase Price") is the sum of One Dollar U.S. (\$1.00). The willingness of Optionor to sell the Option Property to Optionee for the Purchase Price is subject to, and in consideration of, Optionee agreeing to enter into a DDA with Optionor (the "DDA") and all other public hearing, Section 33433, Brown Act and other legal requirements referred to in Sections 5.9, 5.10 and 5.11 hereof.
- 1.5 Exercise of the Option. In the event Optionee elects to exercise the Option and has performed all acts in the time and manner as required by and under the terms of this Agreement, and, therefore, is not in breach of or in default under any provision hereof, Optionee shall initiate its exercise of the Option by delivering to Optionor on any day prior to the end of the Option Period a written notice of Optionee's election to purchase and acquire the Option Property. Optionee must elect to exercise the Option as to the entire Option Property and shall not be permitted to exercise the Option as to any portion or all of the Agency Property except for the portion that constitutes the Option Property.

- 1.6 Automatic Termination. In the event (i) Optionee does not elect to exercise the Option to purchase the Option Property in the manner set forth in Section 1.5 above prior to the expiration of the Option Period, or (ii) Optionee's application for the Fund Reservation has not resulted in a Fund Reservation Approval Notice from HUD through HUD's 2012 NOFA funding round, then (unless the Option Term has been extended by a written amendment to this Agreement, which extension and the approval thereof shall be subject to negotiation and agreement between Optionor and Optionee), or (iii) Optionee notifies Optionor of its intent to exercise the Option, but then fails to meet the conditions stated in Sections 5.9, 5.10 or 5.11 hereof, then the Option shall automatically terminate without any notice to Optionee, and all rights of Optionee in and to the Option Property shall, thereupon, cease. Such termination shall not release either party, however, from its obligations pursuant to Sections 6.1, 6.3 or 8.2 hereof, which sections shall survive the termination of this Agreement.
2. MEMORANDUM OF OPTION. Within ten (10) calendar days of the execution of this Agreement, Optionor and Optionee shall execute the Memorandum of Option Agreement in the form and substance as attached hereto as Exhibit "C" (the "Memorandum of Option"). The executed Memorandum of Option shall then be recorded in the Official Records of the Recorder of San Bernardino County, California (the "County Recorder"). In the event this Agreement shall terminate pursuant to Section 1.6 hereof, Optionee agrees to execute and record in the office of the County Recorder a quitclaim deed to the Option Property (or similar instrument rescinding the Memorandum of Option) within five (5) calendar days of said termination which instrument shall specifically rescind the Option provided under this Agreement.
3. OPTIONEE'S INVESTIGATION, INSPECTION AND REVIEW OF OPTION PROPERTY. Optionee, at its sole cost and expense, shall have the right to make such independent investigations, inspections, tests, reviews, studies or surveys of the Option Property as have already been provided to Optionee pursuant to that certain Exclusive Negotiating Agreement ("ENA") entered into by and between Optionor and Optionee on or about December 21, 2010, and the "Early Entry Permit" accompanying such ENA.
4. FUND RESERVATION. As additional consideration for the granting of the Option, it is understood by Optionor, and Optionee agrees, that Optionee intends to and shall submit to HUD as a minimum a NOFA application for a Fund Reservation in connection with HUD's 2010 NOFA funding round under the HUD Section 202 Program that shall be due on June 1, 2011 (which date may be extended by HUD at HUD's option). Thereafter, Optionee shall operate in good faith in the NOFA application for a Fund Reservation in HUD's 2011 and/or 2012 NOFA funding rounds (should Optionee receive a notice or notices of a Denied Fund Reservation in connection with a prior NOFA funding round application); however, Optionee's decision to apply to HUD for a Fund Reservation under the HUD Section 202 Program in a future NOFA funding round that is inclusive of the Option Period, as may be extended pursuant to Section 1.2 hereof, shall be at Optionee's sole discretion. In the event that Optionee receives a Fund Reservation with terms and conditions that are acceptable to Optionee it shall dutifully

perform all actions as may be reasonably required to secure the Fund Reservation from HUD.

5. CONVEYANCE & ESCROW PURSUANT TO DDA. As required by the California Redevelopment Laws, Health & Safety Code §§ 33000 et seq. ("CRL"), no final conveyance of any real property interest in the Option Property shall be made until the notice, public hearing and reporting requirements of Section 33433 have been satisfied and the parties have entered into a DDA. To this end, a conditional escrow for Optionee's prospective purchase of fee title to the Option Property ("Escrow") has been opened with Fidelity National Title Company, 1300 Dove Street, Suite 310, Newport Beach, CA 92660 (the "Escrow Agent"). The Escrow and title number with the Escrow Agent shall be 11-259925734-SB. Said Escrow shall terminate automatically if the other conditions stated in this Article 5 are not met. Within five (5) working days following adoption of the DDA, the parties shall execute escrow instructions for the sale/purchase of the Option Property and deliver same to the Escrow Agent upon and subject to the following general terms and conditions (which terms and conditions shall be further detailed in the DDA):

- 5.1 The Escrow shall be for a period not exceeding one hundred twenty (120) days;
- 5.2 The Purchase Price shall be paid in cash to Optionor at time of closing of the Escrow (the "Escrow Closing Date") through payment to the Escrow;
- 5.3 Optionee shall have the right to review and approve the status of the title of the Option Property prior to the Escrow Closing Date. Such title shall also be subject to the approval of HUD and any other lenders or grantors;
- 5.4 Escrow Agent, as title insurer ("Title Company"), shall also act as title insurer in connection with the transfer of the Option Property from Optionor to Optionee, and at Optionee's election, may be asked to provide escrow and title services to Optionee in connection with the HUD Section 202 Program closing, including issuance and delivery of loan policies to HUD and Optionee's subordinate lenders and/or grantors. The cost of all policies of title insurance, including the owner's policy (which is expected to be an ALTA Owner's Policy) and loan policies to HUD and Optionee's subordinate lenders and/or grantors, shall be Optionee's sole expense.
- 5.5 Optionee shall pay recording charges and one-half of the escrow charge. Any other escrow costs and charges shall be borne one-half by Optionor and one-half by Optionee;
- 5.6 Optionor shall deposit an executed grant deed conveying fee title of the Property to Optionee or Optionee's permitted assignee into escrow for delivery to Optionee at close of escrow;
- 5.7 Possession and fee title shall be given to Optionee on and as of the Escrow Closing Date;

- 5.8 Current taxes and assessments (if any) shall be prorated on and as of the Escrow Closing Date. Any past due taxes and assessments shall be charged to Optionor. Taxes shall be computed, if undetermined, by the Escrow Agent on the basis of the last available tax rate and valuation;
- 5.9 Optionor and Optionee shall have entered into the DDA in form and substance acceptable to Optionor, Optionee and HUD. The DDA shall contain: the usual and customary terms of such agreements entered into by Optionor for affordable housing projects; provisions for the sale of real property for the Purchase Price; and the provisions set forth in this Article 5 including provisions supplementary to or superseding the provisions contained in this Article 5. The DDA shall provide for the Optionor's loan or loans to Optionee of up to the amount listed in the Optionor's Letter of Funding Commitment, included as Exhibit D to this agreement, for use by Optionee in the pre-development and development of the Project as applicable (collectively, the "Agency Loan"). The Agency Loan shall be junior to the HUD Section 202 Capital Advance and, depending on the Agency's source of funding the Agency Loan which has yet to be identified, shall include a regulatory agreement or restrictive covenant that ensures the Optionor/Agency that the Option Property shall be developed and operated by Optionee (including Optionee's successor, if any) as an affordable housing rental project for a period of not less than fifty-five (55) years as required by the CRL. The DDA shall also contain customary and ordinary subordination provisions consistent with HUD Section 202 Program requirements;
- 5.10 Close of Escrow is strictly conditioned upon Optionor having conducted all legally required notices and hearings pertaining to the disposition of the Option Property, including the notice, public hearing and reporting requirements of Section 33433, and the completion of a DDA. Optionee acknowledges and agrees that nothing herein shall be deemed to restrict the Town or Optionor/Agency in the exercise of their discretion or in the exercise of their executive and legislative powers; and
- 5.11 Close of Escrow is strictly conditioned upon approval by the Town of Yucca Valley and/or Optionor and/or any other governmental agency with jurisdiction, of any land use approvals and entitlements which may be required for the Project including, but not limited to, zoning compliance and a building permit.

6. ZONING, LAND USE, COOPERATION.

- 6.1 Optionor agrees, within the bounds of and without waiving its discretion, to review and execute any and all documents and to join in or review as the enforcing agency of any applications that may be required to obtain any zoning, filing of maps, land use or development plan proposals by Optionee from applicable governmental agencies having jurisdiction in connection with the Option Property and the Project. Optionee agrees to hold Optionor harmless from any and all

costs and expenses in connection with the foregoing documentation and process.

6.2 As contemplated under, and provided by Section 7, SUBDIVISION OF AGENCY PROPERTY TO CREATE LEGAL OPTION PROPERTY, Optionee shall be responsible for any and all actions required for Optionor to convey a legally transferable lot or parcel pursuant to the Map Act, as hereafter defined.

6.3 REPRESENTATION AND WARRANTY OF OPTIONOR REGARDING ENVIRONMENTAL HAZARDS. To the best of Optionor's knowledge (i) no hazardous substances or conditions are or have heretofore been generated, treated, used, or stored, disposed of or deposited in or otherwise are existing in or on any portion of the Option Property during the period of Optionor's ownership thereof, and no substances or conditions are in, on or under the Option Property that would have a materially adverse effect upon the Option Property or in any way affect the use thereof or that may support a claim at common law or under any federal, state or local environmental statute, regulation, ordinance or other environmental regulation; and (ii) there are no seismic, soils conditions, geological defects or faults affecting the Option Property. For the purposes of this section, Optionor's "knowledge" shall mean the knowledge of those Town or Optionor employees directly involved with the acquisition, management and sale of the Agency Property, including the Option Property, and shall not require the Optionor to conduct any further testing of the Option Property.

7. SUBDIVISION OF AGENCY PROPERTY TO CREATE LEGAL OPTION PROPERTY.

7.1 Optionor's Power and Authority. Optionor is vested with the authority and power to determine and declare the Option Property, when transferred to Optionee in accordance with the terms and conditions of this Agreement, as a legal lot or parcel which the Title Company can insure pursuant to policies issued to Optionee, or its designee, and to HUD and Optionee's lenders and/or grantors. Optionor agrees that it will in good faith exercise its authority and power to declare the Option Property as a legal lot or parcel on or before the transfer of title to same to Optionee or Optionee's designee.

7.2 Subdivision Map Act Requirements. In the event cannot under California law determine satisfaction and/or compliances under, or waive, the requirements of the Subdivision Map Act (California Government Code Sections 667473, et seq.) (the "Map Act"), then Optionor and Optionee contemplate that the Agency Property will need to be subjected to a formal subdivision, a parcel split or a lot line adjustment (as applicable) in accordance with the Map Act. Should a tentative map, parcel map or lot line adjustment map need to be prepared and filed for record in the office of the County Recorder to create and cause the Option Property to be a legal parcel under California law, all such requirements and costs related thereto shall be

the Optionee's duties and responsibility and Optionor shall not be responsible except to the extent as provided in Sections 6.1 and 6.2 hereof.

8. RETENTION OF DISCRETION TO APPROVE PROJECT & DDA; SCOPE OF INTERESTS GRANTED HEREBY. The parties understand that, pursuant to the CRL, the Town of Yucca Valley and Optionor have the complete and unfettered discretion to reject the DDA, any findings or facts presented pursuant to a public hearing per Section 33433, and other documents related to the conveyance of the Option Property without explanation or cause. In this vein, this Agreement does not create any interest or estate in real property other than an unexercised option.

9. MISCELLANEOUS.

8.1 Attorneys' Fees. In the event of any dispute between the parties hereto involving the terms, conditions and agreements contained in this Agreement or arising out of the subject matter of the Option, the prevailing party shall be entitled to recover, and the other party agrees to pay, all reasonable fees, expenses and costs, including, but not limited, to reasonable attorneys' fees.

8.2 Indemnity. Optionee shall indemnify, protect, defend and hold harmless both Town of Yucca Valley and Optionor, including their respective elected officials, officers, employees, representatives, members, and agents from and against any and all challenges to this Agreement, including any challenges to this Agreement in re its compliance with the substantive and/or procedural requirements of the CRL, or any and all losses, liabilities, damages, claims or costs (including attorneys' fees) arising from Optionee's negligent acts, errors, or omissions with respect to its obligations hereunder, excluding any such losses arising from the sole negligence or sole willful misconduct of Town of Yucca Valley, Optionor or the conduct of third parties not under contract to or associated with, and outside the control of, Optionee. This indemnity obligation shall survive the termination of this Agreement. Town and Optioner shall have sole discretion in selecting its defense counsel.

