



City of Fontana

8353 Sierra Avenue
Fontana, CA 92335

Action Report

City Council Meeting

File #: 21-2598

Agenda #: D.

Agenda Date: 11/14/2023

Category: Public Hearing

FROM:
Development Services

SUBJECT:

Public Hearing and consideration of a Disposition and Development Agreement (“DDA”) between the City of Fontana, the Fontana Housing Authority and Fontana Courtplace I Housing Partners, L.P., for development of 1.94 acres of unimproved land located on Sierra Avenue, between Santa Ana Avenue to the north and Jurupa Avenue to the south (a portion of assessor parcel numbers 0255-101-22-0-000 and 0255-101-23-0-000)(“Property”) pursuant to California Environmental Quality Act findings concerning the adequacy of the previously adopted Mitigated Negative Declaration, and Mitigation, Monitoring, and Reporting Program.

RECOMMENDATION:

1. Acting as the City Council, conduct a public hearing to consider protests to the conveyance of 1.94 acres of unimproved land located on Sierra Avenue, between Santa Ana Avenue to the north and Jurupa Avenue to the south (a portion of assessor parcel numbers 0255-101-22-0-000 and 0255-101-23-0-000) (“Property”); determine public interest and convenience require the sale of the Property;
2. Acting as the City Council and Housing Authority Board of Directors, jointly adopt the Resolution Approving the Disposition and Development Agreement among the Fontana Housing Authority, City of Fontana and Fontana Courtplace I Housing Partners, L.P. for the sale of Property for the construction of a 50 unit affordable family-apartment housing project and adopt California Environmental Quality Act findings concerning the adequacy of the previously adopted Mitigated Negative Declaration, and Mitigation, Monitoring, and Reporting Program and direct staff to file a Notice of Determination.

COUNCIL GOALS:

- To promote affordable housing by construction of high-quality multi-family housing which also serves to address the affordability needs of this community.

DISCUSSION:

The City has been in negotiations with Fontana Courtplace I Housing Partners, L.P., a California limited partnership (the “Developer”), regarding the development of a 50-unit affordable family-apartment housing project (“Project”) on the City-owned Property. Negotiations have included the sale and purchase of the Property to permit the Developer to commence with the project. In order to complete the sale and purchase of the Property, the City is required to declare the Property as exempt surplus land pursuant to the Surplus Land Act, Government Code Section 54221(f)(1)(A). As such, it is required that the City conduct a public hearing to consider protests regarding the property

conveyance. Additionally, the City and Developer have negotiated a DDA for the project, which includes the terms of the Property sale and purchase.

Surplus Land Act

California Government Code Section 54220 et seq. (the “Surplus Land Act”) was amended in 2019 by Assembly Bill 1486 (“AB 1486”) and requires, among other things, that prior to the disposal of any surplus land, a local agency must provide notice to, among others, affordable housing developers, and thereafter negotiate in good faith for ninety (90) days with any parties who submit a notice of interest, unless an exemption applies. Under the Surplus Land Act, as amended by AB 1486, a property is considered exempt surplus land if it is being transferred to a developer for developing housing where at least 40% of the total developed units are to be affordable to households whose incomes are less than or equal to 75% of the maximum income for lower income households (80% of Area Median Income (“AMI”), and at least half of the affordable units are set aside for very low income households (50% of AMI).

The Project to be developed on the Property will consist of 50 affordable family-apartment units, all but the manager unit, will be low, to very low or extremely low-income units. The affordability level of the units is as follows: five (5) of the units will be leased to extremely low-income households (i.e., 30% of the AMI), 25 of the units shall be leased to households that are very low income (i.e., 40%-50% AMI), and 19 units shall be leased to lower income households (i.e., 60% AMI); and there is one manager unit. The affordability levels as detailed above satisfy the requirements set forth in Government Code Section 37364, and therefore the transfer of the Property is exempt from the Surplus Land Act.

Pursuant to Government Code Section 37422 et seq., the Council adopted Resolution No. 2023-102 on October 24, 2023, declaring the property exempt from the Surplus Land Act and fixing the time for hearing protests to the property conveyance and taking final action regarding the conveyance (providing for publication of notice of the hearing and an accurate description of the property)., The Resolution has submitted to the California Department of Housing and Community Development to determine if the transaction is exempt from the Surplus Land Act, and in the event that determination is not confirmed the transaction will be terminated to comply with the Act.

In accordance with California Government Code Section 37420 et seq., the City must hold a public hearing to accept any written protests received from interested parties and, if no protests are received or if the city council votes to overrule a protest by a 4/5 majority, the City Council may adopt a resolution finding that the public interest and convenience require the sale of the Property and proceed with the sale of the Property.

Disposition and Development Agreement

The DDA stipulates the following:

- Project details to include the construction of a 50-unit affordable family-apartment housing project as detailed above;
- Terms of the Property sale and purchase including that upon receipt of a Tax Credit allocation by the Developer, the City would convey the Property to the Developer;
- Provision allowing the City to terminate the DDA if a final exempt determination is not received from the California Department of Housing and Community Development; and
- The Project has a 99-year affordability covenant commencing from recordation of the Grant

Deed.

- The Project would commence within 10 days after close of escrow and the construction must be completed within 24 months from close of escrow.

Financing

The total Project cost is estimated at \$34.2 million, and the financing of the Project will come from multiple sources. The Developer will be seeking both a Federal and State Tax Credits as well as a Senior Loan from a reputable institutional lender. Pursuant to the DDA the City would provide funding and financing in the amount of \$14.1 million as detailed below:

Predevelopment Loan	(1)	\$ 600,000.00
Housing Authority Subordinate Loan	(1)	4,662,307.84
City Loan (Gap Financing)	(2)	6,037,692.16
		<hr/>
	Total City Financing	11,300,000.00

(1) Funding Sources: Low/Mod Asset Funds (\$1,678,959.21)

and AB 1486 (Surplus Land) Funds (\$3,583,348.63)

(2) Funding Sources: Federal HOME (FY 2018-23 + PI)

(\$2,700,000) and Affordable Housing Trust Fund

Development Impact Fees (\$3,337,692.16)

City Land Loan	(3)	2,800,000.00
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(3) The City shall record a note and trust deed against the property as security for repayment of the land loan.

Regulatory Agreement

The Project will be subject to Regulatory Agreement (attached to the DDA as Exhibit L) The Regulatory Agreement requires the Project comply with the following affordability thresholds:

- Five (5) of the units will be leased to extremely low-income households (i.e., 30% of the AMI) consisting of 3 two-bedroom units, and 2 three-bedroom units.
- Ten (10) of the units shall be leased to households that are very low income (i.e. 40% of the AMI) consisting of 2 one-bedroom units, 6 two-bedroom units, and 2 three-bedroom units.
- Fifteen (15) of the units shall be leased to households that are very low income (i.e., 50% AMI) consisting of 3 one-bedroom units, 10 two-bedroom units, and 2 three-bedroom units.
- Nineteen (19) units shall be leased to lower income households (i.e., 60% AMI) consisting of 2 one-bedroom units, 10 two-bedroom units, and 7 three-bedroom units.
- One (1) manager unit containing two-bedrooms.

Eligible persons and families on the City's waiting list and eligible persons and families displaced by Authority will be given priority in the selection of the tenants of the Project.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Pursuant to the California Environmental Quality Act (Pub. Res. Code §§ 21000 et seq.) ("CEQA"), and the State CEQA Guidelines (14 Cal. Code Regs. §§ 15000 et seq.) the City determined that a Mitigated Negative Declaration (MND) would be prepared in order to analyze all potential adverse environmental impacts of a proposed multi-level residential affordable apartment buildings with associated green space, community gathering areas, vehicle parking, landscaping, and security fencing on the approximately 4.8-acres of land ("Courtplace Project"). The City prepared and adopted the Courtplace Project MND on November 1, 2022 for the Courtplace Project.

Pursuant to CEQA, when taking subsequent discretionary actions in furtherance of a project for which an MND has been adopted, the lead agency is required to review any changed circumstances to determine whether any of the circumstances under Public Resources Code section 21166 and State CEQA Guidelines Section 15162 require additional environmental review. Staff evaluated the proposed Resolution approving the DDA and Regulatory Agreement for the Property in light of the standards for subsequent environmental review outlined in Public Resources Code section 21166, State CEQA Guidelines section 15162 and City of Fontana's 2019 Local Guidelines for Implementing CEQA; and,

In connection with the Resolution approving the DDA and Regulatory Agreement for the Property and the City Council's review of the Courtplace Project MND, staff recommends that the City Council independently review all the prior environmental documentation prepared for the Courtplace Project, and exercise its independent judgment in making the determination that the Courtplace Project MND fully analyzed and mitigated, all potentially significant environmental impacts, if any, that would result from adoption of Resolution approving the DDA and Regulatory Agreement for the Property, and therefore, no subsequent EIR or mitigated negative declaration is required.

FISCAL IMPACT:

The fiscal impact associated with the approval of this item is \$11,300,000 for the project for which the City will provide to the Developer for project financing and will only be realized upon an award of construction financing. In addition, the City will record a receivable in the form of a \$2.8 million loan in lieu of direct and immediate payment for the land. The loan repayment is a term of 58 years. The required appropriation was not included in the 2023-24 Revised Budget. The required budget adjustments will be submitted in the next quarterly budget report as follows:

Fund	Increase in Appropriations
Housing Authority AB 1486 (291)	3,583,348.63
Housing Authority LMIHF (297)	1,678,959.21
Affordable Housing Trust (698)	3,337,692.16
HOME (363)	<u>2,700,000.00</u>
Total	11,300,000.00

MOTION:

If received, City Council overrule any protests to the conveyance of 1.94 acres of unimproved land located on Sierra Avenue, between Santa Ana Avenue to the north and Jurupa Avenue to the south

(a portion of assessor parcel numbers 0255-101-22-0-000 and 0255-101-23-0-000)(“Property”) and determine the public interest and convenience require the sale of the Property;

City Council and Housing Authority adopt the Joint Resolution Approving the Disposition and Development Agreement among the Fontana Housing Authority, City of Fontana and Fontana Courtplace I Housing Partners, L.P. for the sale of Property for the construction of a 50 unit affordable family-apartment housing project and adopt California Environmental Quality Act findings concerning the adequacy of the previously adopted Mitigated Negative Declaration, and Mitigation, Monitoring, and Reporting Program and direct staff to file a Notice of Determination.

¹A Four-Fifths vote is required to overrule any protests to the Property Conveyance

**CITY COUNCIL RESOLUTION NO. 2023-113
FONTANA HOUSING AUTHORITY RESOLUTION NO. 2023-003**

A JOINT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA AND HOUSING AUTHORITY OF THE CITY OF FONTANA, FINDING PUBLIC CONVENIENCE AND NECESSITY SUPPORT THE SALE OF THE PROPERTY; APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT AND REGULATORY AGREEMENT AMONG THE FONTANA HOUSING AUTHORITY, CITY OF FONTANA, AND FONTANA COURTPLACE I HOUSING PARTNERS, L.P., FOR THE SALE OF 1.94 ACRES OF UNIMPROVED LAND LOCATED ON SIERRA AVENUE, BETWEEN SANTA ANA AVENUE TO THE NORTH AND JURUPA AVENUE TO THE SOUTH (A PORTION OF ASSESSOR PARCEL NUMBERS 0255-101-22-0-000 AND 0255-101-23-0-000); AND ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS CONCERNING THE ADEQUACY OF THE PREVIOUSLY ADOPTED MITIGATED NEGATIVE DECLARATION, MITIGATION, MONITORING, AND REPORTING PROGRAM.

WHEREAS, the City of Fontana (“City”) currently owns in fee that certain real property consisting of 1.94 acres of unimproved land located on Sierra Avenue, between Santa Ana Avenue to the north and Jurupa Avenue to the south (a portion of assessor parcel numbers 0255-101-22-0-000 and 0255-101-23-0-000) and legally described in **Exhibit “A”** attached to this resolution and incorporated by reference herein (the “Property”); and

WHEREAS, the City desires to sell the Property by executing a Disposition and Development Agreement (“DDA”) and Regulatory Agreement in a form substantially similar to **Exhibit “B”** attached to this resolution and incorporated by reference herein with Fontana Courtplace I Housing Partners, L.P. (“Purchaser”); and

WHEREAS, California Government Code Section 54220 *et seq.* (the “Surplus Land Act”) was amended in 2019 by Assembly Bill 1486 (“AB 1486”); and

WHEREAS, the Surplus Land Act, as amended by AB 1486, does not apply to this Property because pursuant to section 54221(f)(1)(A) of the Surplus Land Act, this Property is being transferred pursuant to Government Code Section 37364; and

WHEREAS, Government Code Section 37364 authorizes cities to convey land to a developer for developing housing where at least 40% of the total developed units are to be affordable to households whose incomes are less than or equal to 75% of the maximum income for lower income households (80% of Area Median Income “AMI”), and at least half of the affordable units are set aside for very low income households (50% of AMI); and

CC Resolution 2023-113/FHA Resolution 2023-003

WHEREAS, pursuant to the Surplus Land Act, ten of the affordable units will be leased to families at or below 50% AMI and ten of the affordable units will be leased to families at or below 60% AMI in compliance with Government Code Section 37364, and

WHEREAS, California Government Code Sections 37420 through 37430 authorize the City to dispose of property; and

WHEREAS, on October 24, 2023, the City Council passed and approved Resolution No. 2023-102 which declared the City's intent to sell the Property and announced a public hearing scheduled for November 14, 2023, at 7:00 pm in order to hear any protests to the sale, and published notice of said hearing, and fixed the time for final action on the disposition of the Property and approval of the DDA; and

WHEREAS, in accordance with Government Code section 65402, the proposed disposition of the Property under the DDA will be presented to the City's Planning Commission ("Planning Commission") prior to the close of escrow; and

WHEREAS, pursuant to CEQA, when taking subsequent discretionary actions in furtherance of a project for which an MND has been adopted, the lead agency is required to review any changed circumstances to determine whether any of the circumstances under Public Resources Code section 21166 and State CEQA Guidelines Section 15162 require additional environmental review; and,

WHEREAS, staff evaluated this Resolution approving a DDA and Regulatory Agreement for the Property in light of the standards for subsequent environmental review outlined in Public Resources Code section 21166, State CEQA Guidelines section 15162 and City of Fontana's 2019 Local Guidelines for Implementing CEQA; and,

WHEREAS, in connection with this Resolution approving the DDA and Regulatory Agreement for the Property and the City Council's review of the Courtplace Project MND, the City Council has independently reviewed all the prior environmental documentation prepared for the Courtplace Project, and has exercised its independent judgment in making the determination that the Courtplace Project MND fully analyzed and mitigated, all potentially significant environmental impacts, if any, that would result from the sale, and therefore, no subsequent EIR or mitigated negative declaration is required; and,

WHEREAS, the City, having heard protest, now desires to approve the execution of the DDA and Regulatory Agreement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA, AND THE HOUSING AUTHORITY OF THE CITY FONTANA DO HEREBY RESOLVE AS FOLLOWS:

Section 1. Incorporation of Recitals. The foregoing recitals are true and correct and are incorporated herein and made an operative part of this Resolution.

CC Resolution 2023-113/FHA Resolution 2023-003

Section 2. Surplus Land Act Findings. The City Council of the City hereby finds and determines that the Property is exempt from the Surplus Land Act, as amended by AB 1486, because the Property is being transferred pursuant to Government Code Section 37364

Section 3. CEQA Findings The City Council and Housing Authority have reviewed and considered the Courtplace Project MND and the Mitigation, Monitoring, and Reporting Program (MMRP), pursuant State CEQA Guidelines Sections 15162 and 15164 along with the City of Fontana's 2019 Local Guidelines for Implementing CEQA, and has determined that the Courtplace Project MND fully analyzed and mitigated all potentially significant environmental impacts, if any, that would result from the Resolution approving the DDA and Regulatory Agreement for the Property, and therefore, no subsequent EIR or mitigated negative declaration is required.

Section 4. Public Convenience and Necessity Findings. The City Council hereby finds and determines that public convenience and necessity require the sale of the Property. The factors demonstrating that the public convenience and necessity require the sale of the Property include but are not limited to the following: (1) the Property is no longer needed by the City, and in excess of its foreseeable needs; (2) Developing the Property for a higher use with a 50 affordable family units, will revitalize an underutilized property, and provide much needed affordable housing in the City, that will assist City meet its Regional Housing Needs Allocation, and create jobs within the City; (3) it will alleviate conditions of economic and physical blight in the City, and potentially create an increase in property taxes by virtue of rising values, all of which benefit the health, safety, and welfare of the City.

Section 5. Approval. The City Council and Housing Authority approve the DDA (attached as **Exhibit "B"**) and accompanying Regulatory Agreement (attached as Exhibit "L" of the DDA). The City Council and Housing Authority authorize the City Manager or designee, in consultation with the City Attorney, to take all necessary actions to effectuate the execution of the DDA and Regulatory Agreement after that time and make any minor revisions to the documents necessary to effectuate the intent of the parties. The City Manager is directed to perform the obligations of the City and Housing Authority under the DDA and Regulatory Agreement .