8.3 Notices. Except for the notice requirement as set forth in Section 3 hereof, all notices required to be delivered under this Agreement to the other party must be in writing and shall be effective (i) when personally delivered by the other party or messenger or courier thereof; (ii) three (3) business days after deposit in the United States mail, registered or certified; (iii) twenty-four (24) hours after deposit before the daily deadline time with a reputable overnight courier or service; or (iv) upon receipt of a telecopy, electronic or fax transmission, provided a hard copy of such transmission shall be thereafter placed in the mail within twenty-four (24) hours, ordinary postage prepaid, addressed to the other party; in each case postage fully prepaid and addressed to the respective parties as set forth below or to such other address and to such other persons as the

parties may hereafter designate by written notice to the other parties hereto:

To Optionor: Yucca Valley Redevelopment Agency
57090 29 Palms Hwy
Yucca Valley, California 92284
Attention: Executive Director

Copy to: Law Firm of Aleshire and Wynder, LLP
18881 Von Karman Avenue, Suite 400
Irvine, CA 92612
Attention: Lona N. Laymon

To Optionee: National Community Renaissance of California
9065 Haven Street, Suite 100
Rancho Cucamonga, California 91730
Attention: Julie Mungai, Senior Project Manager

Copy to: Gary Hoshiyama, Esq.
Law Office of Gary Hoshiyama
545 Sansome Street, Suite 825
San Francisco, California 94111

- 8.4 Broker's Fees. Optionor and Optionee each represents and warrants to the other that no third party is entitled to a broker's commission and/or finder's fee with respect to the transactions contemplated by this Agreement. Each party agrees to indemnify and hold the other harmless from and against all liabilities, costs, damages and expenses, including, without limitation, reasonable attorneys' fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay broker's commissions and/or finder's fees.
- 8.5 Assignment. Optionee shall have no right to assign this Agreement or the Option herein granted or any right or privilege Optionee might have in this Agreement or in the Option, by operation of law or otherwise, without the prior written consent of Optionor, which consent shall be at the sole and absolute discretion of Optionor. Notwithstanding the foregoing, upon written notice to Optionor, Optionee shall have the right to assign this Agreement, including the right to exercise the Option, to a non-profit corporation, limited liability company or other qualifying entity that is formed by or affiliated with Optionee for the sole purpose of developing, owning, managing and operating the Project as required by HUD and the DDA, but such right shall not be valid and the transfer shall not be effective unless and until the assignee agrees in writing to carry out and observe Optionee's agreements hereunder pursuant to a formal written assumption agreement executed by Optionee's assignee and approved by Optionor.
- 8.6 Time is of the Essence. Time is of the essence with respect to each of the terms, covenants and conditions of this Agreement.

- 8.7 Binding on Successors and Assigns. Subject to the limitations set forth in Section 8.5 above, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.
- 8.8 Modification, Waivers and Entire Agreement. Any amendments or modifications to this Agreement must be in writing and executed by both parties to this Agreement. No delay or omission by either party hereto in exercising any right or power accruing upon the compliance or failure of performance by the other party hereto under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party hereto of a breach of any of the covenants, conditions or agreements hereof to be performed by the party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions thereof. This Agreement contains the entire agreement of the parties hereto with respect to the matters covered hereby, and all negotiations and agreements, statements or promises between the parties hereto or their agents with respect to this transaction have been deemed merged in this Agreement, which alone expresses the parties' rights and obligations. No prior agreements or understandings not contained herein shall be binding on or valid against either of the parties hereto.
- 8.9 Interpretation; Governing Law; Forum. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. Title and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates. In the event of any litigation between the parties hereto, the Superior Courts of the State of California in and for the County of San Bernardino shall have exclusive jurisdiction.
- 8.10 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 8.11 Authority to Execute. The person(s) executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this

Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said party is bound.

- 8.12 Execution in Counterpart. This Agreement may be executed in several counterparts and if so executed each counterpart when read together shall constitute a single agreement that is binding on and enforceable against the parties hereto.
- 8.13 Exhibits. Exhibits "A", "B", "C" and "D" attached hereto are hereby incorporated herein by this reference.

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

OPTIONOR:

YUCCA VALLEY REDEVELOPMENT AGENCY,
a public body corporate and politic

By: _____

(Print Name and Title)

APPROVED AS TO FORM:

By: _____
Lona N. Laymon, Agency Counsel

OPTIONEE:

NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA,
a California nonprofit public benefit corporation

By: _____

(Print Name and Title)

Exhibits

- "A" Legal Description of Agency Property
- "B" Legal Description (metes and bounds) of Option Property
- "C" Form of Memorandum of Option
- "D" Yucca Valley RDA Funding Commitment Letter

EXHIBIT "A"

LEGAL DESCRIPTION OF AGENCY PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF YUCCA VALLEY, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

A PORTION OF THE SOUTHWEST 1/4 OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 5 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER UNITED STATES GOVERNMENT SURVEY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF TRACT NO. 4611, AS SHOWN ON THE MAP THEREOF, RECORDED IN BOOK 80, PAGES 21 AND 22, RECORDS OF SAID COUNTY; THENCE SOUTH $89^{\circ}59'14''$ EAST ALONG THE NORTH LINE OF SAID TRACT NO. 4611, 239.15 FEET TO AN ANGLE POINT IN SAID NORTH LINE; THENCE NORTH $69^{\circ}34'44''$ EAST ALONG SAID NORTH LINE 640.19 FEET TO THE NORTHEAST CORNER OF SAID TRACT NO. 4611; THENCE CONTINUING ON A NORTHEASTERLY PROLONGATION OF THE LAST MENTIONED COURSE, NORTH $69^{\circ}34'44''$ EAST, 612.09 FEET; THENCE SOUTH $20^{\circ}25'16''$ EAST, 290 FEET MORE OR LESS TO THE NORTHERLY LINE OF TWENTYNINE PALMS HIGHWAY; THENCE NORTHEASTERLY ALONG SAID NORTH LINE, 300 FEET MORE OR LESS TO THE SOUTHWEST CORNER OF THE PROPERTY CONVEYED TO HAROLD A. BAHR, ET AL BY DEED RECORDED IN BOOK 4226, PAGE 320 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTHEASTERLY ALONG THE WEST LINE OF SAID BAHR PROPERTY, AND ITS NORTHERLY EXTENSION TO THE NORTHWEST CORNER OF PROPERTY CONVEYED TO HI-DESERT SOJOURNERS MASONIC CLUB, INCORPORATED, RECORDED IN BOOK 4233, PAGE 336 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH $32^{\circ}05'58''$ WEST, 435.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 76.19 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE 134.17 FEET; THROUGH A CENTRAL ANGLE OF $100^{\circ}54'19''$ TO A POINT OF TANGENCY ON A CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 2062.50 FEET, SAID POINT BEING IN THE SOUTH LINE OF A RIGHT OF WAY DEEDED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL RECORDED IN BOOK 5370, PAGE 423 OF OFFICIAL RECORDS OF SAID COUNTY, SAID POINT ALSO BEING 287.52 FEET FROM THE WESTERLY TERMINUS OF SAID CURVE; THENCE WESTERLY ALONG SAID CURVE 287.52 FEET THROUGH A CENTRAL ANGLE OF $7^{\circ}59'14''$ TO SAID TERMINUS; THENCE ALONG LINE TANGENT THERETO AND BEING A SOUTH LINE OF SAID SAN BERNARDINO COUNTY FLOOD CONTROL RIGHT OF WAY, SOUTH $76^{\circ}47'35''$ WEST, 1,177.68 FEET TO A POINT IN THE WEST LINE OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 5 EAST, SAN BERNARDINO BASE AND MERIDIAN, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF SAID SAN BERNARDINO COUNTY FLOOD CONTROL RIGHT OF WAY; THENCE SOUTH $0^{\circ}00'16''$ WEST, ALONG SAID WEST LINE, 1,103.06 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION LYING WITHIN TRACT 6501 AS PER PLAT RECORDED IN BOOK 83, PAGES 96, 97 AND 98 OF MAPS, RECORDS OF SAID COUNTY.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO HI-DESERT WATER

DISTRICT BY GRANT DEED RECORDED OCTOBER 10, 1986 AS INSTRUMENT NO. 86-298105 OF OFFICIAL RECORDS.

APN: 0595-361-21-0-000 AND 0595-371-11-0-000

EXHIBIT "B"

[LEGAL DESCRIPTION (METES AND BOUNDS) OF OPTION PROPERTY]

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 5 EAST, SAN BERNARDINO MERIDIAN IN THE TOWN OF YUCCA VALLEY, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHEASTERLY EXTENSION OF THE EAST LINE OF PARCEL 4 OF PARCEL MAP 4575, AS SHOWN IN PARCEL MAP BOOK 67, PAGES 72 THROUGH 73, AND THE NORTHERLY RIGHT OF WAY OF STATE ROUTE 62;

THENCE NORTH 20°27'21" WEST 17.00 FEET ALONG THE EASTERLY LINE OF SAID PARCEL 4 AND ITS EXTENSION THEREOF TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING NORTH 20°27'21" WEST 273.13 FEET ALONG THE EASTERLY LINE OF SAID PARCEL 4 AND ITS EXTENSION THEREOF;

THENCE SOUTH 69°32'39" WEST 2.09 FEET ALONG THE NORTHERLY LINE OF SAID PARCEL 4 TO THE SOUTHEASTERLY CORNER OF LOT 30 OF TRACT 6501, AS SHOWN IN MAP BOOK 83, PAGES 96 THROUGH 98;

THENCE NORTH 20°25'16" WEST 120.00 FEET ALONG THE EASTERLY LINE OF SAID LOT 30 TO THE NORTHEASTERLY CORNER OF SAID LOT 30 AND THE SOUTHERLY RIGHT OF WAY OF ANTELOPE TRAIL;

THENCE NORTH 69°32'39" EAST 142.02 FEET ALONG THE NORTHEASTERLY EXTENSION OF SAID ANTELOPE TRAIL TO THE BEGINNING OF A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 50.00 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE 49.65 FEET THROUGH A CENTRAL ANGLE OF 56°53'51";

THENCE SOUTH 86°58'07" EAST 113.03';

THENCE NORTH 79°18'44" EAST 109.69';

THENCE SOUTH 46°43'25" EAST 33.42';

THENCE SOUTH 07°14'26" WEST 193.36 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 70.00';

THENCE SOUTHWESTERLY ALONG SAID CURVE 44.88 FEET THROUGH A CENTRAL ANGLE OF 36°44'06" TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 130.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE 131.59 FEET THROUGH A CENTRAL ANGLE OF 57°59'47" TO THE BEGINNING OF A REVERSE CURVE CONCAVE WESTERLY HAVING A RADIUS OF 20.00 FEET;

THENCE SOUTHWESTERLY ALONG SAID CURVE 30.12 FEET THROUGH A CENTRAL ANGLE OF 86°17'48" TO A POINT PARALLEL WITH AND 67 FEET NORTHERLY OF THE CENTERLINE OF STATE ROUTE 62;

THENCE SOUTH 69°34'06" WEST 192.91 FEET PARALLEL WITH STATE ROUTE 62 TO THE TRUE POINT OF BEGINNING.

EXHIBIT "C"
[FORM OF MEMORANDUM OF OPTION]

RECORDING REQUESTED BY:
Fidelity National Title Company
Title No. 11-259925734-SB

AFTER RECORDING RETURN TO:
National Community Renaissance of California
Attn: Julie Mungai
9065 Haven Avenue, Suite 100
Rancho Cucamonga, CA 91730

-----SPACE ABOVE RESERVED FOR RECORDER-----

MEMORANDUM OF OPTION

dated as of May ____, 2011

MEMORANDUM OF OPTION

THIS MEMORANDUM OF OPTION ("Memorandum") is executed and made effective as of this _ day of May 2011 by YUCCA VALLEY REDEVELOPMENT AGENCY, a public body, corporate and politic ("Optionor"), and NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA, a California nonprofit public benefit corporation ("Optionee").

- 1. Optionor and Optionee executed a certain Option Agreement dated as of May ____, 2011 granting Optionee an option to purchase certain real property owned by Optionor, located in the Town of Yucca, County of San Bernardino, State of California and more particularly described in Exhibit "A" attached hereto ("Option Property").
- 2. The term of Optionee's option under the Option Agreement commenced as of May ____, 2011 and may continue until 5:00 p.m., Tuesday, December 31, 2013.
- 3. The right of Optionee to exercise the option to purchase and acquire the Option Property from Optionee is conditioned on Optionee agreeing to the execution of a disposition and development agreement with Optionor to monitor, control and impose certain restrictions, including housing use and affordability restrictions, on Optionee and Optionee's development of the Option Property.
- 4. The option fee, purchase price of the Option Property and agreement to extend the Option Agreement, including the term of the option, are as set forth in the Option Agreement.

EXECUTED by Optionor and Optionee as of the day and year first above written.