Section 6. Notice of Determination. The City Council hereby directs staff to prepare, execute and file with the San Bernardino County Clerk a Notice of Determination within five working days of the approval of this Resolution.

Section 7. Custodian of Documents. The custodian of documents constituting the record of proceedings for this matter is the City Clerk of the City of Fontana. The documents constituting the record of proceedings for this matter are located at City Hall at 8353 Sierra Avenue, Fontana, CA 92335.

Section 8. Severability. If any provision of this Resolution is held invalid, the remainder of this Resolution shall not be affected by such invalidity, and the provisions of

CC Resolution 2023-113/FHA Resolution 2023-003

this Resolution are severable.

Section 9. Effective Date. This Resolution shall become effective immediately upon its adoption, and the effective date of the DDA and Regulatory Agreement shall be effective when signed by all Parties.

APPROVED AND ADOPTED this 15th day of November, 2023.

READ AND APPROVED AS TO LEGAL FORM:

Ruben Duran

City Attorney

I, Germaine Key, City Clerk of the City of Fontana and Ex-Officio Clerk of the City Council, do hereby certify that the foregoing resolution is the actual resolution duly and regularly adopted by the City of Fontana at a regular meeting thereof, held on the 15th day of November 2023, by the following vote to wit:

AYES: Mayor Warren, Mayor Pro Tem Garcia, Council Members Cothran, Roberts and Sandoval

NOES: None

ABSENT: None

ABSTAIN: None

Germaine Key

City Clerk of the City of Fontana

Lequanetta Warren

Mayor of the City of Fontana

ATTEST:

Germaine Key

City Clerk

EXHIBIT "A"
TO
CITY COUNCIL RESOLUTION NO. 2023-113
FONTANA HOUSING AUTHORITY RESOLUTION NO. 2023-003

LEGAL DESCRIPTION OF PROPERTY

APN No. 0255-101-22-0000

S T L AND W CO S B L S 45 FT OF E 397.12 FT SE 1/4 LOT 769

APN No. 0255-101-23-0000

S T L AND W CO S B L SE 1/4 LOT 769 EX S 45 FT OF E 397.12 FT THEREOF

Certificate Of Completion

Envelope Id: 8052708ADFFB4AEC9379F706EABDD037

Status: Completed

Subject: Please Sign Reso 2023-113.pdf

Source Envelope:

Document Pages: 5

Signatures: 4

Envelope Originator:

Certificate Pages: 5

Initials: 0

City Clerk

AutoNav: Enabled

EnvelopeD Stamping: Enabled

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

8353 Sierra Avenue

Fontana, CA 92335

clerks@fontana.org

IP Address: 192.146.186.96

Record Tracking

Status: Original

Holder: City Clerk

Location: DocuSign

11/16/2023 | 05:27 PM

clerks@fontana.org

Signer Events

Ruben Duran

Signature**Timestamp**

ruben.duran@bbklaw.com

Sent: 11/16/2023 | 05:27 PM

Security Level: Email, Account Authentication
(None)

Viewed: 11/16/2023 | 06:26 PM

Signature Adoption: Pre-selected Style

Signed: 11/16/2023 | 06:26 PM

Using IP Address: 74.116.243.2

Electronic Record and Signature Disclosure:

Accepted: 11/16/2023 | 06:26 PM

Sent: 11/16/2023 | 06:26 PM

ID: f04100c2-3f31-443a-bbfd-036ab6910fb7

Acquanetta Warren



Viewed: 11/16/2023 | 06:58 PM

awarren@fontana.org

Signed: 11/16/2023 | 06:59 PM

Security Level: Email, Account Authentication
(None)

Signature Adoption: Pre-selected Style

Using IP Address: 174.231.227.34

Signed using mobile

Electronic Record and Signature Disclosure:

Accepted: 11/16/2023 | 06:58 PM

Sent: 11/16/2023 | 06:59 PM

ID: 8d387b64-2640-4e61-aeec-9fbf5246fb57

Germaine Key



Viewed: 11/16/2023 | 08:58 PM

gkey@fontana.org

Signed: 11/16/2023 | 08:58 PM

Security Level: Email, Account Authentication
(None)

Signature Adoption: Pre-selected Style

Using IP Address: 107.201.246.59

Electronic Record and Signature Disclosure:

Accepted: 11/16/2023 | 08:58 PM

Sent: 11/16/2023 | 08:58 PM

ID: 20f02884-f830-45fe-bdf7-11ecbddedef1

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp**

Carbon Copy Events

Kathy Kasinger

kkasinger@fontanac.org

Records Coordinator

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**

Accepted: 6/26/2023 | 12:01 PM

ID: 313ff663-c622-41d0-ac8d-292f7d782a66

Status**COPIED****Timestamp**

Sent: 11/16/2023 | 08:59 PM

Viewed: 11/21/2023 | 01:13 PM

Wendy Duenas

wduenas@fontanac.org

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

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Sent: 11/16/2023 | 08:59 PM

Witness Events**Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent

Hashed/Encrypted

11/16/2023 | 05:27 PM

Certified Delivered

Security Checked

11/16/2023 | 08:58 PM

Signing Complete

Security Checked

11/16/2023 | 08:58 PM

Completed

Security Checked

11/16/2023 | 08:59 PM

Payment Events**Status****Timestamps****Electronic Record and Signature Disclosure**

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Fontana (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Fontana:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: ctejeda@fontana.org

To advise City of Fontana of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at ctejeda@fontana.org and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from City of Fontana

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to ctejeda@fontana.org and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Fontana

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to ctejeda@fontana.org and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERs):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none">•Allow per session cookies•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Fontana as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Fontana during the course of my relationship with you.

DISPOSITION AND DEVELOPMENT AGREEMENT

(Fontana Courtplace I Family Apartments)

Among

FONTANA HOUSING AUTHORITY,

CITY OF FONTANA

and

FONTANA COURTPLACE I HOUSING PARTNERS, L.P.

(September ____, 2023)

DISPOSITION AND DEVELOPMENT AGREEMENT

(Fontana Courtplace I Family Apartments)

This Disposition and Development Agreement (“Agreement”), dated September ___, 2023 for identification purposes only, is among the Fontana Housing Authority (“Authority”), a public body, corporate and politic, the City of Fontana, California (“City”), a municipal corporation and Fontana Courtplace I Housing Partners, L.P. (“Partnership”), a California limited partnership. The Authority and Partnership is each a “Party.”

RECITALS

- A. The general partners of Partnership are experienced owners, developers, and managers of affordable housing for low-income residents.
- B. The City is the owner of fee title to 4.72 acres of unimproved land comprised of Assessor Parcel Numbers 0255-101-22-0-000 and 0255-101-23-0-000, located on Sierra Avenue, between Santa Ana Avenue to the north and Jurupa Avenue to the south, in the City of Fontana and legally described on Exhibit A-1 attached hereto (“Site”).
- C. The parties intend for The Related Companies of California, a California limited liability company (“TRCC”) to divide the Site into at least two (2) separate legal parcels pursuant to a lot line adjustment as part of the entitlement process prior to the Close of Escrow.
- D. The parties intend, on the terms and conditions set forth in this Agreement, for the City to transfer a fee interest in a portion of the Site (the “Property”) (more particularly described on Exhibit A-2) to Partnership and for Partnership to develop thereon the affordable family-apartment rental housing project described in the Scope of Development (the “Project”).
- E. The Parties anticipate the City may transfer a fee interest in the remaining portion of the Site (the “Phase II Property”) to a limited partnership in which TRCC (or an affiliate thereof) is a general partner (the “Phase II Partnership”) which the Phase II Partnership may develop thereon an affordable family-apartment rental housing project (currently projected to include fifty-six residential units) to be described in a to-be-negotiated Disposition and Development Agreement between the Authority and the Phase II Partnership.
- F. For purposes of compliance with the California Environmental Quality Act (“CEQA”), the City is relying upon the previously adopted Initial Study/Mitigated Negative Declaration and Mitigation Monitoring Reporting Program as approved by the City Planning Commission on November 1, 2022 for the Project.

G. The Parties have determined that the Site qualifies as exempt surplus land under the terms of the Surplus Land Act (California Government Code Section 54220-54234) (the “SLA”) and the City agrees to comply with the SLA as more fully provided herein.

H. In order to make the Project financially feasible, City and Authority also will, on the terms and conditions set forth in this Agreement, provide certain financial assistance to Partnership.

I. In consideration of the mutual promises, covenants, and conditions herein, City, Authority and Partnership agree as follows:

TERMS AND CONDITIONS

1. Definitions and Interpretation

1.1 Defined Terms. As used in this Agreement (including in the Recitals above), capitalized terms are defined where first used or as set forth in this Section. Capitalized terms used in an exhibit to this Agreement and not defined in the exhibit have the meanings set forth in this Section 1.1.

1.1.1 **“Actual Permanent Loan Amount”** means the actual principal amount of the Authority Take-Out Loan.

1.1.2 **“Actual Tax Credit Equity”** means the actual amount of equity raised by Partnership from syndication of the Tax Credits.

1.1.3 **“Authority Subordinate Loan”** means the loan to be made to Partnership pursuant to Section 11.1 consisting of Five Million Two Hundred Sixty Two Thousand Three Hundred Seven Dollars and Eighty-Four Cents (**\$5,262,307.84**) in gap financing.

1.1.4 **“Authority Subordinate Loan Closing”** means recordation of the Authority Subordinate Loan Deed of Trust in the Official Records.

1.1.5 **“Authority Subordinate Loan Deed of Trust”** means the deed of trust encumbering the Property, in the form attached hereto as Exhibit G, to be executed by Partnership pursuant to Section 11.2 in order to secure the Authority Subordinate Loan Note.

1.1.6 **“Authority Subordinate Loan Documents”** means, collectively, this Agreement, the Authority Subordinate Loan Note, the Authority Subordinate Loan Deed of Trust and any other agreement, document or instrument that Authority requires in connection with the Authority Subordinate Loan.

1.1.7 “**Authority Subordinate Loan Note**” means that certain promissory note in the form attached hereto as Exhibit F, to be executed by Partnership in favor of Authority to evidence the obligation of Partnership to repay the Authority Subordinate Loan.

1.1.8 “**Authority Title Policy**” has the meaning set forth in Section 12.1.5.

1.1.9 “**Building Permit**” means all permits issued by City and required for commencement of construction of the Improvements.

1.1.10 “**Certificate of Completion**” has the meaning set forth in Section 16.

1.1.11 “**City**” has the meaning set forth in the opening paragraph of this Agreement.

1.1.12 “**City Indemnified Parties**” has the meaning set forth in Section 9.4.2.

1.1.13 “**City Subordinate Loan**” means the loan to be made to Partnership pursuant to Section 11.1 consisting of Six Million Thirty Seven Thousand Six Hundred Ninety Two Dollars and Sixteen Cents (**\$6,037,692.16**) in gap financing and Two Million Eight Hundred Thousand Dollars (**\$2,800,000**) in acquisition financing.

1.1.14 “**City Subordinate Loan Closing**” means recordation of the City Subordinate Loan Deed of Trust in the Official Records.

1.1.15 “**City Subordinate Loan Deed of Trust**” means the deed of trust encumbering the Property, in the form attached hereto as Exhibit K, to be executed by Partnership pursuant to Section 11.2 in order to secure the City Subordinate Loan Note.

1.1.16 “**City Subordinate Loan Documents**” means, collectively, this Agreement, the City Subordinate Loan Note, the City Subordinate Loan Deed of Trust and any other agreement, document or instrument that City requires in connection with the City Subordinate Loan.

1.1.17 “**City Subordinate Loan Note**” means that certain promissory note in the form attached hereto as Exhibit J, to be executed by Partnership in favor of City to evidence the obligation of Partnership to repay the City Subordinate Loan.

1.1.18 “**Close of Escrow**” means recordation of the Grant Deed, the Senior Loan Security Documents, the Authority Subordinate Loan Deed of Trust, the City Subordinate Loan Deed of Trust and the City Acquisition Loan Deed of Trust, in the Official Records.

1.1.19 “**Construction Lender**” means the first trust deed lender that provides construction financing for the Project.

1.1.20 “**Construction Loan**” means the construction loan for the Project secured by the Senior Loan Security Documents.

1.1.21 “**Construction Loan Closing**” means recordation of the Senior Loan Security Documents, the Authority Subordinate Loan Deed of Trust, the City Subordinate Loan Deed of Trust and the City Acquisition Loan Deed of Trust in the Official Records.

1.1.22 “**County**” means the County of San Bernardino, California.

1.1.23 “**Effective Date**” means the date on which the Authority, the City and the Developer have fully-executed this Agreement.

1.1.24 “**Escrow**” means the escrow through which (a) the Property is sold to Partnership, (b) the Construction Loan Closing is conducted, and (c) the Authority Subordinate Loan Closing, the City Subordinate Loan Closing and the City Acquisition Loan is conducted.

1.1.25 “**Escrow Holder**” means the firm that holds the Escrow.

1.1.26 “**Event of Default**” has the meaning set forth in Section 19.1.

1.1.27 “**Evidence of Financing**” has the meaning set forth in Section 6.4.

1.1.28 “**Executive Director**” means the Executive Director of the Authority or his designee.

1.1.29 “**Federal Tax Credit**” has the meaning set forth in Section 6.1.1.

1.1.30 “**Final Project Budget**” has the meaning set forth in Section 7.4.2.

1.1.31 “**Final Construction Documents**” means plans, drawings and specifications in sufficient detail to support issuance of a Building Permit for the Project.

1.1.32 “**General Contractor**” has the meaning set forth in Section 7.4.4.

1.1.33 “**Grant Deed**” means that certain grant deed attached hereto as Exhibit E.

1.1.34 “**Hazardous Materials**” means flammable materials, explosives, radioactive materials, hazardous wastes, toxic substances and similar substances and materials, including all substances and materials defined as hazardous or toxic wastes,

substances or materials under any applicable law, including, without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 42 §§ 9601, et seq., as amended. Hazardous Materials expressly exclude substances typically used in the construction, development, operation and maintenance of an apartment complex provided such substances are used in accordance with all applicable laws.

1.1.35 “**Improvements**” means the improvements to be made to the Property in accordance with this Agreement, including, without limitation, in accordance with the Scope of Development and the Final Construction Documents.

1.1.36 “**Indemnitees**” means the Authority, City, and their officers, employees, representatives, agents and volunteers.

1.1.37 “**Land Use Entitlements**” has the meaning set forth in Section 4.1.

1.1.38 “**Licensee Liabilities**” has the meaning set forth in in Section 9.4.2.

1.1.39 “**Licensee Parties**” has the meaning set forth in Section 9.4.1.

1.1.40 “**Notices**” has the meaning set forth in Section 20.

1.1.41 “**Official Records**” means the Official Records of the County.

1.1.42 “**Partnership**” has the meaning set forth in the opening paragraph of this Agreement.

1.1.43 “**Partnership Title Policy**” has the meaning set forth in Section 7.6.1.

1.1.44 “**Permitted Encumbrances**” means the Senior Loan Security Documents and such other exceptions to title approved by the Executive Director and City Manager.

1.1.45 “**Pre-Closing License**” has the meaning set forth in in Section 9.4.

1.1.46 “**Predevelopment Documents**” means any and all plans, studies, drawings, models, reports, permits and Land Use Entitlements for the Project.

1.1.47 “**Predevelopment Loan**” means that portion of the Authority Subordinate Loan in the original principal amount of Six Hundred Thousand Dollars [\$600,000] that the Authority advances to Partnership before Close of Escrow, under a Predevelopment Note and secured by an Assignment of Work Product, to reimburse Partnership for predevelopment costs that will be incorporated into the Authority Subordinate Loan at closing. The form of the Predevelopment Note and Assignment of Work

are attached to this DDA as Exhibits O and P. Partnership acknowledges that Three Hundred Forty-Nine Thousand Nine Hundred Seventy-Five Dollars and Fifty-Seven Cents (\$349,975.57) of the Predevelopment Loan was disbursed to Partnership prior to the execution of this Agreement.

1.1.48 **“Preliminary Project Budget”** has the meaning set forth in Section 6.2.1.

1.1.49 **“Project”** has the meaning set forth in Recital D above.

1.1.50 **“Project Architect”** has the meaning set forth in Section 5.4.

1.1.51 **“Project Costs”** means all costs of any nature incurred in connection with development of the Project.

1.1.52 **“Project Documents”** means, collectively, this Agreement, the Authority Subordinate Loan Documents, the City Subordinate Loan Documents, the Grant Deed and any other agreement, document or instrument that Partnership, City and Authority enter into pursuant to this Agreement or in order to effectuate the purposes of this Agreement.

1.1.53 **“Project Financing”** has the meaning set forth in Section 6.1.

1.1.54 **“Property”** has the meaning set forth in Recital D above.

1.1.55 **“QAP”** means the **“Low Income Housing Tax Credit Programs Qualified Allocation Plan”** adopted by the California Tax Credit Allocation Committee in accordance with the standards and procedures of Internal Revenue Code Section 42(m), and the rules and regulations adopted by such Committee from time to time for the implementation thereof.

1.1.56 **“Regulatory Agreement”** is attached hereto as Exhibit L.