OPTIONOR

OPTIONEE

YUCCA VALLEY REDEVELOPMENT AGENCY,
a public body, corporate and politic,

NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA,
a California nonprofit public benefit corporation

By _____

By _____

(Print Name and Title)

(Print Name and Title)

Approved as to form:

By _____

EXHIBIT "A"
TO
MEMORANDUM OF OPTION

[Legal Description of Option Property]

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 5 EAST, SAN BERNARDINO MERIDIAN IN THE TOWN OF YUCCA VALLEY, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHEASTERLY EXTENSION OF THE EAST LINE OF PARCEL 4 OF PARCEL MAP 4575, AS SHOWN IN PARCEL MAP BOOK 67, PAGES 72 THROUGH 73, AND THE NORTHERLY RIGHT OF WAY OF STATE ROUTE 62;

THENCE NORTH 20°27'21" WEST 17.00 FEET ALONG THE EASTERLY LINE OF SAID PARCEL 4 AND ITS EXTENSION THEREOF TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING NORTH 20°27'21" WEST 273.13 FEET ALONG THE EASTERLY LINE OF SAID PARCEL 4 AND ITS EXTENSION THEREOF;

THENCE SOUTH 69°32'39" WEST 2.09 FEET ALONG THE NORTHERLY LINE OF SAID PARCEL 4 TO THE SOUTHEASTERLY CORNER OF LOT 30 OF TRACT 6501, AS SHOWN IN MAP BOOK 83, PAGES 96 THROUGH 98;

THENCE NORTH 20°25'16" WEST 120.00 FEET ALONG THE EASTERLY LINE OF SAID LOT 30 TO THE NORTHEASTERLY CORNER OF SAID LOT 30 AND THE SOUTHERLY RIGHT OF WAY OF ANTELOPE TRAIL;

THENCE NORTH 69°32'39" EAST 142.02' FEET ALONG THE NORTHEASTERLY EXTENSION OF SAID ANTELOPE TRAIL TO THE BEGINNING OF A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 50.00 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE 49.65 FEET THROUGH A CENTRAL ANGLE OF 56°53'51";

THENCE SOUTH 86°58'07" EAST 113.03';

THENCE NORTH 79°18'44" EAST 109.69';

THENCE SOUTH 46°43'25" EAST 33.42';

THENCE SOUTH $07^{\circ}14'26''$ WEST 193.36 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 70.00';

THENCE SOUTHWESTERLY ALONG SAID CURVE 44.88 FEET THROUGH A CENTRAL ANGLE OF $36^{\circ}44'06''$ TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 130.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE 131.59 FEET THROUGH A CENTRAL ANGLE OF $57^{\circ}59'47''$ TO THE BEGINNING OF A REVERSE CURVE CONCAVE WESTERLY HAVING A RADIUS OF 20.00 FEET;

THENCE SOUTHWESTERLY ALONG SAID CURVE 30.12 FEET THROUGH A CENTRAL ANGLE OF $86^{\circ}17'48''$ TO A POINT PARALLEL WITH AND 67 FEET NORTHERLY OF THE CENTERLINE OF STATE ROUTE 62;

THENCE SOUTH $69^{\circ}34'06''$ WEST 192.91 FEET PARALLEL WITH STATE ROUTE 62 TO THE TRUE POINT OF BEGINNING.

EXHIBIT "D"
[FORM OF FUNDING COMMITMENT LETTER]

Project Pro Forma and Detail

SOURCES & USES OF FUNDS

Project Name: *Dumosa Ave. Project - 75 Senior DU - HUD 202 - 4% LIHTC - PREVI*
 Project Address: *Town of Yucca Valley, Ca*
 Developer: *National CORE* *Preliminary*

SOURCES: CONSTRUCTION

Construction Loan	\$13,500,000	60%
Towne of Yucca Valley	\$1,681,726	8%
LIHTC Equity	\$5,565,719	25%
County of San Bernardino HOME funds	\$1,580,000	7%
TOTAL	\$22,327,445	100%

USES:

Acquisition Costs/Closing	\$1
Architecture/Fees & Permits	\$2,225,000
Construction Cost	\$16,294,563
Indirect Construction/Legal	\$790,381
Developer's Fee	\$700,000
Rent-Up Costs/Reserves	\$650,000
Financing Costs	\$1,667,500
TOTAL	\$22,327,445

SOURCES: PERMANENT

Permanent Loan	\$0	0%
Towne of Yucca Valley	\$1,681,726	7%
LIHTC Equity	\$7,735,266	33%
County of San Bernardino HOME funds	\$1,580,000	7%
Deferred Dev Fee	\$0	0%
AHP	\$0	0%
HUD 202	\$12,205,978	53%
TOTAL	\$23,202,970	100%

USES:

Acquisition Costs/Closing	\$1
Architecture/Fees & Permits	\$2,225,000
Construction Cost	\$16,294,563
Indirect Construction/Legal	\$790,381
Developer's Fee	\$1,400,000
Rent-Up Costs/Reserves	\$766,671
Financing Costs	\$1,726,354
TOTAL	\$23,202,970

Per unit Agency contribution	\$22,423
Agency GAP	\$1,681,726
Gap to be filled with HOME funds	1,500,000
TOTAL Monetary Contribution	3,181,726
Value of Donated Property (80% of appraised value)	752,800
Amount to be committed for HUD 202 (32% of HUD 202 Funds)	\$3,934,526 32.23%
Funds to be committed At HUD 202 application	\$3,181,726

DEVELOPMENT COSTS - Non-Prevailing wage

Project Name: *Dumosa Ave. Project - 76 Senior DU - HUD 202 - 4% LIHTC - PREVAILING WAGE*

Project Address: *Town of Yucca Valley, Ca*

Developer: *National CORE*

PRELIMINARY

Number of Dwelling Units:	75	Gross Building Area (sf)			57,993			
		TOTAL COST	\$ PER UNIT	\$ PER SF BUILDING	% OF TOTAL	Previous Proforma	Difference	Explanation
1. ACQUISITION COSTS:								
Purchase Price		\$1	\$0.01	\$0.00	0.00%			
Closing Costs		\$0	\$0.00	\$0.00	0.00%			
Appraisals		\$0	\$0.00	\$0.00	0.00%			
Acquisition Contingency		\$0	\$0.00	\$0.00	0.00%			
TOTAL ACQUISITION COSTS		\$1	\$0.01	\$0.00	0.00%			
2. FEES/PERMITS & STUDIES								
Plan check Fees and Permits		\$375,000	\$5,000.00	\$6.47	1.62%			
Development impact fees		\$1,050,000	\$14,000.00	\$18.11	4.53%	1,125,000	(\$75,000)	
Surveys/Goods/Traffic		\$50,000	\$666.67	\$0.86	0.22%			
Environmental Documentation		\$50,000	\$666.67	\$0.86	0.22%			
Arch. & Engineering Fees								
Design		\$650,000	\$8,666.67	\$11.21	2.80%			
Reimbursables		\$50,000	\$666.67	\$0.86	0.22%			
Subtotal:		\$700,000	\$9,333.33	\$12.07	3.02%			
TOTAL FEES/PERMITS & STUDIES		\$2,225,000	\$29,666.67	\$38.37	9.58%			
3. DIRECT CONSTRUCTION COSTS:								
Residential Construction: Housing units		\$9,130,180	\$121,735.73	\$157.44	39.35%			
Green Building Delta		\$780,180	\$10,402.39	\$13.45	3.36%			
Off-Site Improvements		\$851,842	\$11,357.89	\$14.69	3.67%			
On-Site Improvements		\$2,169,991	\$28,933.22	\$37.42	9.35%	2,744,991	(\$575,000)	Reduce for sewer fees
Subtotal:		\$12,932,193	\$172,429.24	\$223.00	55.74%			
Contractor's Overhead & Profit	9.36%	\$1,210,640	\$16,141.87	\$20.88	5.22%	1,291,140	(\$80,500)	Related reductions
Subtotal:		\$14,142,833	\$188,571.10	\$243.87	60.95%			
General Conditions	4.64%	\$599,867	\$7,998.23	\$10.34	2.58%			
Performance Bond		\$258,644	\$3,448.58	\$4.46	1.11%	270,144	(\$11,500)	Related reductions
Subtotal:		\$15,001,344	\$200,017.91	\$258.68	64.65%			
Construction Contingency	10.00%	\$1,293,219	\$17,242.92	\$22.30	5.57%	1,350,719	(\$57,500)	Related reductions
TOTAL DIRECT CONSTRUCTION COSTS		\$16,294,563	\$217,260.84	\$280.97	70.23%	17,019,063	(\$724,500)	Net reduction in construction costs
4. INDIRECT CONSTRUCTION COSTS								
Developer's Fee		\$1,400,000	\$18,666.67	\$24.14	6.03%			
Deferred Developer Fee		\$0	\$0.00	\$0.00	0.00%			
Subtotal:		\$1,400,000	\$18,666.67	\$24.14	6.03%			
Development Consultant		\$75,000	\$1,000.00	\$1.29	0.32%			
Construction Manager		\$100,000	\$1,333.33	\$1.72	0.43%			
Builders Risk/Liability Insurance		\$340,381	\$4,538.42	\$5.87	1.47%	0	\$100,000	Internal since using outside GC
Real Estate Taxes		\$5,000	\$66.67	\$0.09	0.02%			
Legal - Organizational		\$45,000	\$600.00	\$0.78	0.19%			
Legal - Syndication		\$30,000	\$400.00	\$0.52	0.13%			
Accounting/Inspection		\$45,000	\$600.00	\$0.78	0.19%			
Relocation (Included with land costs)		\$0	\$0.00	\$0.00	0.00%			
Indirect Construction Costs Contingency		\$150,000	\$2,000.00	\$2.59	0.65%			
TOTAL INDIRECT CONSTRUCTION COSTS		\$2,190,381	\$29,205.08	\$37.77	9.44%			
5. RENT-UP COSTS								
Marketing/Advertising Expense		\$10,000	\$133.33	\$0.17	0.04%			
Operating Lease-up Reserve		\$100,000	\$1,333.33	\$1.72	0.43%			
Capitalized Lease-up Reserve (PRAC)		\$100,000	\$1,333.33	\$1.72	0.43%			
Minimum Capital Investment (HUD)		\$10,000	\$133.33	\$0.17	0.04%			
Capitalized Excess Amenities Maint. Reserve		\$75,000	\$1,000.00	\$1.29	0.32%			
Capitalized Partnership mgmt Fees		\$155,000			0.67%			
Capitalized Replacement Reserve		\$45,000	\$600.00	\$0.78	0.19%			
Capitalized Operating Reserve		\$71,671	\$955.62	\$1.24	0.31%			
Common Area Furnishings		\$200,000	\$2,666.67	\$3.45	0.86%	100,000	\$100,000	Increased furnishings cost
TOTAL RENT-UP/MARKETING COSTS		\$766,671	\$8,155.62	\$10.55	3.30%			
6. FINANCING COSTS								
Construction Loan Interest		\$1,113,750	\$14,850.00	\$19.20	4.80%	1,155,000	(\$41,250)	reduced construction loan
Construction Loan Fees/Costs		\$176,250	\$2,350.00	\$3.04	0.76%	182,500	(\$6,250)	reduced construction loan
Appraisal/Market Study		\$30,000	\$400.00	\$0.52	0.13%			
Lender Legal		\$50,000	\$666.67	\$0.86	0.22%			
Permanent Loan Fees/Closing Costs		\$10,000	\$133.33	\$0.17	0.04%			
Tax Credit Allocation Fee		\$48,854	\$651.38	\$0.84	0.21%	91,164	(\$42,310)	Correction of error
Capitalized bond Issuer Monitoring Fees		\$100,000	\$1,333.33	\$1.72	0.43%			
Bridge Loan Costs		\$35,000	\$466.67	\$0.60	0.15%			
Bond Issuance Costs		\$122,500	\$1,633.33	\$2.11	0.53%			
Title and Recording (Const./Perm.)		\$40,000	\$533.33	\$0.69	0.17%			
TOTAL FINANCING COSTS		\$1,726,354	\$23,018.05	\$29.77	7.44%			
7. SUBTOTAL DEVELOPMENT COSTS		\$23,202,969	\$307,306.25	\$397.43	100.00%			
TOTAL LAND COSTS		\$1	\$0.01	\$0.00	0.00%			
TOTAL DEVELOPMENT COSTS		\$23,202,970	\$307,306.27	\$397.43	100.00%	23,892,280	(\$689,310)	Net change in TDC

Construction estimates are based on non-prevailing wage and subject to change. *may be revised due to entitlement issues, changes in construction standards, architectural and engineering requirements, and other unforeseen circumstances.*

RENT SCHEDULE

Project Name: *Dumosa Ave. Project - 75 Senior DU - HUD 202 - 4% LIHTC - PREVAILING WAGE*

Project Address: *Town of Yucca Valley, Ca*

Developer Name: *National CORE*

AREA MEDIAN INCOME: TCAC \$65,000								
Unit Type	Percent Median	Monthly Gross Rent	Monthly Utility Allow.	Monthly Net Rent	Number of Units	Total Monthly Rent	Total Annual Rent (\$)	Total # of Bdrms.
ONE BEDROOM	50%	\$475	\$77	\$398	8	\$3,184	\$38,208	8
	50%	\$475	\$77	\$398	26	\$10,348	\$124,176	26
	50%	\$475	\$77	\$398	26	\$10,348	\$124,176	26
	Rural Only 50%	\$475	\$77	\$398	14	\$5,572	\$66,864	14
					74			74
TWO BEDROOM	30%	\$439	\$102	\$337	0	\$0	\$0	0
	45%	\$658	\$102	\$556	0	\$0	\$0	0
	50%	\$731	\$102	\$629	0	\$0	\$0	0
	Rural Only 55%	\$804	\$102	\$702	0	\$0	\$0	0
					0			0
THREE BEDROOM	30%	\$507	\$126	\$381	0	\$0	\$0	0
	45%	\$761	\$126	\$635	0	\$0	\$0	0
	50%	\$845	\$126	\$719	0	\$0	\$0	0
	Rural Only 55%	\$930	\$126	\$804	0	\$0	\$0	0
					0			0
MANAGER'S	Exempt	\$0	\$0	\$0	1	\$0	\$0	2
TOTAL					75	29,452	353,424	150

50%	8	10.67%
50%	26	34.67%
50%	26	34.67%
50%	14	18.67%
Mgr	1	1.33%
	75	100%

Utility Allowance:

Source: San Bernardino County Housing Authority - effective Dec 1, 2010

	1 BRM	2 BRM	3 BRM
Heating - Electric	15	19	22
Cooking (Electric)	11	14	17
Water Heating (Gas)	0	0	0
Basic Electric	32	43	54
Water			
Trash			
Refrigerator	5	5	5
Air Conditioning	14	21	28
Total	77	102	126

SOURCES & USES OF FUNDS

Project Name: *Dumosa Ave. Project - 75 Senior DU - HUD 202 - 4% LIHTC - PREVA*
 Project Address: *Town of Yucca Valley, Ca*
 Developer: *National CORE*
Preliminary

SOURCES: CONSTRUCTION

Construction Loan	\$13,500,000	60%
Towne of Yucca Valley	\$1,681,726	8%
LIHTC Equity	\$5,565,719	25%
County of San Bernardino HOME funds	\$1,580,000	7%
TOTAL	\$22,327,445	100%

USES:

Acquisition Costs/Closing	\$1
Architecture/Fees & Permits	\$2,225,000
Construction Cost	\$16,294,563
Indirect Construction/Legal	\$790,381
Developer's Fee	\$700,000
Rent-Up Costs/Reserves	\$650,000
Financing Costs	\$1,667,500
TOTAL	\$22,327,445

SOURCES: PERMANENT

Permanent Loan	\$0	0%
Towne of Yucca Valley	\$1,681,726	7%
LIHTC Equity	\$7,735,266	33%
County of San Bernardino HOME funds	\$1,580,000	7%
Deferred Dev Fee	\$0	0%
AHP	\$0	0%
HUD 202	\$12,205,978	53%
TOTAL	\$23,202,970	100%

USES:

Acquisition Costs/Closing	\$1
Architecture/Fees & Permits	\$2,225,000
Construction Cost	\$16,294,563
Indirect Construction/Legal	\$790,381
Developer's Fee	\$1,400,000
Rent-Up Costs/Reserves	\$766,671
Financing Costs	\$1,726,354
TOTAL	\$23,202,970

Per unit Agency contribution \$22,423

Agency GAP \$1,681,726
 Gap to be filled with HOME funds 1,500,000
 TOTAL Monetary Contribution 3,181,726

Value of Donated Property (80% of appraised value) 752,800
 Amount to be committed for HUD 202 (32% of HUD 202 Funds) \$3,934,526 32.23%

Funds to be committed At HUD 202 application \$3,181,726

OPERATING EXPENSES

Project Name: *Dumosa Ave. Project - 75 Senior DU - HUD 202 - 4% LIHTC - PREVA*
 Project Address: *Town of Yucca Valley, Ca*
 Developer: *National CORE*

	ANNUAL 75	MONTHLY	PER UNIT	UNIT/MO.	% TOTAL
1. MANAGEMENT					
Contract Management Fee	\$36,000	\$3,000.00	\$480.00	\$40.00	10.28%
TOTAL MANAGEMENT	\$36,000	\$3,000.00	\$480.00	\$40.00	10.28%
2. ADMINISTRATION					
Marketing	\$2,000	\$166.67	\$26.67	\$2.22	0.57%
Audit	\$11,500	\$958.33	\$153.33	\$12.78	3.28%
Legal	\$4,000	\$333.33	\$53.33	\$4.44	1.14%
Office Expenses	\$8,000	\$666.67	\$106.67	\$8.89	2.28%
TOTAL ADMINISTRATION	\$25,500	\$2,125.00	\$340.00	\$28.33	7.28%
3. SALARIES AND BENEFITS					
On-Site Manager/Asst. Manager	\$30,000	\$2,500.00	\$400.00	\$33.33	8.57%
Maintenance Personnel	\$25,000	\$2,083.33	\$333.33	\$27.78	7.14%
Janitorial Personnel	\$0	\$0.00	\$0.00	\$0.00	0.00%
Case Manager	\$0	\$0.00	\$0.00	\$0.00	0.00%
Housekeepers	\$0	\$0.00	\$0.00	\$0.00	0.00%
Payroll Txs, Ins & Wkr. Comp.	\$22,000	\$1,833.33	\$293.33	\$24.44	6.28%
TOTAL SALARIES	\$77,000	\$6,416.67	\$1,026.67	\$85.56	21.99%
4. MAINTENANCE					
Supplies	\$8,000	\$666.67	\$106.67	\$8.89	2.28%
Repairs Contract	\$11,500	\$958.33	\$153.33	\$12.78	3.28%
Pest Control	\$5,000	\$416.67	\$66.67	\$5.56	1.43%
Grounds Contract	\$8,000	\$666.67	\$106.67	\$8.89	2.28%
Turnover	\$6,000	\$500.00	\$80.00	\$6.67	1.71%
Elevator	\$7,000	\$583.33	\$93.33	\$7.78	2.00%
TOTAL MAINTENANCE	\$45,500	\$3,791.67	\$606.67	\$50.56	12.99%
5. UTILITIES NOT PAID BY TENANTS					
Trash Removal	\$8,000	\$666.67	\$106.67	\$8.89	2.28%
Electricity	\$19,000	\$1,583.33	\$253.33	\$21.11	5.43%
Water/Sewer	\$35,000	\$2,916.67	\$466.67	\$38.89	9.99%
Gas	\$10,000	\$833.33	\$133.33	\$11.11	2.86%
TOTAL UTILITIES	\$72,000	\$6,000.00	\$960.00	\$80.00	20.56%
6. INSURANCE					
Property & Liability Insurance	\$30,000	\$2,500.00	\$400.00	\$33.33	8.57%
TOTAL INSURANCE	\$30,000	\$2,500.00	\$400.00	\$33.33	8.57%
7. TAXES/RESERVES					
Real Estate Taxes	\$5,000	\$416.67	\$66.67	\$5.56	1.43%
Replacement Reserves	\$45,000	\$3,750.00	\$600.00	\$50.00	12.85%
TOTAL TAXES	\$50,000	\$4,166.67	\$666.67	\$55.56	14.28%
8. OTHER					
County Monitoring fees	\$0	\$0.00	\$0.00	\$0.00	0.00%
Support Services	\$13,500	\$1,125.00	\$180.00	\$15.00	3.86%
Resident Activities	\$685	\$57.08	\$9.13	\$0.76	0.20%
TOTAL OTHER	\$14,185	\$1,182.08	\$189.13	\$15.76	4.05%
TOTAL OPERATING EXPENSES	\$350,185	\$29,182	\$4,669.13	\$389.09	100.00%

HUD 202 Scoring

information on the type of document. Co-Sponsors or the submitting applicant can insert the document name in the space labeled Program Component.

NOTE: Do not insert any additional or other cover pages as it will cause problems in electronically matching the pieces of the application. See the **General Section** for further instructions.

If you are not faxing any documents: Even though you are not faxing any documents, you must still complete the facsimile transmittal form. In the section of the form titled "Name of Document Transmitting," enter the words "Nothing Faxed with this Application." Complete the remaining highlighted fields and enter the number "1" in the section of the form titled "How many pages (including cover) are being faxed?"

V. Application Review Information:

A. Criteria.

Rating Factors. HUD will rate applications that successfully complete technical processing using the Rating Factors set forth below and in accordance with the application requirements in this NOFA. The maximum number of points an application may receive under this program is 102. This includes five (5) Policy Priority points and two (2) RC/EZ/EC-II bonus points, as described in the **General Section** and Section V.A.6., below.

1. Rating Factor 1: Capacity of the Applicant and Relevant Organizational Staff (23 Points)

This factor addresses the extent to which you have the experience and organizational resources to successfully implement the proposed activities in a timely manner. Submit information responding to this factor in accordance with Application Requirements in Exhibits 3(a), 3(b), 3(e), 5 and 6 of Section IV.B., above. In rating this factor, HUD will consider the extent to which your application demonstrates your ability to develop and operate the proposed housing on a long-term basis, considering the following:

a. (15 points). The scope, extent, and quality of your experience in providing housing and related services to those proposed to be served by the project and the scope of the proposed project (i.e., number of units, services, relocation costs, development, and operation) in relationship to your demonstrated development and ownership capacity as well as your financial management capability. In the case of co-sponsored applications, the rating will be based upon the most experienced of the co-sponsors in the area under review.

(1) (10 points) The scope, extent, and quality of your experience in providing housing to those proposed to be served by the project and the scope of the proposed project in relationship to your demonstrated development and ownership capability. To earn the maximum number of points you must have experience in developing and owning housing projects as complex in number of units, financial structure (e.g. mixed finance), building type, and quality of the proposed project.

(2) (5 points). The scope, extent and quality of your experience in providing supportive services to those proposed to be served by the project (i.e., number of units, services and operation) in relationship to your demonstrated management capacity to provide a range of services in accordance with the needs of the population served.

b. (8 points). The scope, extent and quality of your experience in providing housing and related services to minority persons or minority families and your ties to the community at large and to the minority and elderly communities in particular.

(1) (2 points). The scope, extent, and quality of your experience in providing housing to minority persons or minority families.

(2) (1 point). The scope, extent, and quality of your experience in providing services to minority persons or minority families.

(3) (5 points). The scope, extent, and quality of your ties to the community at large.

To earn the maximum number of points under sub-criteria (b)(1) and (b)(2), above, you must describe significant previous experience in providing housing and supportive services to minorities generally and to minority elderly in particular. For the purpose of this competition, 'significant previous experience' is defined under Exhibit 3, subsection (b) above. To earn the maximum number of points under sub-criterion (b)(3), above, you should submit materials that demonstrate your efforts to make housing available to the community at large and the minority and elderly communities in particular and your relationships over time with the minority and elderly communities. Please submit copies of your past affirmative marketing plan and the advertising/outreach materials you utilized to attract minority communities (including LEP communities), elderly communities, and the community at large, as specified under Exhibit 3, subsection (b) above.

NOTE: The allocation of points for affirmatively furthering fair housing in no way changes the statutory and regulatory requirement of every applicant to affirmatively further fair housing. The same holds for statutory and regulatory fair housing and accessibility requirements.

c. (-5 to -7 points). **Past Performance – Delays.** HUD will deduct (except if the delay was beyond your control) 5 points if a fund reservation you received under either the Section 202 Program of Supportive Housing for the Elderly or the Section 811 Program of Supportive Housing for Persons with Disabilities in FY 2005 or later has been extended beyond 24 months, 6 points if beyond 36 months, or 7 points if beyond 48 months. Examples of such delays beyond your control include, but are not limited to, initial closing delays that are:

(1) directly attributable to HUD,

(2) directly attributable to third party opposition, including litigation, and

(3) due to a disaster, as declared by the President of the United States.

d. (-5 to -10 points). Past Performance – Amendments. HUD will deduct from 5 points to 10 points if HUD amendment money was required in connection with a fund reservation you received under either the Section 202 Program of Supportive Housing for the Elderly or the Section 811 Program of Supportive Housing for Persons with Disabilities in FY 2005 or later based on the following. No points will be deducted if the need for amendment funds was due to unforeseen circumstances beyond your control.

NOTE: Examples of unforeseen circumstances outside of your control includes, but are not limited to, increased cost due to litigation, new government regulations or controls, additional requirements imposed by local authorities, or a disaster, as declared by the President of the United States.

(1) (-5 points). The amount of the amendment money required was equal to 20 percent and less than 30 percent of the original capital advance amount approved by HUD.

(2) (-6 points). The amount of the amendment money required was equal to 30 percent and less than 35 percent of the original capital advance amount approved by HUD.

(3) (-7 points). The amount of amendment money required was equal to 35 percent and less than 40 percent of the original capital advance amount approved by HUD.

(4) (-8 points). The amount of amendment money required was equal to 40 percent and less than 45 percent of the original capital advance amount approved by HUD.

(5) (-9 points). The amount of amendment money required was equal to 45 percent and less than 50 percent of the original capital advance amount approved by HUD.

(6) (-10 points). The amount of the amendment money required was equal to or over 50 percent of the original capital advance amount approved by HUD.

2. Rating Factor 2: Need/Extent of the Problem (12 Points)

This factor addresses the extent to which there is a need for funding the proposed activities to address a documented problem in the target area. Submit information responding to this factor in accordance with Application Requirements in Exhibits 4(a) and 4(b) of Section IV.B., above. HUD will take into consideration the extent of the need for the project in the area based on a determination by the Multifamily Hub Office. In making this determination, HUD will consider your evidence of need in the area, as well as other economic, demographic, and housing market data available to the Multifamily Hub Office. The data should include but are not limited to:

- a general assessment of the current conditions in the market for the type of housing proposed.

- an estimate of the demand for additional housing of the type proposed in the applicable housing market area,
- information on the numbers and types of existing comparable Federally assisted housing units for the elderly (HUD and RHS) and current occupancy in such housing and recent market experience,
- comparable assisted housing for the elderly under construction or for which fund reservations have been issued, and
- in accordance with an agreement between HUD and RHS, comments from RHS on the demand for additional comparable subsidized housing and the possible harm to existing projects in the same housing market areas.

The Department will also review applications to ensure they establish a connection between the proposed project and the community's Analysis of Impediments to Fair Housing Choice (AI) or other planning document that analyzes fair housing issues and is prepared by a local planning or similar organization. The Department will review applications more favorably depending on how well this connection is made. You must show how your proposed project will address an impediment to fair housing choice described in the AI or meet a need identified in the other type of planning document.

For all Section 202 projects that are determined to have sufficient demand, HUD will rate your application based on the ratio of the number of units in the proposed project to the estimate of unmet need for housing assistance by the income eligible elderly households with selected housing conditions, expressed as a percent. Unmet need is defined as the Units in the proposed project divided by the number of very low-income elderly one-person renter households age 75 and older with housing conditions, as of the 2000 Census, minus the number of project-based subsidized rental housing units (HUD, RHS, LJHTC, or any state or local subsidized program) that are affordable to very low-income elderly provided in the area since 1999. **Note:** The analysis is conducted at the county level. Units to be occupied by resident managers are not counted.

In evaluating this factor HUD will consider the following:

a. (10 points). Ratio of Units to Unmet needs (expressed as a percent).

NOTE: Percentage calculations will round the decimal number to the nearest tenth (e.g. 5.56 percent will be rounded to 5.6 percent and 5.44 percent will be rounded to 5.4 percent).