1.1.57 **“Schedule of Performance”** means the Schedule of Performance attached hereto as Exhibit B.

1.1.58 **“Senior Lender”** means the Construction Lender or the Take-Out lender, as the context requires, and their successors and assigns.

1.1.59 **“Senior Loan”** means the Construction Loan or the Take-Out Loan as the context requires.

1.1.60 **“Senior Loan Security Documents”** means the documents and instruments required by the Senior Lender to secure the Senior Loan.

1.1.61 "**SLA**" has the meaning set forth in the Recitals.

1.1.62 "**State Tax Credit**" has the meaning set forth in Section 6.1.2.

1.1.63 "**Take-Out Lender**" means the lending institution that makes the Take-Out Loan and its successors and assigns.

1.1.64 "**Take-Out Loan**" means the long-term loan made by the Take-Out Lender to Partnership in order to take out the Construction Loan.

1.1.65 "**Tax Credits**" means the Federal Tax Credits and, if applicable, State Tax Credits required to finance the Project in the manner contemplated in the Preliminary Project Budget attached to this Agreement as Exhibit D.

1.1.66 "**Tax Credit Funds**" has the meaning set forth in Subdivision 7.4.3(B).

1.1.67 "**Title Company**" means Fidelity National Title Company, First American Title Insurance Company, Old Republic Title Company, or such other title insurance company agreed to by Partnership, City Manager and the Executive Director.

1.1.68 "**Total Development Cost**" means the total development cost for the Project as reported to the Tax Credit Allocation Committee in the application for Tax Credits for the Project.

1.2 Singular and Plural Terms. Any defined term used in the plural in this Agreement shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class.

1.3 Accounting Principles. Any accounting term used and not specifically defined in this Agreement shall be construed in conformity with, and all financial data required to be submitted under this Agreement shall be prepared in conformity with, generally accepted accounting principles applied on a consistent basis or in accordance with such other principles or methods as are reasonably acceptable to Authority.

1.4 References and Other Terms. References herein to Sections and Exhibits shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The terms "including" and "include" mean "including (include) without limitation."

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

2. Parties

2.1 Authority. Authority is the Fontana Housing Authority and any successor to its rights, powers and responsibilities. The principal offices of the Authority are located at 8353 Sierra Avenue, Fontana, California 92335.

2.2 Partnership. Partnership is Fontana Courtplace I Housing Partners, L.P., a California limited partnership. The principal offices of Partnership are located at c/o, Related/Fontana Courtplace I Development Co., LLC, 18201 Von Karman Avenue, Suite 900, Irvine, California, 92612.

2.3 City. City is the City of Fontana, a municipal corporation, duly formed and existing within the State of California.

3. Schedule of Performance. A Schedule of Performance for the Project is attached hereto as Exhibit B. The Schedule of Performance sets forth the times by which the parties are to perform certain obligations under this Agreement. The Schedule of Performance may be modified from time to time by written agreement of Partnership, the City Manager and Executive Director.

4. Land Use Entitlements

4.1 Application Pending. The parties acknowledge and agree that as of the date of this Agreement the City has approved certain land use entitlements necessary to allow Partnership to develop the Property in the manner required by this Agreement (the “Land Use Entitlements”).

4.2 Partnership Right to Terminate. Prior to the Construction Loan Closing, Partnership, if it is not then in material default under this Agreement (subject to the notice and cure provisions of Section 19.1), may terminate this Agreement by giving 30 days’ notice to Authority and City if, despite having made all commercially reasonable efforts, Partnership is unable, by the time provided in the Schedule of Performance, to secure the Land Use Entitlements. That notwithstanding, if Partnership gives notice to Authority pursuant hereto, and if the Land Use Entitlements are secured during the 30-day notice period, Partnership’s notice of termination shall be deemed nullified thereby. As of the Effective Date of this Agreement, the Partnership has obtained all necessary Land Use Entitlements.

4.3 Authority Right to Terminate. Prior to the Construction Loan Closing, Authority, if it is not then in material default under this Agreement, may terminate this Agreement by giving 30 days’ notice to Partnership if the Land Use Entitlements have not, by the time provided in the Schedule of Performance, been secured. That notwithstanding, if Authority gives notice to Partnership pursuant hereto, and if the Land Use Entitlements are secured during the 30-day notice period, Authority’s notice of termination shall be deemed nullified thereby. As of the Effective Date of this Agreement, the Partnership has obtained all necessary Land Use Entitlements.

4.4 Article XXXIV. The Authority and the City hereby represent and warrant to the Partnership that Article XXXIV of the California Constitution does not apply to the Project. Health and Safety Code Section 37001.5 establishes an exclusion where the public agency's participation in the Project is limited to financial assistance. Under Health and Safety Code Section 37001.5(e), a public agency does not develop, construct or acquire a low rent housing project when the agency "provides assistance to a low-rent housing project and monitors construction or rehabilitation of such project and compliance with conditions of assistance to the extent of: (1) carrying out routine governmental functions; (2) performing conventional activities of a lender; [and] (3) imposing constitutionally mandated or statutorily authorized conditions accepted by a grantee of assistance." Pursuant to this Agreement the City and Authority are acting in a manner consistent with Health and Safety Code Section 37001.5. That notwithstanding, if, within 60 days of the date of execution of this Agreement, the Project is challenged with respect to compliance with Article XXXIV, either Party, provided that it is not then in material default under this Agreement, may terminate this Agreement by notice to the other Party.

5. DESIGN REVIEW PROCESS.

5.1 Scope of Development. Partnership shall develop the Property substantially in conformance with the Scope of Development attached hereto as Exhibit C and with the plans, drawings and specifications for the Property approved by City pursuant to this Section 5.

5.2 City Design Review. Partnership shall cause the Improvements to be designed substantially in accordance with the Scope of Development and shall diligently cause the construction documents to be processed through City's site plan, design review and plan check process on a schedule reasonably calculated to permit a Building Permit to issue by the time provided in the Schedule of Performance for Construction Loan Closing.

5.3 Partnership Right to Terminate. Prior to the Construction Loan Closing, Partnership, if it is not then in material default under this Agreement (subject to the notice and cure provisions of Section 19.1), may terminate this Agreement by five (5) business days' notice to Authority and City, as Partnership's sole and exclusive remedy, if Partnership has, due to the fault of City, been unable, by the time provided in the Schedule of Performance, to obtain City's approval of the Final Construction Documents for the Project and, as a result thereof, Partnership loses all or any material part of the Project Financing.

5.4 Project Architect. The "Project Architect" is DNA Design and Architecture. The City Manager and Executive Director shall have the right to approve any replacement for the Project Architect.

6. Financing for the Project

6.1 Financing Plan. It is contemplated that Partnership will finance the Project through a combination of:

6.1.1 Partnership equity, consisting of equity raised by the sale to reputable investors of the low-income housing credit obtained pursuant to 26 U.S.C. §42 (the “Federal Tax Credit”);

6.1.2 Partnership equity, consisting of equity raised by the sale to reputable investors of the low-income housing credit obtained pursuant to California Revenue and Taxation Code Section 12206 (the “State Tax Credit”), if such State Tax Credits are available with respect to the Project;

6.1.3 the Senior Loan from a reputable institutional lender; and

6.1.4 as more particularly provided in Section 11.1, the Authority Predevelopment Loan and the Authority Subordinate Loan;

6.1.5 as more particularly provided in Section 11.5, the City Loan; and

6.1.6 such other loans as are approved by the Authority in accordance with the terms of this Agreement (collectively, the “Project Financing”).

6.2 Preliminary Project Budget.

6.2.1 Attached hereto as Exhibit D are the following preliminary budgetary materials for the Project:

- (A) Preliminary Project Budget;
- (B) Sources and Uses of Funds Statement;
- (C) Cash Flow Projection; and
- (D) First Year Operating Budget.

6.2.2 Until the Construction Loan Closing, Partnership, if, as and when additional information becomes available, shall promptly revise these budgetary materials to reflect the best information then available to Partnership, and shall submit the revised documents to the Executive Director and City Manager for review and approval.

6.3 Final Project Budget. Prior to the Construction Loan Closing, and as more particularly provided in Section 7.4.2, Authority, Partnership and the third-party lenders and/or investors providing the Project Financing shall agree on the budget for the Project.

6.4 Financing Commitments. Partnership shall use its best efforts to obtain, by the earliest reasonable date, financing for the Project, including, without limitation, (a) applying to lenders at the earliest reasonable opportunity for the Senior Loan, and (b) timely filing applications for State Tax Credits (if available) and 9% Federal Tax Credits with the Tax Credit Allocation Committee in each successive round through and including any fourth round following the completion of the Infrastructure Work and Sewer Improvements. Prior to the deadline for submission of an application for the third round from the Effective Date, regardless of the number of applications actually submitted by Partnership at that time, Partnership, City Manager and Executive Director may meet and confer to discuss alternative financing options for the project, which may, at the City Manager and Executive Director's sole discretion, include pursuit of a bond allocation from the California Debt Limit Allocation Committee or a subsequent application for 4% Tax Credits. The Partnership shall have the right to apply for up to four rounds of 9% Tax Credits, or an approved alternate financing option described above, provided, however, any such applications shall be submitted not later than December 31, 2025, and Partnership shall not have the right to submit additional applications, regardless of the number of applications then submitted, after such date. If efforts to obtain Tax Credits during the permitted successive rounds of 9% Tax Credit, or approved alternative, applications following the Effective Date of this Agreement are not successful for any reason, including, without limitation, due to unavailability of funds or credits for otherwise successful applications, the City Manager or Executive Director may terminate this Agreement by providing thirty (30) days written notice to the Partnership. If financing is not secured during such notice period, this Agreement shall automatically terminate. In the event financing for the Project is timely secured, not later than the time provided in the Schedule of Performance, Partnership shall submit to City Manager and Executive Director for approval preliminary commitments for the Project Financing, other than the Authority Subordinate Loan and City Subordinate Loan (the "Evidence of Financing"). Authority agrees, without any obligation to incur any out-of-pocket cost or expense, to provide Partnership with all appropriate assistance in applying for any of the Project Financing.

6.5 Best Effort to Minimize Authority and City Cost.

6.5.1 Reserved.

6.5.2 Partnership shall obtain at least two competitive bids and use its best efforts to obtain (A) the highest price and best terms for the Federal Tax Credits and, if applicable, State Tax Credits allocated to the Project, and (B) the largest Take-Out Loan reasonably supportable by the Project based on a debt coverage ratio of not greater than 1.20:1.

6.6 Partnership Rights to Terminate

6.6.1 Reserved.

6.6.2 Failure to Obtain Tax Credits. Prior to the Construction Loan Closing, Partnership, if it is not then in material default under this Agreement (subject to the notice and cure provisions of Section 19.1), may, as its sole and exclusive remedy, terminate this Agreement by giving 30 days' notice to Authority and City if, (a) despite Partnership having made its best efforts, it has been unable to obtain the reservation of Tax Credits through the maximum of four rounds of 9% Tax Credit applications permitted hereunder, or (b) it has been unable to obtain such reservation due to the fact that (i) subsequent to the date of this Agreement, changes are made to the QAP the net effect of which is either (x) to reduce materially the financial return from the Project reasonably expected as reflected by the budgetary materials attached to this Agreement as Exhibit D, including, without limitation, the developer fee, or (y) to materially damage the economic feasibility of the Project, and (ii) Authority or City, not later than 30 days after such notice from Partnership declines to offer Partnership an amendment to this Agreement the effect of which would be to eliminate substantially such reduction in financial return and/or materially repair the damage to the economic feasibility of the Project.

6.6.3 Failure to Obtain Other Project Financing. Prior to the Construction Loan Closing, Partnership, if it is not then in material default under this Agreement (subject to the notice and cure provisions of Section 19.1), may terminate this Agreement by giving 30 days' notice to Authority and City if, despite having obtained a reservation of Tax Credits for the Project and despite its best efforts, it has been unable to obtain the balance of the Project Financing on terms and conditions reasonably consistent with the economic assumptions contained in the budgetary materials attached to this Agreement as Exhibit D.

6.7 City Right to Terminate. Prior to the Partnership's receipt of a reservation of Tax Credits, if HCD provides written notice to the City that the Site does not qualify as exempt surplus land, or the sale of the Site is otherwise in violation of the SLA, the City, Authority and Partnership agree to meet and confer within ten (10) days to coordinate a response to HCD, which response may include modification of the DDA and attachments. After such meeting, if the City reasonably determines there is no valid response to the HCD notice, the City may terminate this Agreement by delivering written notice to the Authority and the Partnership without any liability to the other Parties.

7. Sale of Property

7.1 Agreement. City, subject to the conditions set forth in Section 7.4, agrees to transfer a fee interest to Partnership, and Partnership, subject to the condition set forth in Section 7.5, agrees to accept from City, the Property pursuant to the "Grant Deed" attached hereto as Exhibit E.

7.2 Escrow. Conveyance of the Property pursuant to the Grant Deed shall be made through the Escrow. This Agreement shall constitute escrow instructions to the Escrow Holder. City and Partnership shall execute such escrow instructions as are consistent with this Agreement and as may be reasonably required by the Escrow Holder.

7.3 Term of Escrow. The Escrow shall close concurrent with the Construction Loan Closing.

7.4 Conditions for Authority's and City's Benefit. City's obligation to transfer the Property to Partnership and close and fund the City Subordinate Loan, and the Authority's obligation to close and fund the Authority Subordinate Loan shall be subject to satisfaction of the following conditions precedent:

7.4.1 **Land Use Entitlements.** Partnership has secured and possesses the Land Use Entitlements for the Project including having processed a lot line adjustment (or other appropriate action) creating at least two legal lots in a general shape and configuration reasonably acceptable to the City.

7.4.2 **Final Project Budget.** The City Manager, Executive Director, Partnership, purchasers of the Tax Credits, and the Construction Lender have approved a final budget for the Project, including, without limitation, (i) the terms and conditions of the developer fee payable by the Partnership, and (ii) the terms and conditions of any reserve funds to be established and maintained for the Project (the "Final Project Budget"). The Final Project Budget may be revised from time to time, subject to the approval of the City Manager and Executive Director.

7.4.3 **Evidence of Financing.** The City Manager and Executive Director have received and approved the following "Evidence of Financing":

(A) **Construction Loan.** True and complete copies of the Construction Loan documents evidencing the obligation of a reputable institutional lender, subject only to reasonable and customary conditions, to make the Construction Loan to Partnership.

(B) **Tax Credit Financing.** Documentary evidence reasonably acceptable to the City Manager and Executive Director that Partnership has either (x) obtained at least two competitive bids, or (y) if it has obtained less than two such bids, made all commercially reasonable efforts to obtain such bids, and either (A) committed, or caused to be committed, funds from the sale of the Tax Credits to construction of the Improvements, which commitment may be subject only to reasonable and customary conditions, or (B) at Partnership's sole option, an exchange of such Tax Credits for cash in lieu of equity (in either case, the "Tax Credit Funds").

(C) **Gap Financing.** Documentary evidence that Partnership has committed, or caused to be committed, equity and/or financing to the Improvements in the amount of the remainder, if any, of the Project Costs less the amount of the total of any Construction Loan, Tax Credit Funds, City Subordinate Loan and Authority Subordinate Loan (collectively, the “Gap Financing”). Gap Financing, if any, shall be from sources, and subject only to conditions, reasonably acceptable to the Executive Director and City Manager.

(D) **Take-Out Loan Commitment.** A commitment from a reputable institutional lender, subject only to reasonable and customary conditions, pursuant to which said lender agrees to make a permanent loan to Partnership, with a term of not less than 15 years, in sum sufficient, when added to any Tax Credit Funds to be disbursed for such purpose, to take-out any existing short-term financing.

(E) **SLA Compliance.** No later than thirty (30) days after the Effective Date, the City shall have submitted to the California Department of Housing and Community Development (“HCD”), a resolution and supporting documentation regarding its determination that the Site is exempt surplus land under California Government Code Section 54221(f)(1)(A) and otherwise complied with the terms and conditions of the SLA. HCD shall have provided written evidence reasonably satisfactory to the City acknowledging the transfer of the Property will not violate the SLA.

7.4.4 General Contractor. The general contractor for the Project (the “General Contractor”) has been approved by the Executive Director and City Manager. Executive Director and City Manager hereby approve Portrait Construction, Inc., R.D. Olson, Walton Construction, Inc., National CORE and KPRS.

7.4.5 Construction Contract. Authority has received a true and complete copy of a contract by and between Partnership and the General Contractor pursuant to which the General Contractor has agreed to make the Improvements at a cost consistent with the Final Project Budget.

7.4.6 Final Construction Documents. City has approved the Final Construction Documents for the Improvements and Authority has received a full set thereof.

7.4.7 Completion Bonds. If the Construction Lender or the purchaser of the Tax Credits require that a completion bond be posted by the General Contractor, then such completion bond shall name Authority as a co-obligee.

7.4.8 Completion Guaranty. Authority and City shall have received a duly executed completion guaranty for the Project from The Related Companies, L.P., a New York limited partnership, substantially in the form attached hereto as Exhibit H.

7.4.9 Organizational Documents. The Executive Director and City Manager have received and approved a copy of such portions of the organizational documents (e.g., partnership agreement, limited liability company operating agreement) of Partnership or Partnership's successor-in-interest as the Executive Director and City Manager deems reasonably necessary to document the power and authority of the organization to perform its obligations under this Agreement. Partnership has also made full disclosure to Authority of the names and addresses of all persons and entities that have a beneficial interest in Partnership, excluding, if Partnership is a limited partnership, limited partners with less than a majority interest in the partnership.

7.4.10 Loan to Close. All of the conditions to closing the Authority Subordinate Loan set forth in Section 12.1 and all conditions to closing of the City Subordinate Loan set forth in Section 12.1 have been satisfied or waived.

7.4.11 Building Permit. The Building Permit for the Improvements has issued or is ready to issue upon only payment of a sum certain.

7.4.12 Work to Commence. The Executive Director and City Manager shall be reasonably satisfied that the work of the Improvements will commence not later than ten (10) business days after the Close of Escrow and will thereafter be completed in a diligent and continuous manner.

7.4.13 Assignment of Plans and Architect's Contract. Partnership shall, by an instrument substantially in the form attached hereto as Exhibit I, conditionally assign to Authority the Final Construction Documents for the Improvements and the Project Architect's contract. Partnership shall also deliver to Authority, in the form included as part of Exhibit I, the written consent of said Project Architect to said assignment, including, without limitation, to the use by Authority of the Final Construction Documents, as well as the ideas, designs, and concepts contained within them. Authority acknowledges and agrees that its rights under such assignments shall be subordinate to any such rights assigned to the Construction Lender.

7.4.14 Insurance. Authority and City have received satisfactory evidence that the insurance required pursuant to the Regulatory Agreement is in full force and effect.

7.4.15 Management Plan. Executive Director and City Manager have received from Partnership and approved a comprehensive management plan for the Project, including a fair housing component.

7.4.16 Management Agreement. Executive Director and City Manager have received and approved an executed agreement by and between Partnership and John Stewart Company, or another reputable and experienced property manager for management

of the Project (the “Management Agreement”), which Management Agreement shall be consistent with this Agreement, including, without limitation, Section **Error! Reference source not found.** of the Regulatory Agreement.

7.4.17 Affirmative Marketing Plan. Partnership shall prepare and submit to the Executive Director and City Manager for reasonable approval an affirmative marketing plan that satisfies the requirements of 24 CFR 92.351.

7.4.18 Representations and Warranties. The representations of Partnership contained in this Agreement shall be correct in all material respects as of the Close of Escrow as though made on and as of that date and, if requested by the Executive Director and/or City Manager, Authority and City shall have received a certificate to that effect signed by Partnership.

7.4.19 No Default. No Event of Default by Partnership shall then exist, and no event shall then exist which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Partnership and, if requested by the Executive Director and/or City Manager, Authority and/or City shall have received a certificate to that effect signed by Partnership.

7.5 Covenants of Partnership. Partnership covenants and agrees to satisfy, by the time provided in the Schedule of Performance, any and all of the conditions set forth in Section 7.4 that (a) Partnership has not elsewhere in this Agreement expressly covenanted and agreed to satisfy and (b) the satisfaction of which is entirely within the reasonable control of Partnership. Partnership covenants and agrees to make its best efforts to satisfy, by the time provided in the Schedule of Performance, any and all of the conditions set forth in Section 7.4 that (a) Partnership has not elsewhere in this Agreement expressly covenanted and agreed to make best or commercially reasonable efforts to satisfy, and (c) the satisfaction of which is within the reasonable control of Partnership.

7.6 Condition for Partnership’s Benefit. Partnership’s obligation to purchase the Property from the City shall be subject to satisfaction of the following condition precedent:

7.6.1 Title Insurance. Title Company is prepared to issue its ALTA owner’s form policy of title insurance, with liability in the amount of the total of the equity raised from the sale of the Tax Credits plus the principal amounts of the Take-Out Loan, City Subordinate Loan and Authority Subordinate Loan, showing fee simple title to the Property and the improvements located thereon vested in Partnership, subject only to the lien of the Senior Loan Security Documents, the City Subordinate Loan Documents, the Authority Subordinate Loan Documents and such other exceptions as Partnership has previously notified City were acceptable to Partnership (the “Partnership Title Policy”).

7.6.2 Documents Executed. City has duly executed the Grant Deed, and such document has been deposited into escrow.

7.6.3 Infrastructure Work. The Parties acknowledge that the City has commenced and is diligently pursuing the infrastructure work required by the Sierra Basin Storm Drain Improvement plans as approved by the City on August 25, 2022 (the “**Infrastructure Work**”). The City anticipates completion of the Infrastructure Work in the first quarter of 2024. City will continue to diligently pursue, (i) the Infrastructure Work required by the Sierra Basin Storm Drain improvement plans and the associated basin grading with full stabilization and items according to approved grading plans shall have been completed by the City, and (ii) the off-site sewer public improvement plans from Jurupa Avenue to the Site (“**Sewer Improvements**”). To the extent the City is delayed in causing the completion of the Infrastructure Work or the Sewer Improvements past the first quarter of 2024, the Developer’s deadline to apply for tax credits under Section 6.4 shall be extended to allow additional application rounds on account of such delay. Notwithstanding the foregoing, the Partnership may waive the City’s obligation to complete the Infrastructure Work and the Sewer Improvements prior to the Partnership’s receipt of a reservation of Tax Credits, but it shall in all events be a condition to the Partnership’s obligation to purchase the Property from the City.

7.6.4 Parcel Map and/or Lot Line Adjustment. The Partnership has processed a parcel map and/or lot line adjustment (as applicable) to conform the boundaries of the Site with site sizes and shapes needed to accommodate the Project and Phase II, respectively.

7.6.5 Approval of the Site Condition. The Partnership shall have approved (or be deemed to have approved) the site condition in its sole discretion in accordance with Section 9.2.

7.7 Partnership Right to Terminate. Prior to the Close of Escrow, Partnership, if it is not then in material default under this Agreement (subject to the notice and cure provisions of Section 19.1), may terminate this Agreement by giving 30 days’ notice to Authority if, despite having made its best efforts, it has been unable, by the time provided in the Schedule of Performance, to satisfy any of the conditions set forth in Section 7.4.

7.8 Authority and City Right to Terminate. Prior to the Close of Escrow, Authority and City, if it is not then in material default under this Agreement, may terminate this Agreement by giving 30 days’ notice to Partnership if, by the time provided in the Schedule of Performance, Partnership has failed to satisfy any of the conditions set forth in Section 7.4. That notwithstanding, (a) if Partnership, during said 30-day notice period, satisfies said conditions, then the Authority or City notice of termination shall be deemed nullified thereby, and (b) Authority and City shall have

no right to terminate this Agreement for Partnership's failure to satisfy the condition set forth in Subdivision 7.4.6 if such failure is due to the fault of City.

7.9 Waiver of Conditions. The conditions set forth in Section 7.4 are for Authority's benefit only and the Executive Director may waive all or any part of such rights by notice to Partnership and the Escrow Holder. The conditions set forth in Section 7.4 are for City's benefit only and the City Manager may waive all or any part of such rights by notice to Partnership and the Escrow Holder. The conditions set forth in Section 7.6 are for Partnership's benefit only and Partnership may waive all or any part of such right by notice to Authority and the Escrow Holder.

8. AFFORDABILITY COVENANTS. As more particularly provided in the Regulatory Agreement, the dwelling units in the Project shall be rented to families whose incomes do not exceed the incomes required by the Federal Tax Credits for a period of ninety-nine (99) years commencing upon recordation of the Grant Deed and the requirements of Government Code 37364.

9. PHYSICAL CONDITION OF PROPERTY.

9.1 As-Is Purchase. Partnership acknowledges and agrees that upon Close of Escrow it is purchasing the Property solely in reliance on its own investigation, and that no representations and/or warranties of any kind whatsoever, express or implied, have been made by City, or by its officers, employees, representatives or agents. Partnership further acknowledges and agrees that, as of the Close of Escrow, Partnership will be purchasing the Property in "AS IS" condition with all faults and conditions then existing in and on the Property, whether known or unknown; provided that the foregoing shall not constitute a release of City under any statute or common law theory. Notwithstanding the foregoing, City acknowledges and agrees that neither this Section 9.1, nor any other term, provision or condition of this Agreement obligates Partnership, as between it and City, and prior to the Construction Loan Closing, to remediate, or to incur any cost to remediate, any Hazardous Materials discovered by Partnership on the Property prior to the Construction Loan Closing. In the event that Hazardous Materials are so discovered, disposition of the situation shall be governed by the conditions set forth in Section 9.3. Partnership acknowledges and agrees that, as between it and City, nothing in this Agreement shall ever be deemed, construed or interpreted to obligate City to remediate, or to incur any expense to remediate, any Hazardous Materials discovered on the Property either before or after Construction Loan Closing unless and until City expressly agrees to do so in writing.

9.2 Developer's Due Diligence.

9.2.1 Developer shall have up to ninety (90) days after the Effective Date (the "**Due Diligence Period**") to complete its inspection of the Property. Developer is hereby granted a license to enter the Property during such period for the purpose of conducting such inspections, surveys and diligence as it deems reasonably necessary. If Developer finds the

Property unsatisfactory for any reason, Developer shall have the right to terminate this Agreement by delivery in writing to the City and Authority of its determination to terminate this Agreement prior to expiration of the Due Diligence Period. Upon Developer's failure to terminate this Agreement prior to expiration of the Due Diligence Period, Developer shall be deemed to have accepted the Property.

9.2.2 Developer may obtain a survey of the Property prepared by a land surveyor (the “Survey”) or update to an existing survey prepared for or on behalf the City, in a form acceptable to the title company for the deletion of the standard survey exception in the Title Policy. In addition, Developer may obtain a title report for the Property (the “Title Report”). Developer will have until the expiration of the Due Diligence Period to examine the Survey and the Title Report and deliver in writing any objections Developer has to the City (the “Developer’s Title Objection Notice”). The City will have a period of ten (10) days after receipt of the Developer’s Title Objection Notice in which to deliver written notice to Developer of City’s election to either (1) agree to remove the objectionable items prior to Construction Loan Closing, or (2) decline to remove the objectionable items prior to Construction Loan Closing (the “City’s Title Objection Response”). If the City notifies Developer of its intention not to remove the objectionable items, Developer will have the right, by written notice delivered to the City and the Authority within five (5) days of receipt of the City’s Title Objection Response to agree to accept the Site subject to the objectionable items, or its election to terminate this Agreement.

For purposes of this Section 9.2, the term “Property” is used rather than the term Site due to the fact that the Lot Line Adjustment may not be processed and the boundaries of the Site may not have been determined prior to expiration of the Due Diligence Period. Developer’s approval of the Property for purposes of Phase I shall not be deemed approval of the to-be-created Phase II Site for purposes of development of any subsequent phase.

9.3 Prior to Construction Loan Closing, if, the City, in the course of grading or excavating the Property, discovers Hazardous Materials it shall notify the Partnership of such discovery within five (5) business days. The City shall have the right, within 15 days after delivery of said notice, or such longer period of time as may reasonably be required by City to obtain competitive bids for the work, to elect, in its sole and absolute discretion, to perform remediation of the Hazardous Materials. In the event the City elects not to remediate the Hazardous Materials, the Partnership may terminate this Agreement by written notice to City within ten (10) Business Days of the City’s election not to remediate the Hazardous Materials.

9.4 The Partnership, and its agents, shall have a license to enter the Property from the Effective Date through the Construction Loan Closing for the purpose of (i) performing testing and analysis necessary to obtain a Phase One Environmental Report, (ii) to confirm that any rough grading performed by the City has been completed in accordance with applicable plans, and (iii)

to conduct any other tests or inspections required in connection with the Construction Loan Closing (the “**Pre-Closing License**”).

9.4.1 During such period, the Partnership shall at Partnership’s sole cost and expense, shall procure and maintain commercial general liability insurance for injuries to person and for damage to property, with a combined single limit of at least One Million and 00/100 Dollars (\$1,000,000) per occurrence and Two Million and 00/100 Dollars (\$2,000,000) general aggregate. Such insurance shall insure, on an occurrence basis, against all liability of the Partnership, its licensees, invitees, guests, agents, employees and contractors (the “**Licensee Parties**”) arising out of or in connection with Licensee Parties’ exercise of their rights under the Pre-Closing License. Partnership shall provide to the City a certificate of insurance evidencing the coverages required by this Section on or prior to the Effective Date. All insurance carried by the Partnership shall be primary to and not contributory with any similar insurance carried by the City, whose insurance shall be considered excess insurance only.

9.4.2 Partnership shall indemnify, defend, protect and hold harmless the City and its officers, employees, agents, successors and assigns (collectively, the “**City Indemnified Parties**”) from and against any and all lawsuits, claims, actions, causes of action, fines, penalties, damages, charges, demands, liabilities, injuries (including bodily injury or death resulting therefrom), costs, and expenses, which may be suffered or incurred by any City Indemnified Party, as a result of Partnership’s acts in connection with its entry and use of the Property under the Pre-Closing License (collectively, the “**Licensee Liabilities**”); provided, however, that the foregoing indemnification shall not apply to the extent any Licensee Liabilities are the result of such City Indemnified Party’s gross negligence or willful misconduct.

10. INTENTIONALLY OMITTED.

11. AUTHORITY PREDEVELOPMENT LOAN AND AUTHORITY SUBORDINATE LOAN; CITY SUBORDINATE LOAN

11.1 Authority Loan Amount and Purpose. Subject to the terms and conditions of this Agreement, Authority agrees to loan to Partnership the following:

11.1.1 Predevelopment Loan in the principal amount of up to Six Hundred Thousand and No/100 Dollars (**\$600,000**), advanced to the Partnership before Close of Escrow and that will be incorporated into the Authority Subordinate Loan at closing; and

11.1.2 Authority Subordinate Loan in the principal amount of Five Million Two Hundred Sixty Two Thousand Three Hundred Seven Dollars and Eighty-Four Cents (**\$5,262,307.84**), including amounts disbursed by Authority to Partnership under the Predevelopment Loan, which Authority Subordinate Loan shall close (i.e., the Authority Subordinate Loan Deed of Trust shall record in the Official Records and the undisbursed

portion of the Authority Subordinate Loan shall, subject to Section 15, be disbursed to the Construction Lender) concurrently with the Construction Loan Closing (the “Authority Subordinate Loan Closing”).

11.2 Loan Notes, Assignment of Work Product and Deed of Trust.

11.2.1 The Predevelopment Loan shall be evidenced by the Predevelopment Loan Note and shall be secured by the Assignment of Work Product entered into between Authority and Partnership concurrently with this Agreement in the form attached as Exhibit P; and

11.2.2 The Authority Subordinate Loan shall be evidenced by the Authority Subordinate Loan Note and shall be secured by the Authority Subordinate Loan Deed of Trust.

11.3 Authority Funding Sources. The Authority has identified the following funding sources to be applied to this Project, with a sum of Five Million Two Hundred Sixty Two Thousand Three Hundred Seven Dollars and Eighty-Four Cents (**\$5,262,307.84**):

(A) Low/Mod Asset Funds:	\$1,678,959.21
(B) AB 1486 (Surplus Land) Funds:	\$3,583,348.63

11.4 Authority hereby represents that none of the foregoing funding sources indicated here include proceeds from the issuance or sale of tax-exempt bonds.

11.5 City Loan Amount and Purpose. Subject to the terms and conditions of this Agreement , City agrees to loan to Partnership the City Subordinate Loan in the principal amount of Six Million Thirty Seven Thousand Six Hundred Ninety Two Dollars and Sixteen Cents (\$6,037,692.16) in gap financing and a Two Million Eight Hundred Thousand Dollar (\$2,800,000) land loan which City Subordinate Loan shall close (i.e., the City Subordinate Loan Deed of Trust shall record in the Official Records and the undisbursed portion of the City Subordinate Gap Loan shall, subject to Section 15, be disbursed to the Construction Lender) concurrently with the Construction Loan Closing (the “City Subordinate Loan Closing”).

11.6 City Loan Note, and Deed of Trust.

11.6.1 The City Subordinate Loan shall be evidenced by the City Subordinate Loan Note and shall be secured by the City Subordinate Loan Deed of Trust.

11.6.2 **Funding Sources.** The City has identified the following funding sources to be applied to this Project:

- (A) Federal HOME (FY 2018-23 + PI) Funds: \$2,700,000; and
- (B) Affordable Housing Trust Fund (Development Impact Fees): \$3,337,692.16.

11.7 The City hereby represents that none of the foregoing funding sources indicated here include proceeds from the issuance or sale of tax-exempt bonds.

12. CONDITIONS TO CLOSING OF AUTHORITY SUBORDINATE LOAN AND THE CITY SUBORDINATE LOAN.

12.1 Conditions Precedent to Disbursement. Authority's and City's respective obligation to make the Authority Subordinate Loan and the City Subordinate Loan to Partnership shall be subject to satisfaction of the following conditions precedent:

12.1.1 Conditions to Transfer the Property. All of the conditions precedent set forth in Section 7.4 to City's obligation to transfer the Property to Partnership have been satisfied or waived.