- (1) **(10 points)** The project has an unmet needs ratio of greater than or equal to 0.0 percent and less than or equal to 0.25 percent;
- (2) **(9 points)** The project has an unmet needs ratio of greater than 0.25 percent and less than or equal to 0.5 percent;

- (3) (8 points) The project has an unmet needs ratio of greater than 0.5 percent and less than or equal to 1.0 percent;
- (4) (7 points) The project has an unmet needs ratio of greater than 1.0 percent and less than or equal to 1.5 percent;
- (5) (6 points) The project has an unmet needs ratio of greater than 1.5 percent and less than or equal to 2.5 percent;
- (6) (5 points) The project has an unmet needs ratio of greater than 2.5 percent and less than or equal to 5.0 percent;
- (7) (4 points) The project has an unmet needs ratio of greater than 5.0 percent and less than or equal to 7.5 percent;
- (8) (3 points) The project has an unmet needs ratio of greater than 7.5 and less than or equal to 10.0 percent;
- (9) (2 points) The project has an unmet needs ratio of greater than 10.0 and less than or equal to 12.5 percent;
- (10) (1 point) The project has an unmet needs ratio of greater than 12.5 and less than or equal to 15.0 percent; or
- (11) (0 points) The project has an unmet needs ratio of greater than 15.0 percent OR less than 0.0 percent.

b. (2 points). The extent that a connection has been established between the project and the community's Consolidated Plan, Analysis of Impediments to Fair Housing Choice (AI) or other planning document that analyzes fair housing issues and is prepared by a local planning or similar organization.

3. Rating Factor 3: Soundness of Approach (49 Points)

This factor addresses the quality and effectiveness of your proposal, including access to transit and amenities, provision of supportive services, the extent to which you involved elderly persons including elderly minority persons, in the development of the application and will involve them in the development and operation of the project, and whether you will undertake green development in the design, construction, rehabilitation, and operation of the proposed housing. There must be a clear relationship between your proposed design, proposed activities, the community's needs and purposes of the program funding for your application to receive points for this factor. Submit information responding to this factor in accordance with Application Requirements in Exhibits 3(b), 3(d), 3(e), 3(f), 3(g), 3(j), 4(c)(i), 4(c)(ii), 4(d)(iii), 4(d)(v), 4(d)(vi), and 5 of Section IV.B., above. In evaluating this factor, HUD will consider the following:

a. (15 points). The proximity or accessibility of the site to services and amenities.

(1) (7 points). **Transit-Served Location.** Reliable and accessible public transportation is available by private door-to-door shuttle/van service and/or a conveniently located transit stop(s). Up to 7 points will be awarded according to the following criteria:

(a) Distance: a project site located within a ¼ mile walking distance of a transit stop will receive 2 points; or a project site located within a ½ mile walking distance of a transit stop will receive 1 point.

(b) Availability: Sites with more than 1 public transit line with a transit stop located within ¼ mile will receive 2 points.

(c) Frequency: Evidence that the available transit lines provides a minimum of 40 daily trips will receive 3 points; or transit lines providing a minimum of 20 daily trips will receive 2 points. Trips may be counted in both directions.

OR;

(d) Evidence of a private door-to-door shuttle/van service available on a daily basis to the project site will receive 7 points.

(2) (8 points). **Amenity-Served Locations.** To earn points, the site must be within one-half mile walking distance of amenities that are appropriate to the elderly. Applicants must provide a map and photograph identifying each amenity. Points will be awarded to project sites in proximity to the following categories of amenities:

(NOTE: Under sub-criteria (b) and (c) a particular type of an identified amenity may not received more than 1 point under the applicable category.)

(a) Grocery Store such as a supermarket or other store that sells produce and meat products will receive 3 points.

(b) Social Services Facilities such as a licensed adult or senior care, hospital, medical clinic or social service organization that offers services relevant to the elderly will receive 2 point.

(c) Up to 3 points may be awarded for (1) Neighborhood-serving amenities such as an apparel store, convenience store, pharmacy, bank, hair care, dry cleaners, and restaurant; (2) Recreational Facilities such as a community or senior center, gym, health club, or family entertainment venue; and/or (3) Civic Facilities such as a government office that serves the public on-site, an educational facility providing adult education classes, place of worship, police or fire station, post office, public library, or public park.

b. (5 points). Affirmatively Furthering Fair Housing. This sub-rating factor addresses the quality and effectiveness of your proposal to provide housing and supportive services in such a way as to remedy barriers to fair housing for elderly low-income residents of the community. The application should demonstrate how the proposed project will address one or more impediments identified in the applicable local community's Analysis of Impediments to Fair Housing Choice (AI), increasing fair housing choice regardless of race, color, national origin, religion, sex, familial status, and disability and what activities applicant will take to AFFH. Fair Housing encompasses a variety of issues that should be addressed in this factor. In evaluating all aspects of this factor, actions that are comprehensive, innovative, and likely to become models for "best practices" will be awarded the most points. The following affirmative fair housing activities must be addressed:

(1) (1 point). **Limited English Proficiency (LEP).** You will receive one point for LEP if you demonstrate that you have conducted a four factor analysis of language needs for the jurisdiction(s) you serve, have implemented a language implementation plan for written and oral language interpretation, have trained your staff members on LEP, and translated vital documents in target language(s).

(2) (2 points). **Affirmative Fair Housing Marketing.** You must describe past strategies to reach persons that are least likely to apply for the housing, and address planned improvements in the manner specified in Exhibit 4(e).

(3) (2 points). **Site and Neighborhood Standards.** You must choose a site location that provides desirable housing to residents in the manner specified in Exhibit 4(e) and below. The suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority elderly persons/families and affirmatively furthering fair housing. In reviewing this criterion, HUD will assess whether the site meets the site and neighborhood standards at 24 CFR 891.125(b) and (c) by examining relevant data in your application or in the Multifamily Hub Office. Where appropriate, HUD may visit the site.

(1) The site will be deemed acceptable if it increases housing choice and opportunity by expanding housing opportunities in non-minority neighborhoods (if located in such a neighborhood). The term "non-minority area" is defined as one in which the minority population is lower than 10 percent. If the site will be in a minority neighborhood, the site will be deemed acceptable if it contributes to the revitalization of and reinvestment in the minority neighborhood, including improvement of the level, quality and affordability of services furnished to minority elderly. You should refer to the Site and Neighborhood Standards provisions of the regulations governing the Section 202 Supportive Housing for the Elderly program (24 CFR 891.125(b) and (c)) when considering sites for your project.

(2) For the purpose of this competition, the term "minority neighborhood (area of minority concentration)" is defined as one where any one of the following statistical conditions exists:

(a) The neighborhood's percentage of persons of a particular racial or ethnic minority is at least 20 percentage points higher than the percentage of that particular racial or ethnic minority in the housing market area.

(b) The neighborhood's total percentage of minority persons is at least 20 percentage points higher than the total percentage of minorities in the housing market area; or

(c) In the case of a metropolitan area, the neighborhood's total percentage of minority persons exceeds 50 percent of its population.

c. (2 points). The extent to which your proposed design will meet the special physical needs of elderly persons.

d. (2 points). The extent to which the proposed size and unit mix of the housing will enable you to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion.

e. (1 point). The extent to which the proposed design of the housing will accommodate the provision of supportive services including for those aging-in-place that are expected to be needed, initially and over the useful life of the housing, by the category or categories of elderly persons the housing is intended to serve.

f. (4 points). The extent to which the proposed supportive services meet the identified needs of the anticipated residents, and the extent to which the identified supportive services will be provided on a consistent, long-term basis to support residents as they age in place. To receive the maximum 4 points, you must submit an MOU between you and the service provider(s) that demonstrates that the organization(s)/agency(s) will follow through with their commitment.

g. (1 points). The extent to which your project will implement practical solutions that will assist residents in achieving independent living, educational opportunities, and improved living environments. Practical solutions may include, but are not limited to, activities that will improve access to educational, employment, and health resources and that will support residents as they age in place.

h. (1 point). The extent to which the proposed design incorporates visitability standards and/or universal design in the construction or rehabilitation of the project. Refer to the Exhibit 4(c)(i) of this program NOFA for further information.

i. (1 point). Your involvement of elderly persons in the area of the project, particularly minority elderly persons, in the development of the application and your intent to involve elderly persons, particularly minority elderly persons, in the development and operation of the project.

j. (4 Policy Priority points). **Green Development.** The extent to which you describe and firmly commit to a comprehensive plan to undertake green development in the design, construction, rehabilitation, and operation of the proposed housing. **NOTE:** As detailed in the General Section, HUD is encouraging applicants to undertake programs and projects that align

with HUD's Strategic Plan and its cross-cutting departmental Policy Priorities. Although this is not a requirement, to receive up to 4 point, under HUD's Policy Priority Number 2, "Sustainability", you must commit to fully utilizing one of the recognized green building standards. Please refer to the General Section for a listing of the recognized green rating programs. If successful, you are required to be certified under the standard that you have selected. You will receive zero points if you do not commit to an identified standard and if your plan does not evidence your efforts and understanding of the process necessary to build to the identified standard (see Section III.C.4.a. of this NOFA on Logic Model requirements associated with this Policy Priority).

k. (11 points). Readiness. To receive the maximum points available, the project must have received all discretionary approvals (building permits are not considered discretionary approvals), have completed initial architectural design work, have a budget showing that necessary sources of funds have been identified to cover all costs, a site in which either a plan to clean-up contamination is not necessary or a clean-up plan of contamination that has been submitted by the applicant has included federal or State approvals, and a site in which there are no major environmental impacts or environmental impacts that require regulatory compliance.

(1) **(6 points).** Evidence that the project, as proposed, is permissible under applicable zoning ordinances or regulations and does not require discretionary action from a governing body such as rezoning, variances, special or conditional use permits, design review, or any other land use approval, OR

(4 points). Evidence that the project, as proposed, is permissible under applicable zoning ordinances or regulations and does not require discretionary action from a governing body such as rezoning, variances, special or conditional use permits, or any other land use approval, OR

(2 points). Evidence that the project as proposed, is permissible under applicable zoning ordinances or regulations but requires other discretionary approvals.

(2) **(2 points).** A letter from a licensed architect that a set of schematic plans and outline specs acceptable to HUD's standard (see Section IV.D.3.a.(2) of this NOFA) have been completed. Plans must include landscape and utility design, building design, unit layout, materials and colors for all elevations and preliminary definitions of all systems serving the project.

(3) **(2 points).** A detailed budget identifying sources and uses which indicates that all resources necessary to cover the cost of the project (including any required off-site infrastructure costs, environmental clean-up costs, and any commercial space proposed) have been committed (other than tax credit equity commitments or Federal Home Loan Bank AHP funds). The budget should be based upon a construction cost estimate performed by a professional cost estimator with itemized sources of funds to cover costs.

(4) **(1 point)**. Provide “will serve” letters from all utility providers for water, sewer, gas, and electric) indicating that sufficient capacity exists to serve the proposed project.

(5) **(-2 points)**. HUD will deduct 2 points if HUD’s preliminary environmental review determines that there are obvious adverse environmental conditions and appropriate mitigation of such does not appear to be achievable within 6 months of the fund reservation date.

l. **(1 point)**. **Section 3**. As noted in Section III.C.3.h., you must comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and its implementing regulations at 24 C.F.R. part 135. Specifically, you are required to ensure, to the greatest extent feasible, that training, employment and other economic opportunities will be directed to low- and very-low income persons, particularly those who are recipients of government assistance for housing, and to business concerns that provide economic opportunities to low- and very-low income persons in the area in which the project is based. The extent to which you describe: the number of new employment opportunities you anticipate will be created during the proposed project/activities; the type and amount of contracting opportunities that will be generated during the proposed project/activities; how Section 3 residents and business concerns will be targeted for these opportunities; efforts you intend to take to facilitate the employment and/or awarding of contracts to these individuals; processes that will be used to ensure contractor compliance; and staff persons responsible for ensuring compliance with this requirement. To receive this point, you must address this requirement in your application submission.

m. **(1 Policy Priority point)**. **Job Creation/Employment**. As explained in the General Section and in Section III.C.4 of this NOFA, under the Job Creation/Employment policy priority, HUD seeks to fund sponsors that undertake activities that sustain economic development in low-income communities and create jobs for low-income populations and communities. The activities must be more comprehensive and exceed those required under HUD’s Section 3 requirements. To receive one policy priority point you must describe the number and type of activities that will expand job creation and other economic opportunities and how those activities will increase economic security and self-sufficiency for low- and very-low income persons in the area in which the project is based. The description must address the extent to which the activities that you undertake are focused on improved access to skills training, building and strengthening of partnerships with community-based organizations, and increased collaborating with federal, state, and local entities. The description should specifically address how the activities you intend to undertake will lead to sustainable economic opportunities for low-income populations and communities on a long term basis and how those activities will be supported (see Section III.C.4.b. of this NOFA on Logic Model requirements associated with this Policy Priority).

4. Rating Factor 4: Leveraging Resources (6 Points)

This factor addresses your ability to secure other funding sources and community resources that can be combined with HUD’s program resources to achieve program purposes. Submit information responding to this factor in accordance with Application Requirements in Exhibits 3(a), 3(c), 4(c)iii and 5(b) of Section IV.B., above. For each commitment document, HUD will evaluate the commitment for completeness and add the amounts that are acceptably

documented. **NOTE:** Percentage calculations will be rounded to the nearest whole number (e.g. 5.5 percent will be rounded to 6 percent and 5.4 percent will be rounded to 5 percent).