12.1.2 Subordinate Loan Notes. Partnership shall have duly executed the Authority Subordinate Loan Note and delivered it to Authority or the Escrow Holder, and duly executed the City Subordinate Loan Note and delivered it to the City or Escrow Holder.

12.1.3 Subordinate Loan Deed of Trust. Each of the Authority Subordinate Loan Deed of Trust and the City Subordinate Loan Deed of Trust shall have been recorded in the Official Records subject only to the Permitted Encumbrances.

12.1.4 Request for Notice of Default. Authority shall have recorded a request for notice of default pursuant to Civil Code Section 2924(b), requesting that the beneficiaries of liens senior to the Authority Subordinate Loan Deed of Trust notify Authority of any default under the instrument creating the lien.

12.1.5 Title Policy. Title Company is prepared to issue its LP-10 loan policy of title insurance naming Authority as the insured, in a policy amount not less than the principal amount of the Authority Subordinate Loan, showing Partnership as holding fee simple title to the Property and insuring the Authority Subordinate Loan Deed of Trust to be a valid lien on the Property subject only to the Permitted Encumbrances (the "Authority Title Policy"). Title Company is prepared to issue its LP-10 loan policy title insurance naming City as the insured, in a policy amount not less than the principal amount of the City Subordinate Loan, showing Partnership as holding fee simple title to the Property and insuring the City Subordinate Loan Deed of Trust to be a valid lien on the Property subject only to the Permitted Encumbrances (the "City Title Policy").

12.1.6 Corporate Resolution. If Partnership is a corporation, or if Partnership is a partnership or limited liability company and its managing general partner or general manager is a corporation, Authority and City shall have received a copy of a resolution of the board of directors of said corporation authorizing the execution and delivery of the Authority Subordinate Loan Documents and the City Subordinate Loan Documents.

12.1.7 Representations and Warranties. The representations of Partnership contained in this Agreement shall be correct as of the date of the disbursement as though made on and as of that date and, if requested by the Executive Director or City Manager, Authority or City shall have received a certificate to that effect signed by Partnership.

12.1.8 No Default. No Event of Default by Partnership shall then exist, and no event shall then exist which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Partnership and, if requested by Executive Director or City Manager, Authority or City shall have received a certificate to that effect signed by Partnership.

12.2 Waiver of Conditions. The conditions set forth in Section 11.1 are for Authority's benefit only and Executive Director may waive all or any part of such rights with respect to the Authority only by notice to Partnership. The conditions set forth in Section 11.5 are for the benefit of the City only and City Manager may waive all or any part of such rights with respect to the City only by notice to the Partnership.

13. CLOSE OF ESCROW; EXPENSES.

13.1 Documents to be Delivered.

13.1.1 Upon receipt by the Escrow Holder of:

- (A) the Authority Subordinate Loan Note,
- (B) the Authority Subordinate Loan Deed of Trust,
- (C) the Grant Deed,
- (D) the City Subordinate Loan Note,
- (E) the City Subordinate Loan Deed of Trust, and
- (F) all other funds and documents required to close the Escrow in accordance with this Agreement;

when the conditions precedent described in Sections 6.4, 6.6 and 12.1 have been satisfied or waived in writing by the Executive Director and the City Manager, the Escrow Holder shall, in the following order, record in the Official Records:

- (G) the Grant Deed;
- (H) the Senior Loan Security Documents;
- (I) the Authority Subordinate Loan Deed of Trust;
- (J) the City Subordinate Loan Deed of Trust; and
- (K) such other documents required to close the Escrow in accordance with this Agreement;

Escrow Holder shall deliver to Authority:

- (A) the Authority Subordinate Loan Note;
- (B) a conformed copy of the Authority Subordinate Loan Deed of Trust; and
- (C) the Authority Title Policy;

Escrow Holder shall deliver to City:

- (A) the City Subordinate Loan Note;
- (B) a conformed copy of the City Subordinate Loan Deed of Trust;
- (C) the City Title Policy;

Escrow Holder shall deliver to Partnership:

- (A) a copy of the Authority Subordinate Loan Note;
- (B) a copy of the City Subordinate Loan Note;
- (C) a conformed copy of the Authority Subordinate Loan Deed of Trust;
- (D) a conformed copy of the City Subordinate Loan Deed of Trust; and
- (E) the Partnership Title Policy.

13.2 Expenses of Partnership. Partnership shall pay:

13.2.1 any and all documentary transfer taxes and recording fees arising from conveyance of the Property from City to Partnership by the Grant Deed,

13.2.2 the Escrow fee,

13.2.3 the premium for the Authority Title Policy and the City Title Policy, and

13.2.4 all such other costs and expenses related to the Escrow and not expressly provided for herein.

13.3 Instruction to Escrow Holder Regarding Waiver of Transfer Taxes and Recording Fees. The Escrow Holder is hereby instructed to seek such waivers and exemptions from transfer taxes and recording fees as are available pursuant to Revenue and Taxation Code Section 11922 and Government Code Section 27383, respectively.

13.4 Broker's Commissions. Partnership represents and warrants that it has not engaged any broker, agent or finder in connection with this Agreement, and Partnership agrees to indemnify, protect, hold harmless, and defend the Indemnitees from any claim by any brokers, agents or finders retained by Partnership.

14. OTHER ESCROW INSTRUCTIONS.

14.1 Funds in Escrow. All funds received in the Escrow shall be deposited by the Escrow Holder in a general escrow account with any state or national bank doing business in the State of California and reasonably approved by the City Manager, the Executive Director and Partnership, and such funds may be combined with other escrow funds of the Escrow Holder. All disbursements shall be made on the basis of a 30 day month.

14.2 Failure to Close.

14.2.1 If the Escrow is not in condition to close on or before the time established in the Schedule of Performance, any party who then shall have fully performed the acts to be performed before the conveyance of title may, in writing, demand the return of its money, papers, or documents from the Escrow Holder. No demand for return shall be recognized until 15 days after the Escrow Holder (or the party making such demand) shall have mailed copies of such demand to the other parties. Objections, if any, shall be raised by written notice to the Escrow Holder and to the other parties within the 15-day period, in which event the Escrow Holder is authorized to hold all money, papers and documents until instructed by mutual agreement of the parties or, upon failure thereof, by a court of competent jurisdiction. If no such demands are made, the Escrow shall be closed as soon as possible.

14.2.2 If objections are raised in the manner provided above, the Escrow Holder shall not be obligated to return any such money, papers or documents except upon the written instructions of the City Manager, Executive Director and Partnership, or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction. If no such objections are made within said 15-day period, the Escrow Holder shall immediately return the demanded money, papers or documents.

14.3 Amendments. Any amendment to these Escrow instructions shall be in writing and signed by the City Manager, Executive Director or Authority Counsel, City Attorney and Partnership. At the time of any amendment, the Escrow Holder shall agree to carry out its duties as the Escrow Holder under such amendment.

14.4 Notices. All Notices from the Escrow Holder to Authority, City or Partnership shall be given in the manner provided in Section 20.

14.5 Liability. The liability of the Escrow Holder under this Agreement is limited to performance of the obligations imposed upon it under Sections 13.1, 13.2, 13.3, 14.1, 14.2 and 14.3.

15. DISBURSEMENT PROCEDURES.

15.1 Subject to compliance with state and federal rules and regulations applicable to disbursement of certain funds and to the conditions set forth below, Authority shall disburse at Close of Escrow, subject to availability of funds scheduled for future receipt, including, without limitation, the undisbursed portion of the Authority Subordinate Loan proceeds to the Construction Lender for disbursement by the Construction Lender for payment of items in the Final Project Budget. Subject to compliance with state and federal rules and regulations applicable to disbursement of certain funds and to the conditions set forth below, City shall disburse at Close of Escrow, subject to availability of funds scheduled for future receipt, including, without limitation, the undisbursed portion of the City Subordinate Loan proceeds to the Construction Lender for disbursement by the Construction Lender for payment of items in the Final Project Budget.

15.2 Authority's obligation to make such disbursements shall be subject to the Executive Director's reasonable approval of the Construction Lender and City's obligation to make such disbursements shall be subject to City Manager's reasonable approval of the Construction Lender. The Authority, the City and the Construction Lender shall enter into an agreement reasonably satisfactory to the Executive Director (with respect to the Authority) and the City Manager (with respect to the City), governing the disbursement of the Authority Subordinate Loan proceeds and the City Subordinate Loan proceeds prior to disbursement of the Senior Loan proceeds; which agreement may contain reasonable and customary conditions to each disbursement, but not, however, a condition requiring the further consent of the Authority or the City.

15.3 The Authority Subordinate Loan proceeds shall not be used for any purpose other than for eligible Project Costs. The City Subordinate Loan proceeds shall not be used for any purpose other than for eligible Project Costs. City and Authority shall have the right to request an accounting of the disbursement of City and Authority funds to confirm compliance with this provision no more than once per quarter. Once available the Partnership shall deliver a copy of the final cost certification to the Authority and the City.

16. CERTIFICATE OF COMPLETION.

16.1 Promptly after completion of all construction and development of the Improvements in conformity with the Final Construction Documents and the Scope of Development, Authority shall furnish Partnership with a final Certificate of Completion upon written request therefor by Partnership. Such final Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction and development required by this Agreement upon the Property.

16.2 The Certificate of Completion shall be in such form as to permit it to be recorded in the Official Records of the County.

16.3 If, after written request therefor from Partnership, Authority refuses or fails to furnish the applicable Certificate of Completion, Authority shall, within 30 days after the written request, provide Partnership with a written statement of the reasons Authority refused or failed to furnish the Certificate of Completion. The statement shall also contain Authority's opinion of the action Partnership must take to obtain the Certificate of Completion. If the reason for such refusal is confined to either (a) the immediate unavailability of specific items or materials for landscaping or (b) the need only to complete "*punch list*" items, Authority will issue the Certificate of Completion upon the posting of a bond by Partnership with Authority in an amount representing the fair value of the work not yet completed. If Authority shall have failed to provide such written statement within said 30-day period, Partnership shall be deemed entitled to the Certificate of Completion.

16.4 Such Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Partnership to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the Improvements. Such Certificate of Completion shall not be notice of completion as referred to in Section 3093 of the California Civil Code.

17. GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS.

17.1 Partnership's Formation, Qualification and Compliance. Partnership (a) is validly existing and in good standing under the laws of the State of California, (b) has all requisite authority to conduct its business and own and lease its properties, (c) has all requisite authority to execute and perform its obligations under this Agreement.

17.2 Litigation. Partnership represents and warrants that there are no material actions, lawsuits or proceedings pending or, to the best of Partnership's knowledge, threatened against or affecting Partnership, the adverse outcome of which could have a material adverse effect on Partnership's ability to perform its obligations under this Agreement.

17.3 Governmental Approvals. Authority represents and warrants that it has obtained all consents of and approvals by, or required by, any California or federal governmental authority, in connection with the use of funds as provided for herein. City represents and warrants that it has obtained all consents of and approvals by, or required by, any California or federal governmental authority in connection with the use of funds as provided for herein. Notwithstanding the foregoing, the Partnership acknowledges that the City is in the process of complying with the Surplus Land Act as provided for in Section 7.4.3(E).

18. INDEMNIFICATION AND INSURANCE.

18.1 Nonliability of Authority.

18.1.1 Partnership acknowledges and agrees that:

(A) Neither Authority nor City undertakes nor assumes any responsibility to review, inspect, supervise, approve (other than for aesthetics) or inform Partnership of any matter in connection with the Project, including matters relating to: (i) the Final Construction Documents, (ii) architects, contractors, subcontractors and materialmen, or the workmanship of or materials used by any of them, or (iii) the progress of the Project and its conformity with the Final Construction Documents; and Partnership shall rely entirely on its own judgment with respect to such matters and acknowledge that any review, inspection, supervision, approval or information supplied to Partnership by Authority and/or City in connection with such matters is solely for the protection of Authority and/or City and that neither Partnership nor any third party is entitled to rely on it;

(B) Notwithstanding any other provision of this Agreement: (i) neither Authority nor City is a partner, joint venturer, alter-ego, manager, controlling person or other business associate or participant of any kind of Partnership and neither Authority nor City intends to ever assume any such status; (ii) neither Authority nor City shall be deemed responsible for or a participant in any acts, omissions or decisions of Partnership;

(C) Neither Authority nor City shall be directly or indirectly liable or responsible for any loss or injury of any kind to any person or property resulting from any construction on, or occupancy or use of, the Property whether arising from: (i) any defect in any building, grading, landscaping or other onsite or offsite improvement; (ii) any act or omission of Partnership or any of Partnership's agents, employees, contractors, licensees or invitees; or

(iii) any accident on the Property or any fire or other casualty or hazard thereon not caused by the Indemnitees; and

(D) By accepting or approving anything required to be performed or given to under this Agreement, including any certificate, financial statement, survey, appraisal or insurance policy, neither Authority nor City shall be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by Authority or City to anyone.

18.2 Indemnity. Except with respect to Hazardous Materials found to exist on the Property as of the date of this Agreement, Partnership shall indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the Executive Director and City Manager) the Indemnitees from and against any and all losses, costs, claims, expenses, damages (including, without limitation, foreseeable or unforeseeable consequential damages) and liabilities (including, without limitation, reasonable attorneys' fees and court costs) directly or indirectly arising from, related to, or as the result of (a) the death of any person, (b) damage, injury or loss to any person, or (c) damage or injury to any property occurring or resulting directly or indirectly from the use, occupancy or development of the Property pursuant to this Agreement, the activities of Partnership or its officers, directors, employees, agents, servants or contractors, or from any other cause, except to the extent caused by the Indemnitees' gross negligence or willful misconduct. This indemnity shall survive termination of this Agreement and issuance of the Certificate of Completion.

18.3 Prevailing Wages.

18.3.1 **Labor Standards.** Partnership shall carry out the construction of the Improvements on the Property in conformance with all applicable federal and state labor standards, including, without limitation, the payment of prevailing wages if required by law.

18.3.2 The Partnership acknowledges that neither the Authority nor the City has made any representation, express or implied, to the Partnership or any person associated with the Partnership regarding whether or not laborers employed relative to the construction of the Project must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to Labor Code Sections 1720, *et seq.* The Partnership agrees with the Authority and the City that the Partnership shall assume the responsibility and be solely responsible for determining whether or not laborers employed relative to the construction of the Project must be paid the prevailing per diem wage rate for their labor classification.

18.3.3 The Partnership, on behalf of itself, its successors, and assigns, waives and releases the Authority and the City from any right of action that may be available to it pursuant to Labor Code Sections 1726 and 1781. The Partnership acknowledges the

protections of Civil Code Section 1542 relative to the waiver and release contained in this Section 18.3, which reads as follows:

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

BY INITIALING BELOW, THE PARTNERSHIP KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 18.3.

Partnership's Initials

18.4 Additionally, in accordance with Section 18.2, the Partnership shall indemnify, defend with counsel acceptable to the Authority and hold the Authority and the City harmless against any claims pursuant to Labor Code Sections 1726 and 1781 arising from this Agreement or the construction or operation of the Project. This indemnity shall survive termination of this Agreement and issuance of the Certificate of Completion.

18.5 Reimbursement of Authority. Except with respect to Hazardous Materials found to exist on the Property as of the date of this Agreement, Partnership shall, within 15 days after written demand, reimburse Authority and/or City, as appropriate, for all costs reasonably incurred by Authority (including the reasonable fees and expenses of attorneys, accountants, appraisers and other consultants) in connection with Authority and/or City, as appropriate, enforcement of the Project Documents and all related matters, including, without limitation, the following: (a) Authority's and/or City, as appropriate, commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights or obligations of the parties to any Project Document; and (b) all claims, demands, causes of action, liabilities, losses, and other costs against which Authority and/or City, as appropriate, is indemnified under the Project Documents. Such reimbursement obligations shall bear interest from the date occurring 15 days after Authority and/or City, as appropriate, makes written demand to Partnership at the rate of ten percent (10%) per annum. Such reimbursement obligations shall survive the cancellation of the Authority Subordinate Loan Note and City Subordinate Loan Note, and the release and reconveyance of the Authority Subordinate Loan Deed of Trust and City Subordinate Loan Deed of Trust.

19. DEFAULTS AND REMEDIES.

19.1 Event of Default. Any of the following events or occurrences with respect to a party (for purposes of this Section 19, the Authority, City and Partnership shall each be deemed a party) shall constitute a material breach of this Agreement and, after the expiration of any applicable cure period, shall constitute an “Event of Default” by such party:

19.1.1 The failure by either party to pay any amount in full when it is due under this Agreement, if the failure has continued for a period of 15 days after the party entitled to payment demands in writing that the other party cure that failure.

19.1.2 The failure by either party to perform any material obligation under this Agreement, which by its nature such party has no capacity to cure or has failed to cure during any applicable cure period.

19.1.3 The failure by either party to perform any other obligation under this Agreement, including, without limitation, the other Project Documents, if the failure has continued for a period of 30 days after demand in writing that such party cure the failure. If, however, by its nature the failure cannot reasonably be cured within 30 days, such party may have such longer period of time as is reasonably necessary to cure the failure, provided, however, that such party commence said cure within said 30-day period, and thereafter diligently prosecute said cure to completion within 90 days.