- a. (1 point). The application contains written evidence of firm commitments towards the development of the proposed project (including financial assistance, donation of land, etc.) from other funding sources (e.g., private, local community, and government sources) where the dollar value totals between **3 percent and 5 percent** of the capital advance amount as determined by HUD.
- b. (2 points). The application contains written evidence of firm commitments toward the development of the proposed project (including financial assistance, donation of land, etc.) from other funding sources (e.g., private, local community, and government sources) where the dollar value totals between **6 percent and 10 percent** of the capital advance amount as determined by HUD.
- c. (3 points). The application contains written evidence of firm commitments toward the development of the proposed project (including financial assistance, donation of land, etc.) from other funding sources (e.g., private, local community, and government sources) where the dollar value totals between **11 percent and 15 percent** of the capital advance amount as determined by HUD.
- d. (4 points). The application contains written evidence of firm commitments toward the development of the proposed project (including financial assistance, donation of land, etc.) from other funding sources (e.g., private, local community, and government sources) where the dollar value totals between **16 percent and 25 percent** of the capital advance amount as determined by HUD.
- e. (5 points). The application contains written evidence of firm commitments toward the development of the proposed project (including financial assistance, donation of land, etc.) from other funding sources (e.g., private, local community, and government sources) where the dollar value totals between **26 percent and 30 percent** of the capital advance amount as determined by HUD.
- f. (6 points). The application contains written evidence of firm commitments toward the development of the proposed project (including financial assistance, donation of land, etc.) from other funding sources (e.g., private, local community, and government sources) where the dollar value totals **over 30 percent** of the capital advance amount as determined by HUD.

5. Rating Factor 5: Achieving Results and Program Evaluation (10 Points)

This factor reflects HUD's goal to embrace high standards of ethics, management and accountability and, as such, evaluates whether you have an effective, quantifiable, outcome-oriented evaluation plan for measuring your performance. This factor requires that you develop clear outputs and outcomes that measure your performance during the development of your project. Information provided in Exhibit 8(i), Form HUD96010_Program_Outcome_Logic_Model, as

well as the Assessment Matrix will be used when reviewing and scoring this factor. Form_HUD96010_Program_Outcome_Logic_Model must be submitted in Excel format. Logic Models converted to any other format will receive zero points. Submit information responding to this factor in accordance with Application Requirements in Exhibits 3(a), 3(b), 3(e), 3(f), 3(g), 3(h), 4(c), 4(d)(iii) and 8(i) of Section IV.B., above.

a. (10 points). The extent to which your Logic Model demonstrates your full understanding of the development process and will, therefore, result in the timely development of your project. The following sub-rating factors reflect the criteria for review as identified in the logic model matrix found in the General Section:

(1) (3 points). The extent to which the services/activities identified in your Logic Model are consistent with the information provided in your application as well as the extent to which you demonstrate your full understanding of the activities that must be accomplished in order to develop your project within the required timeframe.

(2) (3 points). The extent to which the outcomes identified in your Logic Model are consistent with the services/activities that must be accomplished in order to get the project to initial closing within the 18-month fund reservation period, completion of the project, and to final closing.

(3) (3 points). The extent to which your projected measures show a realistic understanding of the development process resulting in a timely initial closing, start of construction, and final closing.

(4) (1 point). The extent to which the evaluation tools selected in your Logic Model are consistent with the project described.

6. Bonus Points (2 bonus points). Location of proposed site in an RC/EZ/EC-II area, as described in the **General Section**. Submit the information responding to the bonus points in accordance with the Application Requirements in Exhibit 8(h) of Section IV.B., above.

B. Reviews and Selection Process

1. Review for Curable Deficiencies. Upon receipt of the application by HUD staff, HUD will screen all applications to determine if there are any curable deficiencies. For applicants receiving a waiver to submit a paper application, submitting fewer than the required **original and four copies** of the application is not a curable deficiency and will cause your application to be considered non-responsive to the NOFA and returned to you. A curable deficiency is a missing Exhibit or portion of an Exhibit that will not affect the rating of the application. Refer to the **General Section** for additional information regarding procedures for corrections to deficient applications. In addition to the examples provided in the General Section, a curable deficiency for those items that do not affect score (as noted above) will exist when: (1) there are no documents associated with a particular exhibit; (2) the exhibit contains missing pages; or (3)

**TOWN OF YUCCA VALLEY
REDEVELOPMENT AGENCY MEETING MINUTES
MAY 17, 2011**

Chair Huntington called the meeting of the Town of Yucca Valley Redevelopment Agency to order at 8:05 p.m.

Agency Members Present: Abel, Hagerman, Luckino, Rowe, and Chair Huntington.

Staff Present: Executive Director Nuaimi, Agency Counsel Laymon, Deputy Executive Director Stueckle, Treasurer Yakimow, Community Services Director Schooler and Secretary Anderson.

CONSENT AGENDA

1. **Approve**, Minutes of the Regular Redevelopment Agency Meeting of May 3, 2011, as presented.
2. **Ratify**, RDA Warrant Registers total of \$136,704.82 for expenses dated May 5, 2011. Ratify RDA Payroll Register total of \$8,199.69 dated April 29, 2011.

Agency Member Hagerman moved to adopt the Consent Agenda, Items 1-2. Agency Member Luckino seconded. Motion carried 5-0 on a roll call vote.

AYES: Agency Members Abel, Hagerman, Luckino, Rowe and Chair Huntington
NOES: None
ABSTAIN: None
ABSENT: None

DEPARTMENT REPORTS

3. **Senior Affordable Housing Development Financial Commitment Resolution and Option Agreement**

A RESOLUTION OF THE REDEVELOPMENT AGENCY, OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, PROVIDING A FINANCIAL COMMITMENT TO NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA, FOR INCLUSION IN AN APPLICATION IN RESPONSE TO HUD'S SECTION 202 NOTICE OF FUNDING AVAILABILITY (NOFA) 2010-11 PURSUANT TO A FORTHCOMING DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE AGENCY AND NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA

With reference to the complete printed staff report provided in the meeting packets and preserved in the meeting files, Executive Director Nuaimi presented the project discussion

and gave a PowerPoint presentation showing the results of the survey given to seniors who were attending various outreach efforts regarding the project. The item is a preliminary funding commitment of the full \$3.2 million in the event CORE doesn't get the County Home funds. He noted there is well over the \$3.2 million potential offset dollars available, and is confident the Agency's funding will not be near the \$3.2 number and will probably be between \$1.5 to \$2 million, and it is hoped all that no funds will have to be spent. This project is also subject to a Disposition and Development Agreement so this is not the last time the Agency will see this.

Margo Sturges, Yucca Valley, spoke in support of the project but questioned the gap funding.

Executive Director Nuaimi explained that the discussion has always been that the CORE would be going after HUD funding, and County HOME funds, noting this financial commitment and option agreement is developed for the sole purpose of the HUD section 202 application, showing HUD that Yucca Valley is dedicated to this project.

Administrative Services Director Yakimow advised of the specific criteria in the HUD application regarding leveraging of resources and the local commitment.

Chair Huntington questioned how much is in the LMI fund. Administrative Services Director Yakimow advised that right now there is \$2,000,000 but there is 20% going into the fund every year and there is also bonding capacity.

Agency Member Hagerman questioned, out of the projects CORE has completed, how many received the HUD evaluation points of 102 and where does that amount fit into the projects that have been granted HUD funding. Julie Mungai, CORE, advised this is the first time HUD has come out with the specific scoring criteria, and is their attempt to make the process much more black and white. Since it is fairly black and white and a very competitive process, it is reasonable to assume that everyone who applies will try to reach that target 102 points. If you can show a commitment of more than 30% of the HUD amount you are requesting you get the full points. Agency Member Hagerman commented he would like to know where we stand from HUD's point of view, noting the feedback he hears from seniors is that this is coming and if we miss the funding this year it is going to be our fault, and questioned if CORE is putting together the best looking package for HUD. Ms. Mungai stated they are using a 3rd party consultant who specializes in HUD applications. She knows her stuff and will act as a liaison to HUD. Administrative Services Director Yakimow added that CORE was selected for this project because they demonstrated their capacity and creativity for looking at different funding alternatives.

Agency Member Luckino questioned if the ownership deed for the project will be in the name of Core or the Town. Ms. Mungai stated that it will initially be CORE, but will convert to a single asset corporation. Agency Member Luckino questioned CORE's financial commitment

in this project outside of trading tax credits. Ms. Mungai advised in a sense it is nothing and explained the financial structuring for the nonprofit. Agency Member Luckino advised that a year ago the Agency had a for-profit entity come to the table, was told it was a bad deal because there was no cash investment. Executive Director Nuaimi advised that proposal was also going to not only use up all the LMI funds but was also going to use all the Agency's bonding capacity and only generate 32 units. Agency Member Luckino expressed concern regarding waiving of impact fees for the project, noting the Town would not waive them for other developers. Deputy Executive Director Stueckle commented on the issue of impact fees and equity between this project and for-profit, noting the ordinance doesn't differentiate between for-profit and nonprofit, but provides for an exception for affordable housing providers, so it is applicable across the board under the Town's ordinance.

Executive Director Nuaimi advised that staff will be bringing back the Disposition and Development Agreement that will tie the many details of this transaction together. He noted the Agency has the resources to make the \$3.2 commitment but he does not believe it will have to pay those funds in the end.

Agency Member Luckino questioned what would happen if the RDA goes away. Executive Director Nuaimi advised the Agency has already committed these dollars for specific purposes, noting that, even with all dialogue going on, there are still plenty of housing advocates out there who say at a minimum the 20% set aside should continue. He noted the Town will be establishing a Housing Authority.

Chair Huntington advised the elimination of RDA is included in the latest budget proposal.

Agency Member Hagerman moved to: (a) Adopt Resolution No. RDA-11-05 providing a financial assistance commitment to CORE pursuant to a Disposition and Development Agreement in the amount of \$3.2 million in accordance to the standard terms and conditions in the referenced Letter of Financial Commitment for the proposed Senior Affordable Housing Project, and direct staff to forward a Letter of Commitment indicated same to CORE for inclusion in the HUD 202 application; (b) Approve the Option Agreement providing site control of the Dumosa/Hwy 62 property to CORE for the proposed Senior Affordable Housing Project. Agency member Rowe seconded.

Agency Member Abel stated he understands the concern but even in the worst case, if all other funding came about the Agency would be leveraging quite a bit.

Chair Huntington stated that the listing of development costs at the top of the sheet it states non prevailing wage. Ms. Mungai advised that is an error and it would be prevailing wages.

Chair Huntington noted he also saw amounts for plan check fees etc., so there are a lot of little pockets for gap funding. He questioned the figures for median income. Ms. Mungai explained the methodology noting the numbers given are for a 4 person household and

YUCCA VALLEY REDEVELOPMENT AGENCY

MAY 17, 2011

divided for senior housing.

Motion carried 5-0 on a roll call vote.

AYES: Agency Members Abel, Hagerman, Luckino, Rowe and Chair Huntington
NOES: None
ABSTAIN: None
ABSENT: None

Ms. Mungai expressed gratitude to the Agency, its Chair and staff, stating it has been a pleasure to work with everyone and CORE is excited to work with the Town on this project and are fully committed to it.

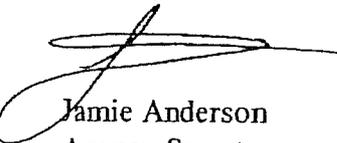
PUBLIC COMMENTS

None

ADJOURNMENT

There being no further business, Chair Huntington adjourned the meeting at 8:50 p.m.

Respectfully submitted,



Jamie Anderson
Agency Secretary

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 substances 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.

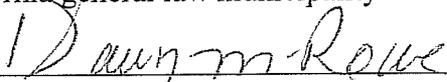
3. Developer represents and warrants that: (i) it is duly organized and existing under the laws of the State of California; (ii) by proper action of Developer, Developer has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and (iii) the entering 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.

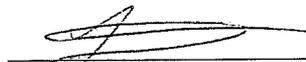
"TOWN"
TOWN OF YUCCA VALLEY,
A California general law municipality

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 J. 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 J. 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

Follow-up Documentation for Item 10.

4. Amendment #1 to the Development and Disposition Agreement



**FIRST AMENDMENT TO
AFFORDABLE HOUSING, FINANCING &
DISPOSITION & DEVELOPMENT AGREEMENT**

(Dumosa)

by and between the

TOWN OF YUCCA VALLEY

and

YUCCA VALLEY SENIOR HOUSING PARTNERS, L.P.,

A California limited partnership

**FIRST AMENDMENT TO
AFFORDABLE HOUSING, FINANCING &
DISPOSITION & DEVELOPMENT AGREEMENT
(DUMOSA)**

This FIRST AMENDMENT (the “**Amendment**”) to the AFFORDABLE HOUSING, FINANCING & DISPOSITION & DEVELOPMENT AGREEMENT dated March 20, 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**”), is entered into as of July __, 2012 on the following terms and conditions.

RECITALS

A. The Town and Developer entered into that certain Affordable Housing, Financing & Disposition & Development Agreement on or about March 20, 2012 (“**DDA**”), which includes as attachments, among others, a Grant Deed (the “**Grant Deed**”), Regulatory Agreement and Declaration of Covenants, Conditions, and Restrictions (“**Regulatory Agreement**”), Promissory Note (“**Note**”), Deed of Trust and Assignment of Rents (“**Deed of Trust**”), and **Project Budget** (collectively, “**Related Documents**”).

B. The DDA concerns the development of a 75-unit affordable rental housing complex for senior citizens (the “**Project**”) on a 2.87 acre vacant property located in the Town of Yucca Valley, County of San Bernardino, State of California, at the northwest corner of the intersection of Twentynine Palms Highway (State Highway 62) and Dumosa Avenue (the “**Site**”).

C. Through the DDA, the Town was to convey to Developer the Site, whose fair market value is \$940,000.00, and to provide Developer a loan in the amount of \$635,000.00 (“**Town Loan**”) for construction, improvement and operation costs. At the time the DDA was negotiated, the only source of funding for the Town Loan included funds from the former Yucca Valley Redevelopment Agency’s Low to Moderate Income Housing Fund (“**Low/Mod Fund**”) that were to be re-paid to the former Agency as a result of Low/Mod Fund monies being borrowed for purposes of paying the Supplemental Educational Revenue Augmentation Fund (“**SERAF**”). Both the fair market value of the Site and the Town Loan were to be repaid to the Town through the residual receipts loan Note secured by the Deed of Trust. With the fair market value of the Site and the Town Loan combined, the total amount of assistance from the Town to the Developer was \$1,575,000.00 (“**Note Amount**”).

D. Additional sources of funding, including a deferral of Development Fees (i.e., deferring payment of \$250,000 in Development Fees to time for repayment under Town Loan) and proceeds from the Storm Drain Impact Fees, Local Transportation Fund, and the Low/Mod Fund, have become available to support an increase of \$1,350,000.00 in the Note Amount. Including the original Note Amount of \$1,575,000.00, the total amount of assistance from the Town will be \$2,925,000.00. Thus, this Amendment will increase the Town Loan and Note Amount to a total of \$2,925,000.00 funds available to Developer and repayable to Town.

E. Notwithstanding the foregoing Recital, the Note Amount (as revised herein to \$2,925,000.00) will be offset or decreased should Developer be awarded Federal Home Loan Bank Affordable Housing Program ("AHP") funds. Developer plans to apply for these funds for the Project in the amount of \$740,000 (\$10,000 per affordable unit). If awarded, such AHP funds shall go first to cover any approved Project cost overruns and second to reduce the Town Loan and Note Amount ("AHP Offset"). If there is an AHP Offset against the Town Loan, the Note and Deed of Trust shall be amended by the parties to show the revised Note Amount.

F. The parties now desire to amend the DDA and Related Documents to reflect the increased assistance and sources of funding, as set forth in more detail below.

NOW, THEREFORE, the Town and Developer hereby agree as follows:

1. All capitalized terms not defined herein shall have the meaning as set forth in the DDA and Related Documents unless the context dictates otherwise.

2. Paragraph F of the Recitals of the DDA is hereby amended to read in its entirety as follows:

Town Loan to Developer. Town agrees to loan \$1,985,000.00 to Developer for Developer's use towards Project construction, improvements and operation ("Town Loan"). About \$156,861.93 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 \$1,828,138.00) will be disbursed to Developer prior to, or upon, the Close of Escrow (the "**Remainder Loan Proceeds**"). The Town has identified the following sources of funding for the Remainder Loan Proceeds to be payable to Developer: (i) \$250,000.00 which will be paid to Developer in the form of deferred Project Development Fees (i.e., payment of Development Fees deferred to time for repayment of Town Loan), (ii) \$300,000.00 payable to Developer from the Town's proceeds from Storm Drain Impact Fees, (iii) \$300,000.00 payable to Developer from Town proceeds in the Local Transportation Fund, (iv) \$500,000.00 from the former Agency's Low/Mod Fund, based on the December 2010 Exclusive Negotiating Agreement for the Project and/or revenues expected to be repaid to the Town as a taxing entity pursuant to AB1x 26; and (v) \$635,000.00 from 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 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.

3. Section 225 [Note; Note Amount] of the DDA is hereby amended to read in its entirety as follows:

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 (\$1,985,000.00) plus the full Purchase Price (\$940,000.00) shall be secured as a single debt obligation owing by Developer to the Town, totaling Two Million Nine Hundred Twenty-Five Thousand Even Dollars (\$2,925,000.00) also referenced herein as the "**Note Amount**". The Note Amount may be reduced by the amount of the AHP Offset if AHP funds are awarded to Developer

Notwithstanding the foregoing, the Note Amount will be offset or decreased should Developer be awarded Federal Home Loan Bank Affordable Housing Program ("**AHP**") funds. Developer plans to apply for these funds for the Project in the amount of \$740,000 (\$10,000 per affordable unit). If awarded, such AHP funds shall go first to cover any approved Project cost overruns, and second to reduce the Town Loan and Note Amount ("**AHP Offset**"). If there is an AHP Offset against the Town Loan, the Note and Deed of Trust shall be amended by the parties to show the reduced Note Amount.

4. Section 245 [Town Loan; Remainder Loan Proceeds] of the DDA is hereby amended to read in its entirety as follows:

The term "Town Loan" shall mean that loan in the amount of \$1,985,000.00 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 \$156,861.93 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 \$1,828,138.00) will be disbursed to Developer after the Effective Date hereof and is referenced herein as the "**Remainder Loan Proceeds**". Notably, the amount of the Remainder Loan Proceeds may be reduced pursuant to the AHP Offset as described in Section 225.

5. The first paragraph of Subsection 1 [Town Loan] of Section 404 [Town Loan, Security & Covenants] of the DDA is hereby amended to read in its entirety as follows:

Town Loan. The total estimated cost of the Project is approximately \$17.05 Million, 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 One Million Nine Hundred Eighty-Five Thousand Even Dollars (\$1,985,000.00) to fund the actual costs for the development, construction and operation of the Project. About \$156,861.93 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 \$1,828,138.00) will be disbursed to Developer prior to, or upon, the Close of Escrow (the "**Remainder Loan Proceeds**"), with the exception that a portion of the Remainder Town Loan Proceeds will be disbursed to Developer in the form of a deferral of Development Fee up-to a maximum amount of \$250,000. Alternatively, the parties may

mutually-agree to other means for the timing and method of Developer's draw upon the Remainder Loan Proceeds. Again, as described in Sections 225 and 245, the actual amounts of the Remainder Loan Proceeds may be decreased or offset as a result of an AHP Offset.

6. Paragraph D of Subsection 1 [Town Loan] of Section 404 [Town Loan, Security & Covenants] of the DDA is hereby amended to read in its entirety as follows:

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. Notwithstanding the foregoing, a portion of the Remainder Town Loan Proceeds will be disbursed to Developer in the form of Development Fee deferrals up-to a maximum of \$250,000. 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, or a fee deferral, as necessary to pay Town-approved Project costs, provided that Developer has submitted all required documentation reasonably requested by the Town to demonstrate that the Town Loan proceeds drawn shall be used for actual Project costs as reflected in the Project Budget.

7. The first paragraph of Subsection 2 [Security for Assistance] of Section 404 [Town Loan, Security & Covenants] of the DDA is hereby amended to read in its entirety as follows:

Security for Assistance. Developer's repayment obligations to pay both the full amount of the Town Loan (\$1,985,000.00) plus the full Purchase Price (\$940,000.00) shall be secured as a single debt obligation owing by Developer to the Town, totaling TWO MILLION NINE HUNDRED TWENTY-FIVE THOUSAND EVEN DOLLARS (\$2,925,000.00) (the "**Note Amount**"). The actual Note Amount may be decreased or offset as a result of an AHP Offset, in which case the parties will modify the Note and Deed of Trust to reflect the Note Amount as adjusted for the AHP Offset.

8. Paragraph A of Subsection 3 [Conditions Precedent to Disbursement of Town Loan] of Section 404 [Town Loan; Security & Covenants] of the DDA is hereby amended to read in its entirety as follows:

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 Four Hundred Thousand Even Dollars (\$1,400,000.00).

9. The stated Note Amount on the Note, which is attached as Exhibit "C" to the DDA, is hereby amended to read: "\$2,925,000.00."

10. The first sentence of the first paragraph of the Note, which is attached as Exhibit "C" to the DDA, is hereby amended to read as follows:

FOR VALUE RECEIVED, the undersigned (herein, the "Maker") hereby promises to pay to the order of the TOWN OF YUCCA VALLEY, a California general law municipality ("Holder" or "Town"), at a place designated by Holder, the principal sum not to exceed TWO MILLION NINE HUNDRED TWENTY-FIVE THOUSAND EVEN DOLLARS (\$2,925,000.00) ("Note Amount"), plus accrued interest, or such lesser amount which shall be disbursed by the Town and from time to time be owing hereunder pursuant to the terms hereof.

11. Section 2.1 [Loan Amount] of the Note, which is attached as Exhibit "C" to the DDA, is hereby amended to read in its entirety as follows:

Loan Amount. The principal amount of the Loan shall be in the amount not to exceed Two Million Nine Hundred Twenty-Five Thousand Even Dollars (\$2,925,000.00). The Loan Amount includes the Purchase Price of the Site being conveyed by Town to Maker plus such amounts of the Town Loan advanced to Maker from time to time which will be contributed to the Project by Town. Interest shall accrue on the outstanding principal amount at the simple rate of one-half of one percent (0.5 %) per annum until repaid in full.

12. The second full paragraph of page 3 of the Deed of Trust, which is attached as Exhibit "D" to the DDA, is hereby amended to read in its entirety as follows:

FOR THE PURPOSE OF SECURING, in such priority as Beneficiary may select, (i) payment of that certain Town Note of even date herewith executed by Trustor and payable to Beneficiary in the original principal amount of not to exceed Two Million Nine Hundred Twenty-Five Thousand Even Dollars (\$2,925,000.00) (the "Town Note"); (ii) Trustor's due, prompt and complete payment, performance, observance and discharge of each and every covenant, condition, provision and agreement contained in this Deed of Trust; (iii) until recordation of the Release of Construction Covenants (as defined in the Agreement referred to herein), Trustor's due, prompt and complete performance, observance and discharge of all obligations of Trustor under that certain Affordable Housing, Financing & Disposition & Development Agreement dated as of March 20, 2012, executed by Trustor and Beneficiary (the "Agreement") and each other ancillary instrument or agreement executed by Trustor for the benefit of Beneficiary pursuant to executory provisions of the Agreement, including, but not limited to, the Regulatory Agreement and Declaration of Covenants and Restrictions from Trustor in favor of Beneficiary recorded concurrently herewith (the "Regulatory Agreement" and, with the Town Note and the Agreement, collectively the "Town Agreements"); and (iv) payment of all monies expended or advanced by Beneficiary pursuant to the terms hereof or to preserve the Trust Estate or the rights of Beneficiary under the Town Agreements (the foregoing obligations, duties and performance by Trustor secured hereby are referred to herein collectively as the "Secured Obligations"). This Deed of Trust shall secure any

and all extensions, amendments, modifications or renewals of the Secured Obligations, however evidenced.

13. Paragraph A of the Recitals of the Regulatory Agreement, which is attached as Exhibit "F" to the DDA, is hereby amended to read in its entirety as follows:

Pursuant to an AFFORDABLE HOUSING, FINANCING & DISPOSITION & DEVELOPMENT AGREEMENT between and among Town and Owner dated March 20, 2012 ("DDA"), Town has sold to Owner real property and provided to Owner a financial loan under the terms of one promissory note for the cumulative amount of Two Million Nine Hundred Twenty-Five Thousand Even Dollars (\$2,925,000.00) (collectively the "Town Financing"), all for the purpose of assisting Owner in the development of an affordable, senior housing complex as further described herein on that certain real property located in the Town of Yucca Valley, County of San Bernardino, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference ("Site").

14. The Project Budget, which is attached as Exhibit "H" to the DDA, is hereby replaced in its entirety with the revised Project Budget, attached to this Amendment as Attachment 1.

15. The Note, Deed of Trust, and Regulatory Agreement, as amended, herein, are attached to this Amendment as Attachments "2," "3" and "4" respectively. These amended documents hereby replace their counterparts in the DDA (i.e., Attachment "2" replaces DDA Exhibit "C"; Attachment "3" replaces DDA Exhibit "D"; Attachment "4" replaces DDA Exhibit "F").

16. Except as otherwise amended herein, the DDA and Related Documents shall remain in full force and effect in accordance with its terms.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date stated above.

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

Date 7/24/2012

Dawn M. Rowe
Mayor Dawn Rowe

ATTEST:

[Signature]
Janet M. Anderson, Town Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

[Signature]
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 7/24/12

[Signature]
Name: R. W. H. [Signature]
CEO

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

Date 7/24/12

[Signature]
Name: R. W. H. [Signature]
CEO

[End of Signatures]

Follow-up Documentation for Item 10.

5. Letters of Funding Commitment





May 18, 2011

Mr. Orlando J. Cabrera
National Community Renaissance of California
9065 Haven Avenue, Suite #100
Rancho Cucamonga, CA 91730

RE: Yucca Valley RDA Senior Housing Funding Commitment

Dear Mr. Cabrera;

The Yucca Valley Redevelopment Agency (Agency) is excited to see the HUD Section 202 application moving forward to completion and submittal by the June 1, 2011 deadline. The Housing Fund of the Agency is dedicated to providing affordable housing alternatives to the Yucca Valley community, and believes that National Community Renaissance of California's (National CORE's) proposed project development in the pending HUD Section 202 application (Project) that will be submitted to HUD under HUD's Section 202 Notice of Funding Availability (NOFA) 2010-11 funding round will successfully advance the housing objectives of the Agency.

To this end, on behalf of the Agency, I am pleased to inform you that Agency Low/Mod Housing loans in an aggregate amount not to exceed \$3,200,000 (Three million two hundred thousand dollars) and Agency property (the "Property"), as identified in a separate Option Agreement executed or to be executed between the Agency and National CORE as evidence of National CORE's site control for the HUD Section 202 NOFA application, are committed by the Agency for the Project subject to the standard terms stated herein. The Agency will transfer the Property for \$1.00 (One dollar), which property is currently appraised at \$941,000 (Nine hundred forty one thousand dollars). If all the requirements of this commitment are satisfied, the loans and the Property will be made available to the Project's developer and Section 202 Sponsor, National CORE; subject to the provisions stated in this funding commitment.