19.2 No Waiver. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default, or of any such rights or remedies, or deprive any 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.

19.3 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 any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by another party.

20. NOTICES.

20.1 All notices, consents, demands, approvals and other communications (the “Notices”) that are given pursuant to this Agreement shall be in writing to the appropriate party and shall be deemed to have been fully given when delivered, including delivery by commercial delivery service, or if deposited in the United States mail, certified or registered, postage prepaid, when received or refused. All Notices shall be addressed as follows:

If to Partnership:	Fontana Courtplace I Housing Partners, L.P. c/o The Related Companies of California, LLC 18201 Von Karman Avenue, Suite 900 Irvine, California 92612
If to Authority:	Fontana Housing Authority 8353 Sierra Avenue Fontana, California 92335 Attn: Executive Director
If to City:	City of Fontana 8353 Sierra Avenue Fontana, California 92335 Attn: City Manager

20.2 Addresses for notice may be changed from time to time by notice to all other parties. Notwithstanding that Notices shall be deemed given when delivered, the nonreceipt of any Notice as the result of a change of address of which the sending party was not notified shall be deemed receipt of such Notice.

21. PROJECT SIGN. Partnership agrees to construct, erect and maintain upon the Property during the course of construction a sign that identifies the Project as an Authority-and City assisted activity. The design, content and dimensions of such signs shall be subject to the prior approval of the Executive Director and City Manager, which approval shall not be unreasonably withheld or delayed, and shall be subject to such related provisions of the Fontana Municipal Code and permit requirements. The Authority and City acknowledge that Partnership is obligated to erect and maintain upon the Property during the course of construction a sign that identifies the Project as funded by the California Tax Credit Allocation Committee. The Partnership shall apply for such signage through the City Planning Department. Any signage erected on the Property shall comply with Fontana Municipal Code for signs.

22. ASSIGNMENT. Except as otherwise expressly provided to the contrary in this Agreement, Partnership shall not assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the Executive Director and City Manager, which consent may be withheld in their sole and absolute discretion. Any such assignment or delegation without such consent shall, at Authority's or City's option, be void.

23. ADMINISTRATION. Following approval of this Agreement by Authority, this Agreement shall be administered and executed on behalf of Authority by the Executive Director. The Executive Director shall have the authority, but not the obligation, to issue interpretations, waive terms and conditions, and enter into amendments of this Agreement (including, without limitation, to the Schedule of Performance) on behalf of Authority provided that such actions do

not substantially change the uses or development permitted of the Property or materially add to the costs of Authority provided herein. All other waivers or amendments shall require the formal consent of Authority. Notwithstanding any other provision of this Agreement, the Executive Director shall have no authority to administratively increase the Authority's financial contribution to the Project nor extend the Project time for completion by more than One Hundred Eighty (180) days. Following approval of this Agreement by the City, this Agreement shall be administered and executed on behalf of the City by the City Manager. The City Manager shall have the authority, but not the obligation, to issue interpretations, waive terms and conditions, and enter into amendments of this Agreement (including, without limitation, to the Schedule of Performance) on behalf of City provided that such actions do not substantially change the uses or development permitted of the Property or materially add to the costs of City provided herein. All other waivers or amendments shall require the formal consent of City Council. Notwithstanding any other provision of this Agreement, the City Manager shall have no authority to administratively increase the Authority's financial contribution to the Project nor extend the Project time for completion by more than One Hundred Eighty (180) days.

24. MISCELLANEOUS.

24.1 Counterparts. This Agreement may be executed in counterparts, all of which, taken together, shall be deemed to be one and the same document. Counterparts may be delivered via facsimile or electronic mail (including a .pdf or any electronic signature complying with California's Uniform Electronic Transactions Act [Cal. Civil Code Section 1633.1, et seq.] or other applicable law), such as DocuSign or such other commercially available electronic signature software, or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

24.2 Prior Agreements; Amendments; Consents. This Agreement contains the entire agreement between Authority and Partnership with respect to the Property, and all prior negotiations, understandings and agreements are superseded by this Agreement. No modification of this Agreement (including waivers of rights and conditions) shall be effective unless in writing and signed by the party against whom enforcement of such modification is sought, and then only in the specific instance and for the specific purpose given.

24.3 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Assuming proper service of process, Partnership, City and Authority waive any objection regarding personal or in rem jurisdiction and agree that venue shall be proper in the County of San Bernardino, California.

24.4 Severability of Provisions. No provision of this Agreement that is held to be unenforceable or invalid shall affect the remaining provisions, and to this end all provisions of this Agreement are hereby declared to be severable.

24.5 Headings. Headings are included in this Agreement for convenience of reference only and shall not be used in construing this Agreement.

24.6 Time of the Essence. Time is of the essence of this Agreement.

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

24.8 Warranty Against Payment of Consideration. Partnership warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

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

24.10 Submission of Documents and Other Matters for Approval. Whenever this Agreement requires a party to submit plans, drawings, documents or other matters to the other party for approval, and there is no time specified herein for such approval, the submitting party may submit a letter requiring approval or rejection by the other party of the documents or matter submitted within 30 days after submission, and unless rejected within the stated time such documents or matter shall be deemed approved. Except where such approval is expressly reserved to the sole discretion of the approving party, all approvals required hereunder by either party shall be reasonable and not unreasonably withheld or delayed.

24.11 Force Majeure.

24.11.1 In addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God or other deities; acts of the public enemy; epidemics; pandemics; quarantine restrictions; freight embargoes; litigation beyond the reasonable control of a party; unusually severe weather; inability, despite best efforts, to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier beyond the reasonable control of a party; acts of the other party; acts or the failure to act of any public or governmental entity (except that acts or the failure to act of Authority shall not excuse performance by Authority); or any other acts or causes beyond the reasonable control of the party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice

by the party claiming such extension is sent to the other party within 30 days of the commencement of the cause.

24.11.2 Force Majeure shall serve also to extend the time by which any condition, for the benefit of either party, shall be satisfied under this Agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGE NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates hereinafter respectively set forth.

PARTNERSHIP:

FONTANA COURTPPLACE I HOUSING PARTNERS, L.P.,
a California limited partnership

By: Related/Fontana Courtplace I Development Co., LLC,
a California limited liability company, its administrative general partner

By: _____
Frank Cardone, President

By: Foundation for Affordable Housing V, Inc.,
a California nonprofit public benefit corporation, its managing general partner

By: _____
Deborrah A. Willard, President

By: LBI Southridge Fontana LLC,
a California limited liability company, its co-general partner

By: LaBarge Industries, LLC,
a Delaware limited liability company, its sole member

By: _____
Josh LaBarge, President

(signatures continue on following page)

[AUTHORITY SIGNATURE BLOCK]

[CITY SIGNATURE BLOCK]

LIST OF EXHIBITS

EXHIBIT A - LEGAL DESCRIPTION OF THE SITE

EXHIBIT B - SCHEDULE OF PERFORMANCE

EXHIBIT C - SCOPE OF DEVELOPMENT

EXHIBIT D - PRELIMINARY PROJECT BUDGET

EXHIBIT E - GRANT DEED

EXHIBIT F - AUTHORITY SUBORDINATE NOTE

EXHIBIT G - AUTHORITY SUBORDINATE DEED OF TRUST

EXHIBIT H - SUBORDINATE COMPLETION GUARANTY

EXHIBIT I - ASSIGNMENT OF ARCHITECT'S AGREEMENT AND PLANS AND SPECIFICATIONS

EXHIBIT J - CITY SUBORDINATE NOTE

EXHIBIT K - CITY SUBORDINATE DEED OF TRUST

EXHIBIT L -REGULATORY AGREEMENT

EXHIBIT M - RESERVED

EXHIBIT N - RESERVED

EXHIBIT O - AUTHORITY PREDEVELOPMENT NOTE

EXHIBIT P - ASSIGNMENT OF WORK PRODUCT

EXHIBIT A-1

LEGAL DESCRIPTION OF SITE

Real property in the City of Fontana, County of San Bernardino, State of California, described as follows:

PARCEL 1: (APN: 0255-101-22-0-000)

THAT PORTION OF LOT 769, ACCORDING TO MAP OF LANDS BELONGING TO SEMI-TROPIC LAND AND WATER COMPANY, AS PER PLAT RECORDED IN BOOK 11 OF MAPS, PAGE 12, RECORDS OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF SAID LOT 769 WITH THE WEST LINE OF SIERRA AVENUE, 60.00 FEET WIDE; THENCE NORTH 89 DEG. 37' 06" WEST ALONG THE SOUTH LINE OF SAID LOT 769 A DISTANCE OF 397.12 FEET TO A POINT ON A LINE THAT IS PARALLEL WITH AND 70.00 FEET WEST OF, MEASURED AT RIGHT ANGLES, THE EAST LINE OF THE WEST 5.18 ACRES OF THE EAST 11.18 ACRES OF LOT 776, SAID SEMI-TROPIC LAND AND WATER COMPANY SAID WEST 5.18 ACRES OF THE EAST 11.18 ACRES COMPUTED TO THE CENTERS OF THE ADJOINING STREETS SHOWN ON AID MAP; THENCE NORTH 00 DEG. 25' 32" EAST PARALLEL WITH SAID SIERRA AVENUE 45.00 FEET; THENCE SOUTH 89 DEG. 37' 06" EAST PARALLEL WITH THE SOUTH LINE OF SAID LOT 769 A DISTANCE OF 397.12 FEET TO A POINT ON THE WEST LINE OF SAID SIERRA AVENUE; THENCE SOUTH 00 DEG. 25' 32" WEST ALONG SAID SIERRA AVENUE 45.00 FEET TO THE POINT OF BEGINNING.

PARCEL 2: (APN: 0255-101-23-0-000)

THE SOUTH ONE-HALF OF THE EAST ONE-HALF OF FARM LOT 769, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO MAP SHOWING SUBDIVISION OF LANDS BELONGING TO THE SEMI-TROPIC LAND AND WATER CO., AS PER PLAT RECORDED IN BOOK 11 OF MAPS, PAGE 12, RECORDS OF SAID COUNTY.

EXCEPT THEREFROM THAT PORTION AS DESCRIBED IN DEED RECORDED NOVEMBER 3, 1977 AS INSTRUMENT NO. 540 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF SAID LOT 769 WITH THE WEST LINE OF SIERRA AVENUE, 60.00 FEET WIDE; THENCE NORTH 89 DEG. 37' 06" WEST ALONG THE SOUTH LINE OF SAID LOT 769 A DISTANCE OF 397.12 FEET TO A POINT ON A LINE THAT IS PARALLEL WITH AND 70.00 FEET WEST OF, MEASURED AT RIGHT ANGLES, THE EAST LINE OF THE WEST 5.18 ACRES OF THE EAST 11.18 ACRES OF LOT 776, SAID SEMI-TROPIC LAND AND WATER COMPANY SAID WEST 5.18 ACRES OF THE EAST 11.18 ACRES COMPUTED TO THE CENTERS OF THE ADJOINING STREETS SHOWN ON SAID MAP; THENCE NORTH 00 DEG. 25' 32" EAST PARALLEL WITH SAID SIERRA AVENUE 45.00 FEET; THENCE SOUTH 89 DEG. 37' 06" EAST PARALLEL WITH THE SOUTH LINE OF SAID LOT 769 A DISTANCE OF 397.12 FEET TO A POINT ON THE WEST LINE OF SAID SIERRA AVENUE; THENCE SOUTH 00 DEG. 25' 32" WEST ALONG SAID SIERRA AVENUE 45.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT A-2

LEGAL DESCRIPTION OF THE PROPERTY

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

PARCEL A:

THE WESTERLY 255.83 FEET OF THE EASTERLY 453 FEET OF THE SOUTH ONE-HALF OF THE EAST ONE-HALF OF FARM LOT 769, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO MAP SHOWING SUBDIVISION OF LANDS BELONGING TO THE SEMI-TROPIC LAND AND WATER COMPANY, AS PER MAP RECORDED IN BOOK 11, PAGE 12 OF MAPS, RECORDS OF SAID COUNTY.

CONTAINING 84,482 SQUARE FEET (1.94 ACRES) OF LAND, MORE OR LESS

EXHIBIT B

SCHEDULE OF PERFORMANCE

<u>Task/Event</u>	<u>Time for Performance</u>
1. <u>Land Use Entitlements</u> . Per Article [4], Partnership shall cause the Land Use Entitlements to be obtained.	Complete.
2. <u>Partnership/Submission of Final Construction Documents</u> . Partnership shall submit to City for plan check the final construction documents for the Project.	Not later than 105 days after receipt by Partnership from TCAC of a reservation of Tax Credits for the Project.
3. <u>Partnership/Project Financing</u> . Per Section [6.4], Partnership shall submit to the Executive Director and City Manager for approval preliminary commitments for Project Financing.	Not later than 120 days after receipt by Partnership from TCAC of a reservation of Tax Credits for the Project.
4. <u>Executive Director/Project Financing</u> . The Executive Director and City Manager shall approve, conditionally approve or disapprove Partnership's preliminary commitments for Project Financing.	Not later than ten (10) business days after receipt of a complete set thereof.
5. <u>Partnership/Final Construction Documents</u> . Per Section [5.2], Partnership shall obtain City approval of Final Construction Documents.	Not later than five (5) business days prior to the TCAC Readiness to Proceed deadline.
6. <u>Partnership/Satisfaction of Final Conditions</u> . Partnership shall cause the conditions set forth in Sections [7.4] and [12.1] to be satisfied.	Not later than one (1) day prior to the TCAC Readiness to Proceed deadline.
7. <u>Partnership/Construction of Project</u> . Partnership shall commence and complete construction of the Project.	Construction shall commence within ten (10) business days after the Close of Escrow or such longer period as the Executive Director may and City Manager may approve. Construction shall be complete with twenty-four (24 months of commencement, subject to Force Majeure.

If Partnership fails to satisfy any obligation by the deadline set forth above, Partnership shall not be in default under this Agreement unless Partnership has first been given written notice of such failure and an opportunity to cure pursuant to Section [19.1.3]. Any cure by Partnership within the period set forth by Section [19.1.3] shall constitute a full and complete cure of the

failure, notwithstanding the fact that the deadline established herein was not first met by Partnership.

EXHIBIT C

SCOPE OF DEVELOPMENT

The Project shall consist of a 50-unit family affordable family housing community on the Property, consisting of approximately 1.94 acres of the Site.

The recreational amenities shall include a community building which will include a multipurpose room, office areas, and miscellaneous other uses. Laundry facilities will be included on-site. Outdoor amenities shall include a barbecue area and other open space.

The attached site plan illustrates the general design intent for the project.

The unit mix, including rent and income restrictions, shall be as provided in the Regulatory Agreement attached to the DDA as Exhibit L.

EXHIBIT D

PRELIMINARY PROJECT BUDGET

[TBD]

EXHIBIT E

GRANT DEED

(Follows this page)

FREE RECORDING. GOV. §6103

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Fontana

Fontana, CA _____
Attention: _____

(Space Above For Recorder's Use)
A.P. Nos: _____

GRANT DEED

THE UNDERSIGNED GRANTOR DECLARE(S):
Documentary Transfer Tax is \$ _____, City Tax \$ _____

() Computed on the full consideration or value of property conveyed

OR

() Computed on the full consideration or value less liens or encumbrances remaining at time of sale

() City of Fontana; and

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, CITY OF FONTANA, _____ ("Grantor") hereby GRANT(S) to FONTANA COURTPLACE I HOUSING PARTNERS, L.P., a California limited partnership, that certain real property in the City of Fontana, County of San Bernardino, State of California, more particularly described in Exhibit A, attached hereto and made a part hereof.

IN WITNESS WHEREOF, Grantor has caused this Grant Deed to be executed by its representative thereunto duly authorized as of the day and year first above written.

"GRANTOR":

CITY OF FONTANA

By: _____
Name: _____
Title: _____

A Notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, a Notary Public in
and for said State, personally appeared, _____, who proved
to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to
the within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

[SEAL]

Exhibit "A" To Grant Deed
Legal Description of Real Property

All that certain real property situated in the City of Fontana, County of San Bernardino, State of California, described as follows:

Assessor's Parcel Number: _____

EXHIBIT F

AUTHORITY SUBORDINATE LOAN NOTE

(Follows this page)

AUTHORITY SUBORDINATE DEVELOPMENT LOAN NOTE

(Fontana Courtplace I Family Apartments)

\$ _____

Fontana, California

As of _____, 202_____

R E C I T A L S

A. WHEREAS, FONTANA COURTPLACE I HOUSING PARTNERS, L.P., a California limited partnership (“Borrower”), the FONTANA HOUSING AUTHORITY, a public body, corporate and politic (“Lender”) and the CITY OF FONTANA (“City”), entered into that certain Disposition and Development Agreement dated as of _____, 2023 (the “DDA”); and

B. WHEREAS, pursuant to the DDA, Lender has made the “Authority Subordinate Loan” to Borrower to finance up to _____ Dollars (\$[TBD]) in Project Costs.