The Town of
Yucca Valley

57090 Twentynine Palms Highway • Yucca Valley, California 92284
760/369-7207 • FAX 760/369-0626

This funding commitment is issued pursuant to and in reliance upon information presented in the HUD Section 202 NOFA in connection with HUD's 2010-11 funding round. It is also based upon National CORE's agreement that the Project will consist of not less than 75 units of affordable rental housing. This housing will be for seniors age 62 or older who are qualified as very low income with household income not exceeding 50% of Area Median Income (AMI), adjusted for household size, for San Bernardino County. To accomplish this goal, the grant documents for the land will contain appropriate restrictions on the use of the Project and rent charges in connection with the occupancy of the Project units by qualified seniors and their families, as applicable.

The loan term for the monetary contribution will be for a period of 55 years at a simple interest rate of 1%. The loan will be a residual receipts loan and no mandatory periodic payments will be due during the term of the loan. No loan origination or other loan processing fees will be charged to National CORE, with the exception of possible legal fees of the Agency's legal counsel(s). It is National CORE's or National CORE's designated borrower's responsibility to ensure that the Agency's legal counsel is provided with all the necessary documentation in a timely and professional manner.

As collateral for the loan, the Agency will take a mortgage and security position on the real property as identified in a Disposition and Development Agreement between the Agency and National CORE (the "DDA"), affecting the Property. This security position will not be any more junior than a third mortgage unless the Agency agrees otherwise in writing. A change in ownership of the Project or in the legal form of the owner of the Project, the placing of additional encumbrances on the Project without the prior written consent of the Agency, failure to maintain the eligible use of the Project as identified in the DDA, or default under senior mortgage loans, shall be among the events of default under the Agency Loan.

This funding commitment is subject to the following conditions to the satisfaction of the Agency:

1. Selection of the Project by HUD for a Conditional Funding Reservation through HUD's Section 202 program;
2. Successful development and execution of a Disposition and Development Agreement (DDA) between the Agency and National CORE related to the conveyance of the Property and further development of the Project in a form acceptable to the Agency, National CORE and HUD. Such DDA shall contain the usual and customary terms of such agreements entered into by the Agency for affordable housing projects, provisions for the donation/conveyance of the property as identified in the DDA, requirement that the Project be developed and operated by National CORE as an affordable housing rental project for a period of not less than fifty-five years, and other such customary provisions consistent with HUD Section 202 Program requirements;

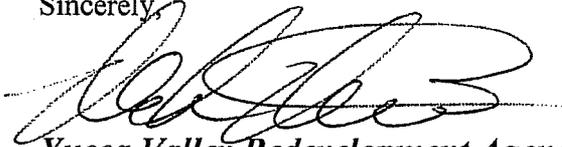
3. Exercise of an Option Agreement between the Agency and National CORE for National CORE to acquire the Property pursuant to the terms and conditions of the DDA;
4. Successful completion of a statutorily required public hearing and report based upon California Health & Safety Code Section 33433 related to the disposition and conveyance of the donated property;
5. Submission to and approval by the Agency of a complete final funding request, which must include:
 - a. Updated development and operating pro-formas including a complete sources and uses of funds statement;
 - b. Evidence of a firm commitment to all acquisition, construction and permanent mortgage financing from those entities and in those amounts shown on the development pro-forma, and on such terms as are acceptable to the Agency.
6. Submission of satisfactory evidence that all legal, design, regulatory, and environmental requirements for the Project are fulfilled and all approvals and site surveys required for the Project are obtained;
7. Submission of and approval by the Agency of evidence of a satisfactory funding commitment for the Project's financing plan, including other financing sources such as tax credit financing, County of San Bernardino HOME funds, and any other funding sources as identified in the Project's pro forma;
8. Submission to and approval by the Agency of a final construction budget with bid prices from the selected general contractor.

Closing and funding of this financing commitment will be conditioned upon the fulfillment of all standard terms and conditions of this funding commitment, the successful development and execution of the DDA, and upon satisfactory submission of all documents required by a closing agenda to be prepared by the Agency's counsel for this loan and land donation to the Project.

This funding commitment will be in effect from the date accepted by National CORE as evidenced below, and shall continue until the earlier of (i) the date that is twelve (12) months after the date National CORE receives notice from HUD that National Core's application or applications (as applicable) for a fund reservation under the HUD Section 202 Program has/have been denied (without right of appeal) through HUD's 2012 Notice of Funding Availability ("NOFA") funding round (each a "Denied Fund Reservation") for the Project development, or (ii) five o'clock (5:00) P.M., Tuesday, December 31, 2013. National CORE shall provide Agency with copies of each HUD notice of a Denied Fund Reservation or a copy of the HUD notice of an approved or awarded Fund Reservation (the "Fund Reservation Approval Notice"), as applicable, within ten (10) calendar days of National CORE's receipt of same.

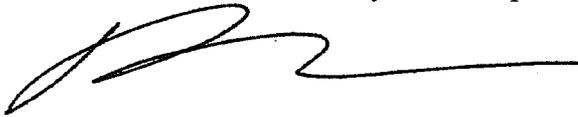
The Agency looks forward to the submission of the HUD Section 202 NOFA application and subsequent HUD selection for a Conditional Funding Reservation for this critical project in Yucca Valley. Through its completion, the Agency will be able to provide a greatly desired housing alternative to some of the neediest in the community.

Sincerely,



Yucca Valley Redevelopment Agency
Mark N. Nuaimi
Executive Director

This Funding Commitment shall be deemed accepted when it has been signed and a copy returned to the Yucca Valley Redevelopment Agency.



Richard J. Whittingham, CPA
Chief Financial Officer

National Community Renaissance of California

4/15/11

Date



December 21, 2011

Mr. Orlando J. Cabrera
National Community Renaissance of California
9065 Haven Avenue, Suite #100
Rancho Cucamonga, CA 91730

RE: Yucca Valley RDA Senior Housing Funding Commitment

Dear Mr. Cabrera;

The Yucca Valley Redevelopment Agency (Agency) is excited to support National Community Renaissance of California's (National CORE's) application through the County of San Bernardino HOME Affordable Housing Development Program (RFP# RHD-2011/2012-01). The Housing Fund of the Agency is dedicated to providing affordable housing alternatives to the Yucca Valley community, and believes that National CORE's proposed project development (Yucca Valley Seniors) will successfully advance the housing objectives of the Agency.

To this end, on behalf of the Agency, I am pleased to re-affirm the Agency Low/Mod Housing loan commitment in an aggregate amount not to exceed \$3,200,000 (Three million two hundred thousand dollars) and Agency property (the "Property"), as identified in a separate Option Agreement executed between the Agency and National CORE as evidence of National CORE's site control for the County HOME application. These items are committed by the Agency for the Project subject to the standard terms stated herein. The Agency will transfer the Property for \$1.00 (One dollar), which property is currently appraised at \$941,000 (Nine hundred forty one thousand dollars). If all the requirements of this commitment are satisfied, the loans and the Property will be made available to the Project's developer and County HOME Sponsor, National CORE subject to the provisions stated in this funding commitment.

Subject to Agency Board approval, I am confident that the Agency can identify additional resources to support this application in the form of fee deferrals, contribution to regionally significant infrastructure costs, support for connection costs to a planned regional wastewater system, and/or additional low/mod financial resources once the Agency receives guidance from a state Supreme Court ruling on AB 26 & AB 27.



The Town of
Yucca Valley

57090 Twentynine Palms Highway • Yucca Valley, California 92284
760/369-7207 • FAX 760/369-0626

This funding commitment is issued pursuant to and reliant upon information presented in the HOME RFP in connection with this round of available funding. It is also based upon National CORE's agreement that the Project will consist of not less than 75 units of affordable rental housing. This housing will be for seniors age 62 or older who are qualified as very low income with household income not exceeding 50% of Area Median Income (AMI), adjusted for household size, for San Bernardino County. To accomplish this goal, the grant documents for the land will contain appropriate restrictions on the use of the Project and rent charges in connection with the occupancy of the Project units by qualified seniors and their families, as applicable.

The loan term for the monetary contribution will be for a period of 55 years at a simple interest rate of 1%. The loan will be a residual receipts loan and no mandatory periodic payments will be due during the term of the loan. No loan origination or other loan processing fees will be charged to National CORE, with the exception of possible legal fees of the Agency's legal counsel(s). It is National CORE's or its designated borrower's responsibility to ensure that the Agency's legal counsel is provided with all the necessary documentation in a timely and professional manner.

As collateral for the loan, the Agency will take a mortgage and security position on the real property as identified in a Disposition and Development Agreement between the Agency and National CORE (the "DDA"), affecting the Property. This security position will not be any more junior than a third mortgage unless the Agency agrees otherwise in writing. A change in ownership of the Project or in the legal form of the owner of the Project, the placing of additional encumbrances on the Project without the prior written consent of the Agency, failure to maintain the eligible use of the Project as identified in the DDA, or default under senior mortgage loans, shall be among the events of default under the Agency Loan.

This funding commitment is subject to the following conditions to the satisfaction of the Agency:

1. Successful completion of a statutorily required public hearing and report based upon California Health & Safety Code Section 33433 related to the disposition and conveyance of the donated property;
2. Submission to and approval by the Agency of a complete final funding request, which must include:
 - a. Updated development and operating pro-formas including a complete sources and uses of funds statement;
 - b. Evidence of a firm commitment to all acquisition, construction and permanent mortgage financing from those entities and in those amounts shown on the development pro-forma, and on such terms as are acceptable to the Agency.

3. Submission of satisfactory evidence that all legal, design, regulatory, and environmental requirements for the Project are fulfilled and all approvals and site surveys required for the Project are obtained;
4. Submission of and approval by the Agency of evidence of a satisfactory funding commitment for the Project's financing plan, including other financing sources such as tax credit financing, County of San Bernardino HOME funds, and any other funding sources as identified in the Project's pro forma;
5. Submission to and approval by the Agency of a final construction budget with bid prices from the selected general contractor.

The Agency looks forward to the submission of the HOME Affordable Housing Development Program (RFP# RHD-2011/2012-01) application and subsequent County selection for this critical project in Yucca Valley. Through this proposed project, the Agency will be able to provide a greatly desired housing alternative to some of the neediest senior/special needs residents in the County. More importantly, this project will be the catalyst to a series of projects designed to transform the Town's civic center area including:

- **SCAG COMPASS Blueprint Project** – The Town applied for and has been awarded funding to complete a Sustainable Communities Strategies analysis focused on improved mobility, sustainability, and affordability in and around the Town Hall campus (intersection of the SR-62 & SR-247);
- **General Plan Update (Midtown Focused Planning Area)** – As part of the ongoing General Plan Update (scheduled for completion in 2013), the Midtown area has been identified for additional land use visioning to encourage a mixed-use government center that integrates the Town's current facilities (library, museum, community center, senior center, Town Hall offices) with the adjacent neighborhoods to promote additional investment in the core of the community while leveraging the available transit facilities;
- **Transportation Development Act (TDA) Article 3 Pedestrian / Transit Stop Access Improvement Project** – The Town applied for and was recently awarded TDA funding to improve pedestrian access from the proposed Yucca Valley Seniors Project site to adjacent transit bus stops;

In addition to these other initiatives, Town residents are anxious for the Yucca Valley Seniors project to be developed. As a component of the entitlement process, Agency staff conducted a series of outreach efforts within the community to gauge support for the project. From the time that National CORE was selected as our development partner (through the Request for Qualifications (RFQ) process), through the outreach and entitlement process, the response has been overwhelmingly positive, and to this day we continue to have residents dropping by Town Hall inquiring when they can apply for the new apartments that are coming.



ORE

Concept Design
Yucca Valley Seniors
 Yucca Valley, California
 National Community Renaissance

PROJECT SUMMARY

Location:
 29140 Twentynine Palms Street, 29140 Palms Ave.
 92586-0000, Twentynine Palms, California 92586-0000

Zone:
 General Commercial (C2G)
 R24K - Open Space (R24K)

Building Height:
 3 Floors 47' Max

Setbacks
 Front 15'-0"
 Side 15'-0"
 Rear 15'-0"

Typical Unit Plan
 HOUSING FOR SENIORS

Unit Mix
 10 600 SF, 74 675 SF, 20 750 SF, 1 825 SF, 1 900 SF

Parking
 48 Spaces (15% of 320 Units)

UNIT TYPE: One Bedroom Unit
AREA: 600 SF

Alt. #9 1

APRIL 2011

This project will be a jewel for the Town of Yucca Valley. We intentionally situated it adjacent to our Town Hall complex – senior center, library, museum, community center, and park – to showcase the investment of federal, state, and local tax dollars. Unlike many communities, we are putting our affordable housing in the heart of our Town and plan this as a catalyst project for sustainable development. We trust that your application to the County will be successful and that the County understands that the Agency/Town have done everything in our power to move this project forward – without HOME funding, all our efforts will be for naught!

If there is additional information I can provide, don't hesitate to contact me.

Sincerely,



Yucca Valley Redevelopment Agency
Mark N. Nuaimi
Executive Director

This Funding Commitment shall be deemed accepted when it has been signed and a copy returned to the Yucca Valley Redevelopment Agency.



National Community Renaissance of California

12/6/11

Date

Richard J. Whittingham, CPA
Chief Financial Officer

Follow-up Documentation for Item 10. Electronic Copies

1. Exclusive Negotiating Agreement
2. Option Agreement & Staff Report
3. Development and Disposition Agreement
4. Amendment #1 to the Development and Disposition Agreement
5. Letters of Funding Commitment



Flash drive
containing
electronic
version of all five
documents
attached here.