NOW, THEREFORE, FOR VALUE RECEIVED, Borrower promises to pay to the order of Lender, at 8353 Sierra Avenue, Fontana, California 92335, or at such other place as Lender may from time to time designate in writing, (a) the principal sum of

_____ Dollars (\$[TBD]), with interest from the Recordation Date until paid at the simple rate of one quarter of one percent (0.25%) per annum, and (b) all fees, costs and expenses payable hereunder.

1. **Definitions; Interpretation; Accounting.**

1.1 **Definitions.** Initially capitalized words and terms used in this Note without definition shall have the meanings ascribed thereto in the DDA or the following definitions, unless the context or use clearly requires otherwise:

“**Appraisal Process**” shall mean the parties shall first attempt to agree on the Fair Market Value of the subject property. If they are unable to come to an agreement within ten (10) business days, the Fair Market Value shall be determined by appraisal. Lender and Borrower shall each name one (1) M.A.I. appraiser within five (5) business days. If the two (2) appraisers cannot agree on the Fair Market Value within thirty (30) days after the date on which the second appraiser is named, they shall appoint a third M.A.I. appraiser. If the third appraiser agrees with either of the originally asserted appraisals of the first two (2) appraisers, then the agreed value shall be the Fair Market Value. If there is no such agreement, then the arithmetic average of the two (2) closest of the three (3) appraisals shall be the Fair Market Value. Each party shall bear the cost of its own appraiser. The cost of the third appraiser, if any, shall be borne equally by the parties.

“**Area**” means the Primary Metropolitan Statistical Area in which the Property is located, as promulgated by the U.S. Department of Housing and Urban Development.

“Authority Subordinate Loan Deed of Trust” means the Deed of Trust of even date herewith by which this Note is secured.

“Authority’s Proportionate Share” has the meaning set forth in Section 6.1.

“Base Rate” means a fluctuating interest rate per annum as shall be in effect from time to time, which rate at all times shall be equal to the rate of interest announced publicly by Bank of America, N.A., from time to time as its base rate.

“Capital Improvements” means all work and improvements with respect to the Property for which costs and expenses may be capitalized in accordance with GAAP.

“Cash Flow” means, for the applicable period of time, the remainder of Net Operating Income less Debt Service.

“City Loan” means that certain loan in the original principal amount of \$ _____ to be made by the City to the Partnership on or about the date hereof.

“Commencement Date” shall mean the earlier of (a) when the Construction has been completed as evidenced by recordation in the Official Records of the Notice of Completion therefor, or (b) when the Improvements have been placed in service.

“Construction” means the construction to be performed by Borrower pursuant to the DDA.

“CPI” means the Consumer Price Index-Urban Wage Earners and Clerical Workers (Los Angeles-Anaheim-Riverside, California, All Items, Base 1982-84 = 100) as published by the United States Department of Labor, Bureau of Labor Statistics. Should the Bureau discontinue the publication of the Index, or publish the same less frequently or in a different schedule, or alter the same in some other manner including, without limitation, changing the name of the Index or the geographic area covered by the Index, Borrower and Lender shall adopt a substitute index or procedure which reasonably reflects and monitors consumer prices.

“Debt Service” means scheduled debt service on the Senior Loan.

“Effective Gross Income” means Operating Income after allowance for vacancy and collection losses.

“Executive Director” means the Executive Director of Lender or his designee.

“Fair Market Value” shall have the meaning provided in Section 1263.320(a) of the California Code of Civil Procedure or any successor statute thereto.

“Fiscal Year” means the fiscal year of Borrower, which is the calendar year.

“GAAP” has the meaning set forth in Section [1.3] of this Note.

“Improvements” means the improvements to be made to the Property by Borrower in accordance with the DDA.

“Median Income for the Area” means the median income for the Area as determined and published annually by the Secretary of Housing and Urban Development under Section 8 of the United States Housing Act of 1937, as amended, or if programs under Section 8 are terminated, median income for the Area determined under the method used by the Secretary prior to such termination.

“Net Operating Income” means, for the applicable period of time, the amount, if any, by which Operating Income for such period exceeds Operating Expenses paid by Borrower during such period. The calculation of Net Operating Income for each Fiscal Year shall be computed based on GAAP (whether or not Operating Expenses are properly deductible or must be characterized as a capital expenditure under the Internal Revenue Code).

“Net Refinancing Proceeds” means, from time to time, the proceeds of any Refinancing in excess of (a) the amount of any senior obligation or debt secured by the Property and satisfied out of such proceeds, and (b) the reasonable and customary costs and expenses incurred in connection with such Refinancing.

“Net Sale Proceeds” means, from time to time, the gross proceeds of a Sale, irrespective of the form of said proceeds, less (a) payment in full of the Senior Loan, (b) return of the cash equity invested in the Project by the partners in Borrower, (c) any reserve reasonably contemplated by Borrower’s partnership agreement at the time this Note was executed by Borrower, and (d) the reasonable and customary costs and expenses incurred by Borrower in connection with the subject Sale. If Lender reasonably determines that any Sale is not made in an arm’s length transaction, other than to a general partner in Borrower pursuant to an option or right of first refusal granted to such general partner (or its affiliate) on or before the date this Note was executed by Borrower, then instead of the Net Sale Proceeds being the result of the aforementioned deductions from the gross proceeds of the subject Sale, the Net Sale Proceeds shall be the result of the aforementioned deductions from the Fair Market Value of the Property.

“Official Records” means the Official Records of the County of San Bernardino, California.

“Operating Expenses” means, for the applicable period of time, all costs and expenses incurred by Borrower in the ordinary course of the management, ownership, and/or operation of the Property by Borrower, including, without limitation, (a) tax credit syndication and other fees including an asset management fee payable to the partners of Borrower in the aggregate amount of up to Thirty Five Thousand Dollars (\$35,000.00) per year, as such sum shall be adjusted annually on January 1 by three percent (3%), (b) all amounts deposited in the reserve fund of the Project for replacements, provided, however, such amounts shall not, without the prior approval of the Executive Director, which approval shall not be unreasonably withheld, exceed those amounts deposited as reserves for similar projects in California, (c) any fee payable to Developer and approved by the Executive Director, the payment of which has been deferred, (d) amounts necessary to provide social services to the residents of the Property, and (e) a property management fee not to exceed sixty five dollars (\$65.00) per unit per month. Debt

Service is not an Operating Expense. Operating Expenses shall not include any expenses for Capital Improvements, except for Capital Improvements approved by the Senior Lender and by the Executive Director for treatment as an Operating Expense. Operating Expenses shall be calculated on a cash basis.

“Operating Income” means, for the applicable period of time, all proceeds received by Borrower from the operation of the Property and from any and all sources resulting from or attributable to the operation of the Property, including, without limitation, all rentals, parking receipts, laundry receipts, forfeited Security Deposits, and all expense reimbursements paid to Borrower by tenants of the Property. Operating Income shall be calculated on a cash basis. Operating Income shall not include any Senior Loan funds, payments for tax credits or the sale of partnership interests in Borrower, or proceeds of a casualty loss or condemnation.

“Property” has the meaning ascribed thereto in the Authority Subordinate Loan Deed of Trust.

“Recordation Date” means the date on which the Authority Subordinate Loan Deed of Trust records in the Official Records.

“Refinancing” means changing the existing financing on the Property, or relating to the Property, by increasing the amount of the existing mortgage(s), adding one or more mortgages to the existing mortgage(s), or paying off an existing mortgage or mortgages and obtaining a new, larger mortgage or mortgages. A Refinancing may be in any form, including, without limitation, debt or a sale and leaseback. Notwithstanding anything contained herein to the contrary, the taking of the Take-Out Loan by Borrower shall not constitute a Refinancing under this Note.

“Sale” has the meaning set forth in subparagraph [29(d)] of the Authority Subordinate Loan Deed of Trust.

“Security Deposits” means all security deposits collected from tenants of the Property.

“Senior Loan” means that certain construction loan made to Borrower by _____, for the Construction, and take-out financing therefor to be provided by _____ or such other lender as may be approved by the Executive Director (the “Take-out Loan”).

“Senior Loan Documents” means the documents evidencing and securing the Senior Loan.

“Subordinate Loans” has the meaning set forth in Section 6.1.

1.2 **Interpretation.** In this Note, (a) the singular includes the plural and the plural the singular; (b) words and terms which include a number of constituent parts, things or elements, unless otherwise specified, shall be construed as referring separately to each constituent part, thing or element thereof, as well as to all of such constituent parts, things or elements as a whole; (c) words importing any gender include the other genders; (d) references to

statutes are to be construed as including all rules and regulations adopted pursuant to the statute referred to and all statutory provisions consolidating, amending or replacing the statute referred to; (e) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms; (f) the words “*hereto*” or “*herein*” or “*hereof*” or “*hereunder*” or words of similar import refer to this Note in its entirety; (g) the words “*include*” or “*including*” or words of similar import, unless otherwise specified herein, shall be deemed to be followed by the words “*without limitation*”; (h) all references to Articles and Sections, unless otherwise specified, are to the Articles and Sections of this Note; and (i) headings of Articles and numberings and headings of Sections and paragraphs are inserted as a matter of convenience and shall not affect the construction of this Note.

1.3 **Accounting Terms and Determinations.** Unless otherwise specified herein, (a) all accounting terms used herein shall be interpreted, (b) all accounting determinations hereunder shall be made, and (c) all books, records and financial statements required to be delivered hereunder shall be prepared in accordance with generally accounting principles as in effect from time to time, consistently applied (“GAAP”), except for changes approved by Lender.

2. **Disposition and Development Agreement.** The principal sums hereunder are being loaned by Lender to Borrower in accordance with and pursuant to the DDA. The terms of the DDA are incorporated herein and made a part hereof to the same extent and with the same force and effect as if fully set forth herein. An Event of Default by Developer [Borrower] under the DDA shall be a default hereunder, and a default hereunder, after delivery of notice and expiration of the cure period described in Section [15] below, shall be an Event of Default by Developer [Borrower] under the DDA.

3. **Intentionally Omitted.**

4. **[Intentionally Omitted].**

5. **Financial Reporting and Accounting Covenants.** Borrower will permit the representatives of Lender at any time or from time to time, upon one (1) business days’ notice and during normal business hours, to inspect, audit and copy all of Borrower’s books, records, and accounts relating to the Property. Borrower shall furnish or cause to be furnished to Lender the following:

(a) **Quarterly Statements.** As soon as available, and in no event later than forty-five (45) days after the close of each of the first three calendar quarters of each Fiscal Year, commencing with the calendar quarter ending, 202__, financial statements of Borrower, including a balance sheet and profit-and-loss statement, as at the close of and for such quarter, all in reasonable detail and prepared in accordance with GAAP; such statements to be accompanied by a certificate signed by a general partner of Borrower to the effect that such statements fairly present the financial condition of Borrower as at the date indicated and the results of operations for the period indicated, subject, however, to year-end audit adjustments;

(b) **Annual Statements.** As soon as available, but in no event later than one hundred twenty (120) days after the close of each Fiscal Year, financial statements of Borrower, including a profit-and-loss statement, reconciliation of capital accounts and a consolidated statement of changes in financial position of Borrower as at the close of and for such Fiscal Year, all in reasonable detail, certified as provided in clause (a) above by a general partner of Borrower;

(c) **Annual Operating Statements.** As soon as available but in no event later than one hundred twenty (120) days after the close of each Fiscal Year, an "Annual Operating Statement" showing all Operating Income, Operating Expenses, Debt Service and any other amounts taken into consideration in computing Net Operating Income and Cash Flow, if any, for the subject Fiscal Year, in a form reasonably satisfactory to the Executive Director;

(d) **Tax Returns.** As soon as available, but in no event later than at the time of filing with the Internal Revenue Service, the federal tax returns (and supporting schedules, if any) of Borrower;

(e) **Audit Reports.** Promptly upon receipt thereof, copies of all reports submitted to Borrower by independent public accountants in connection with each annual, interim or special audit of the financial statements of Borrower, made by such accountants, including the comment letter submitted by such accountants to management in connection with their annual audit;

(f) **Notices, Certificates or Communications.** Immediately upon giving or receipt thereof, copies of any material notices, certificates or other communications given by or on behalf of Borrower or received by or on behalf of Borrower from Senior Lender pursuant to or in connection with any of the Senior Loan Documents, as well as any material notices and other communications delivered to the Property or to Borrower naming Lender or the "Construction Lender" as addressee, or which could reasonably be deemed to affect the construction of the Improvements or the ability of Borrower to perform its obligations to Lender.

6. **Payment.** Borrower shall make payment on this Note in accordance with the following:

6.1 **Annual Payment.** If, when Borrower delivers each Annual Operating Statement to Lender pursuant to Subdivision [5(c)], above, said Annual Operating Statement shows that there was Cash Flow for the subject Fiscal Year, or part thereof, Borrower shall make payment to Lender on account of this Note in the amount of ____ percent (____%) of such Cash Flow (the "Authority's Proportionate Share of Cash Flow"). The Authority's Proportionate Share of Cash Flow shall be calculated as a percentage of Cash Flow in which the denominator is the sum of all loans made to Borrower, secured by the Property, payable from cash flow, including, without limitation, the City Loan (the "**Subordinate Loans**"), and the numerator being the original principal amount of the Authority Loan. The Subordinate Loans shall share in 50% of Cash Flow and the Borrower shall receive 50% of Cash Flow.

6.2 **Refinancing**. As and when there is any Refinancing of the Property, Borrower shall pay the Authority's Proportionate Share of Net Refinancing Proceeds to Lender on account of this Note to the extent of the outstanding balance of principal and accrued interest.

6.3 **Mandatory Prepayments**. If, upon completion of construction and when an independent audit of the total cost of the development has been prepared as required by the Tax Credit Allocation Committee, the remainder of said total cost of the development less the sum of (a) the actual syndication proceeds of the State (if any) and Federal Low-Income Housing Tax Credits, and (b) the permanent loan proceeds (whether the product of a take-out or sale of the Senior Loan) for the Project is less than _____ [Fill-in Original Principal Amount of this Note] _____ Dollars (\$[TBD]), then Borrower shall, in connection with the closing of the permanent loan, make a prepayment to Lender in the amount of such difference.

6.4 **Sale**. As and when there is any Sale, Borrower shall pay the Authority's Proportionate Share of Net Sale Proceeds to Lender on account of this Note to the extent of the outstanding balance of principal and accrued interest.

6.4.1 **Seller Financing**. In the event that the Net Sale Proceeds include financing to be provided by Borrower as a purchase money lender, Lender shall not be obligated to accept any part of said financing. All or any part of the payment to Lender shall be made in cash.

6.4.2 **In Kind Consideration**. In the event that the Net Sale Proceeds include in kind consideration, Lender shall not be obligated to accept any part of such in kind consideration, but Borrower shall be entitled to substitute cash for the cash equivalent value of the in kind consideration. The cash equivalent value of the in kind consideration shall be its Fair Market Value as determined by the Appraisal Process.

7. **Distribution of Profits**. From and after the Commencement Date, Borrower covenants and agrees that, except for fees payable as Operating Expenses pursuant to this Note, Borrower shall not withdraw or distribute to the partners in Borrower any of the rents, issues and/or profits of the Project for any Fiscal Year unless payment is concurrently made to Lender of the percentage of such rents, issues and profits payable to Lender pursuant to Section [6.1].

8. **Maturity**. This Note shall be all due and payable on fifty eight (58) years from the date hereof.

9. **Application of Payments**. Any payments received by Lender pursuant to the terms hereof shall be applied first to sums, other than principal and interest, due Lender pursuant to this Note; next to the payment of all interest accrued to the date of such payment; and the balance, if any, to the payment of principal.

10. **Form of Payment**. All amounts due hereunder are payable in immediately available funds and lawful monies of the United States of America.

11. **Dispute Regarding Annual Operating Statement**. If Lender disputes any Annual Operating Statement, Lender shall notify Borrower of such dispute and the parties shall

cause their representatives to meet and confer concerning the dispute and to use all reasonable efforts to reach a mutually acceptable resolution of the matter in question within thirty (30) days after Lender's notice of such dispute. If the parties are unable to achieve a mutually acceptable resolution within such 30-day period, then, within twenty (20) days after the expiration of such period, Borrower and Lender shall appoint a national firm of certified public accountants to review the dispute and to make a determination as to the matter in question within thirty (30) days after such appointment. If the parties cannot, within ten (10) days, agree on the firm to be appointed, then, upon the application of either party, such firm shall be appointed by the Presiding Judge of the Superior Court for the County of San Bernardino, California. Such firm's determination shall be final and binding upon the parties. Such firm shall have full access to the books, records and accounts of the Borrower and the Project.

11.1 **Underpayment.** If any audit by Lender reports an underpayment by Borrower on this Note, Borrower shall pay the amount of any such underpayment, together with the late charge specified in Section [14] of this Note, to Lender within five (5) days after notice thereof to Borrower or, in the event of a dispute, after notice to Borrower of the resolution of such dispute by the independent firm of certified public accountants, as the case may be, and, if such underpayment amounts to more than three percent (3%) of the disputed payment for the period audited, then, notwithstanding anything to the contrary in this Section, Borrower shall pay to Lender, within five (5) days after demand, Lender's reasonable costs and expenses in conducting such audit and exercising its rights under Section [11] of this Note (including a reasonable charge for the services of any employees of Lender conducting such audit and exercising its rights under this Section).

12. **Prepayment.** At any time, Borrower may prepay in whole or in part, without penalty, the outstanding principal balance under this Note, together with all accrued and unpaid interest, fees, costs and expenses payable hereunder.

13. **Security.** This Note and all amounts payable hereunder are secured by the Authority Subordinate Loan Deed of Trust. The terms of the Authority Subordinate Loan Deed of Trust are incorporated herein and made a part hereof to the same extent and with the same force and effect as if fully set forth herein. A default under any of the provisions of the Authority Subordinate Loan Deed of Trust shall be a default hereunder, and a default hereunder shall be a default under the Authority Subordinate Loan Deed of Trust.

14. **Late Payment.** If any annual payment of accrued interest and principal is not received by the Lender within ten (10) calendar days after the installment is due, Borrower shall pay to the Lender a late charge of five percent (5%) of such payment, such late charge to be immediately due and payable without demand by Lender.

15. **Acceleration and Other Remedies.** If:

(a) any payment under this Note is not made when due and Borrower fails to cure said default within ten (10) days after notice from Lender;

(b) Borrower defaults under any other provision of this Note and Borrower shall have failed to cure said default within thirty (30) days after notice from Lender, provided,

however, if cure of such default reasonably requires more than thirty (30) days, then, provided that Borrower commences to cure within such thirty (30)-day period and thereafter diligently and continuously prosecutes the cure to completion, Borrower shall not be in default during the cure period;

(c) Borrower, subject to force majeure (as defined in Article [24] of the DDA, fails to complete the Construction as required by the Schedule of Performance attached to the DDA; or

(d) there is an event or occurrence which, pursuant to the Authority Subordinate Loan Deed of Trust, gives rise to acceleration of the indebtedness evidenced by this Note,

the entire principal amount outstanding hereunder and accrued interest thereon shall at once become due and payable, at the option of Lender.

16. **Remedies.** Upon the occurrence of an event of default and the expiration of any cure period therefor as provided in this Note without such event of default having been cured, then, at the option of Lender, the entire balance of principal together with all accrued interest thereon shall, without demand or notice, but subject to the non-recourse provisions of Section [22] of this Note, immediately become due and payable. Upon the occurrence of an event of default (and so long as such event of default shall continue), the entire balance of principal together with all accrued interest shall bear interest at the lesser of (a) the maximum rate permitted by law, and (b) the Base Rate plus three percent (3%) per annum. No delay or omission on the part of Lender in exercising any right under this Note or under the Authority Subordinate Loan Deed of Trust shall operate as a waiver of such right.

17. **Third Party Cure Rights.** Notwithstanding anything to the contrary contained in this Note or the Authority Subordinate Loan Deed of Trust (collectively, the "Subordinate Loan Documents"), prior to declaring any default or taking any remedy permitted under the Subordinate Loan Documents or applicable law based upon an alleged default under the Subordinate Loan Documents, _____, a _____, and _____, a _____ (collectively, with their successors and assigns, "_____"") shall have a period of not less than (a) ten (10) days to cure such alleged default if of a monetary nature, and (b) thirty (30) days to cure such alleged default if of a nonmonetary nature; provided, however, if in order to cure such a default _____ reasonably determines that it must remove the general partner of the Borrower, _____ shall so notify the Lender and so long as _____ is diligently and continuously attempting to so remove such general partner, _____ shall have until the date thirty (30) days after the effective date of the removal of the general partner or general partners to cure such default.

18. **Waiver.** Except as otherwise expressly provided herein, Borrower hereby waives diligence, presentment, protest and demand, notice of protest, dishonor and nonpayment of this Note, and expressly agrees that, without in any way affecting the liability of Borrower hereunder, Lender may extend any maturity date or the time for payment of any installment due hereunder, accept additional security, release any party liable hereunder and release any security now or hereafter securing this Note. Borrower further waives, to the full extent permitted by law, the right to plead any and all statutes of limitations as a defense to any demand on this Note, or on

any deed of trust, security agreement, lease assignment, guaranty or other agreement now or hereafter securing this Note.

19. **Attorneys' Fees.** If this Note is not paid when due or if any event of default occurs, Borrower promises to pay all costs of enforcement and collection, including but not limited to, reasonable attorney's fees, whether or not any action or proceeding is brought to enforce the provisions hereof.

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

21. **Interest Rate Limitation.** Lender and Borrower stipulate and agree that none of the terms and provisions contained herein or in any of the loan instruments shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of California. In such event, if any holder of this Note shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on this Note to a rate in excess of the maximum rate permitted to be charged by the laws of the State of California, all such sums deemed to constitute interest in excess of such maximum rate shall, at the option of such holder, be credited to the payment of the sums due hereunder or returned to Borrower.

22. **Non-Recourse.** Notwithstanding anything to the contrary contained in this Note or in the Authority Subordinate Loan Deed of Trust referred to in this Note, but without in any manner affecting the validity of this Note or the lien or charge of the Authority Subordinate Loan Deed of Trust, in the event of any default under the terms of this Note or the Authority Subordinate Loan Deed of Trust, the sole recourse of the Lender for any and all such defaults shall be by judicial foreclosure or by the exercise of the trustee's power of sale, or such other appropriate means of enforcing the Authority Subordinate Loan Deed of Trust, and the undersigned, and the partners of the undersigned, shall not be personally liable for the payment of this Note or for any other default under the Authority Subordinate Loan Deed of Trust or for the payment of any deficiency established after judicial foreclosure or trustee's sale under the Authority Subordinate Loan Deed of Trust. Notwithstanding the limitations of liability set forth above, Borrower shall be fully liable for:

(a) Cash Flow payable to Lender pursuant to Section [6.1] but not applied to this Note; and

(b) all legal costs and expenses reasonably incurred by Lender in the enforcement of this Note.

23. **Headings.** Headings at the beginning of each numbered Section of this Note are intended solely for convenience and are not to be deemed or construed to be a part of this Note.

24. **Giving of Notice.** Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by mailing it by first class mail to Borrower at the following address:

Fontana Courtplace I Housing Partners, L.P.
c/o The Related Companies of California, LLC
18201 Von Karman Avenue, Suite 900
Irvine, CA 92612
Attn: Frank Cardone, President

or at a different address if Borrower gives Lender a notice of that different address.

Any notice that must be given to Lender under this Note will be given by mailing it by first class mail to Lender at the following address:

8353 Sierra Avenue
Fontana, California 92335
Attention: Executive Director

or at a different address if Lender gives Borrower a notice of that different address.

25. **Choice of Law.** This Note shall be governed by and construed and enforced in accordance with the laws of the State of California.

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[signature page next page]

BORROWER:

FONTANA COURTPLACE I HOUSING PARTNERS,
L.P., a California limited partnership

By: Related/Fontana Courtplace I Development Co.,
LLC, a California limited liability company, its
administrative general partner

By: _____
Frank Cardone, President

By: Foundation for Affordable Housing V, Inc.,
a California nonprofit public benefit corporation, its
managing general partner

By: _____
Deborrah A. Willard, President

By: LBI Southridge Fontana LLC, a California limited
liability company, its co-general partner

By: LaBarge Industries, LLC, a Delaware
limited liability company, its sole member

By: _____
Josh LaBarge, President

EXHIBIT G

SUBORDINATED DEED OF TRUST WITH ASSIGNMENT OF RENTS

(Follows this page)

**RECORDING REQUESTED BY:
FONTANA HOUSING AUTHORITY
AND WHEN RECORDED RETURN TO:
FONTANA HOUSING AUTHORITY
8353 Sierra Avenue
Fontana, California 92335-3528
Attention: Director of Housing**

[Free Recording Requested]

Government Code § 6103]

**SUBORDINATED DEED OF TRUST
WITH ASSIGNMENT OF RENTS**

[FONTANA COURTPLACE I FAMILY APARTMENTS]

[AUTHORITY SUBORDINATE LOAN DEED OF TRUST]

Trustor grants, transfers and assigns to Trustee in trust, upon the trusts, covenants, conditions and agreements and for the uses and purposes hereinafter contained, with power of sale, and right of entry and possession, all of its title and interest in that real property (the “Property”) in the City of Fontana, County of San Bernardino, State of California, described in Exhibit A attached hereto and incorporated herein by this reference.

Together with Beneficiary's interest in all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Property; and

Together with the rents, issues and profits thereof; and together with all buildings and improvements of every kind and description now or hereafter erected or placed thereon, and all fixtures, including but not limited to all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, laundry equipment, steam and hot-water boilers, stoves, ranges, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating fixtures, mantles, cabinets, refrigerating plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, and all shades, awnings, screens, blinds and other furnishings, it being hereby agreed that all such fixtures and furnishings shall to the extent permitted by law be deemed to be permanently affixed to and a part of the reality; and

Together with all building materials and equipment now or hereafter delivered to said premises and intended to be installed therein; and

Together with all plans, drawings, specifications, and articles of personal property now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the completion and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner.

To have and to hold the property hereinbefore described (including the Property and all appurtenances), all such property being referred to collectively herein as the "Property," to Trustee, its successors and assigns forever.

FOR THE PURPOSE of securing (1) payment of indebtedness of Trustor to the Beneficiary in the principal sum of _____ Dollars (\$[TBD]) (the "Authority Subordinate Loan"), evidenced by a promissory note of even date herewith between Trustor and Beneficiary (the "Authority Subordinate Loan Note"), together with all sums due thereunder including interest and other charges; and (2) the performance of each agreement of Trustor in this Deed of Trust and the Authority Subordinate Loan Note. Said Authority Subordinate Loan Note and all of its terms are incorporated herein by reference and this conveyance shall secure any and all extensions, amendments, modifications or renewals thereof however evidenced, and additional advances of the Authority Subordinate Loan evidenced by any note reciting that it is secured hereby.

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

1. That it will pay the Authority Subordinate Loan Note at the time and in the manner provided therein;
2. That it will not permit or suffer the use of any of the Property for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed, namely, as affordable rental housing;
3. That the Authority Subordinate Loan Note is incorporated herein and made a part of this Deed of Trust. Upon default under the Authority Subordinate Loan Note or this Deed of Trust, Beneficiary, at its option, may declare the whole of the indebtedness secured hereby to be due and payable;
4. That all rents, profits and income from the Property covered by this Deed of Trust are hereby assigned to Beneficiary for the purpose of discharging the debt hereby secured. Permission is hereby given to Trustor so long as no default exists hereunder, to collect such rents, profits and income;
5. That upon default hereunder, Beneficiary shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the Property described herein and operate same and collect the rents, profits and income therefrom;

6. That Trustor will keep the improvements now existing or hereafter erected on the Property insured against loss by fire and such other hazards, casualties and contingencies as may be required in writing from time to time by Beneficiary, and all such insurance shall be evidenced by standard fire and extended coverage insurance policy or policies, in the amount of the replacement value of the improvements. Such policies shall be endorsed with a standard mortgage clause with loss payable to Beneficiary subordinate to the rights and interest of the beneficiary of the Senior Loan Deed of Trust described in paragraph 31, below) and certificates thereof together with copies of original policies shall be deposited with Beneficiary;

7. To pay, at least ten (10) days before delinquency, any taxes and assessments affecting said Property when due, all encumbrances, charges and liens, with interest, on said Property or any part thereof which appear to be prior or superior hereto, all costs, fees and expenses of this Trust;

8. To keep said Property in good condition and repair, not to remove or demolish any buildings thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor (unless contested in good faith if Trustor provides security satisfactory to Beneficiary that any amounts found to be due will be paid and no sale of the Property or other impairment of the security hereunder will occur); to comply with all laws affecting said Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said Property in violation of law and/or covenants, conditions and/or restrictions affecting said Property; not to permit or suffer any alteration of or addition to the buildings or improvements hereafter constructed in or upon said Property without the consent of Beneficiary;

9. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear;

10. Should Trustor fail to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. Beneficiary or Trustee, being authorized to enter upon said Property for such purposes, may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; may pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, may pay necessary expenses, employ counsel, and pay counsel's reasonable fees;

11. Beneficiary shall have the right to pay fire and other property insurance premiums when due should Trustor fail to make any required premium payments. All such payments made by Beneficiary shall be added to the principal sum secured hereby;

12. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, under permission given under this Deed of Trust, with interest from date of expenditure at the rate specified in the Authority Subordinate Loan Note;

13. That the Authority Subordinate Loan advanced hereunder is to be used in the development of the Property; and upon the failure of Trustor to keep and perform such covenants, the principal sum and all arrears of interest, and other charges provided for in the Authority Subordinate Loan Note shall, at the option of Beneficiary, become due and payable, anything contained herein to the contrary notwithstanding;

14. Trustor further covenants that it will not voluntarily create, suffer or permit to be created against the Property, subject to this Deed of Trust, any lien or liens except as authorized by Beneficiary and further that it will keep and maintain the Property free from the claims of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on the Property;

15. That any and all improvements made or about to be made upon the Property, and all plans and specifications, comply with all applicable municipal ordinances and regulations and all other regulations made or promulgated, now or hereafter, by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office;

16. Trustor herein agrees to pay to Beneficiary or to the authorized loan servicing representative of Beneficiary a charge not to exceed that permitted by law for providing a statement regarding the obligation secured by this Deed of Trust as provided by Section 2954, Article 2, Chapter 2, Title 14, Division 3 of the California Civil Code.

IT IS MUTUALLY AGREED THAT:

17. Subject to the additional cure rights in Section 17 of the Authority Subordinate Loan Note, if the construction of any improvements as herein referred to shall not be carried on with reasonable diligence, or shall be discontinued at any time for any reason other than events of Force Majeure pursuant to Section 36 hereof, Beneficiary, after due notice to Trustor or any subsequent owner, is hereby invested with full and complete authority to enter upon the Property, employ watchmen to protect such improvements from depredation or injury and to preserve and protect the personal property therein, and to continue any and all outstanding contracts for the erection and completion of said building or buildings, to make and enter into any contracts and obligations wherever necessary, either in its own name or in the name of Trustor, and to pay and discharge all debts, obligations and liabilities incurred thereby. All such sums so advanced by Beneficiary (exclusive of advances of the principal of the indebtedness secured hereby) shall be added to the principal of the indebtedness secured hereby and shall be secured by this Deed of Trust and shall be due and payable on demand;

18. In the event of any fire or other casualty to the Project or eminent domain proceedings resulting in condemnation of the Project or any part thereof, Trustor shall have the right to rebuild the Project, and to use all available insurance or condemnation proceeds therefor, provided that (a) such proceeds are sufficient to rebuild the Project in a manner that provides

adequate security to Beneficiary for repayment of the Authority Subordinate Loan or if such proceeds are insufficient then Trustor shall have funded any deficiency, (b) Beneficiary shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no material default then exists under the Authority Subordinate Loan Note or this Deed of Trust. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Authority Subordinate Loan in a manner that provides adequate security for repayment of the remaining balance of the Authority Subordinate Loan. The rights of the Beneficiary to any insurance proceeds or condemnation awards pursuant to this Section 18 are and shall be subject to the prior right to any insurance proceeds or condemnation awards of the beneficiary of the Senior Loan Deed of Trust described in Section 31;

19. Upon default by Trustor in making any payments provided for herein or in the Authority Subordinate Loan Note secured hereby, and if such default is not made good within ten (10) days after notice from Beneficiary, or if Trustor shall fail to perform any covenant or agreement in this Deed of Trust within thirty (30) days after written demand therefor by Beneficiary (or, in the event that more than thirty (30) days is reasonably required to cure such default, should Trustor fail to promptly commence such cure, and diligently prosecute same to completion), Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale, and of written notice of default and of election to cause the Property to be sold, which notice Trustee shall cause to be duly filed for record and Beneficiary may foreclose this Deed of Trust. Beneficiary shall also deposit with Trustee this Deed of Trust, the Authority Subordinate Loan Note and all documents evidencing expenditures secured hereby;

20. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said Property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. Trustee shall apply the proceeds of sale to payment of (1) the expenses of such sale, together with the reasonable expenses of this trust including therein reasonable Trustee's fees or attorneys' fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (2) the cost of any search and/or other evidence of title procured in connection with such sale and revenue stamps on Trustee's deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate specified in the Authority Subordinate Loan Note; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto;

21. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Deed of Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee;

22. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law;

23. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Authority Subordinate Loan Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto";

24. The trust created hereby is irrevocable by Trustor;

25. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "Beneficiary" shall include not only the original Beneficiary hereunder but also any future owner and holder including pledgees, of the Authority Subordinate Loan Note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of each Trustor hereunder are joint and several;

26. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee;

27. The undersigned Trustor requests that copies of any notice of default and of any notice of sale hereunder be mailed to it c/o Related/Fontana Courtplace I Development Co., LLC, 18201 Von Karman Avenue, Suite 900, Irvine, California 92612 and to [Limited Partner] at _____.

28. Trustor agrees at any time and from time to time upon receipt of a written request from Beneficiary, to furnish to Beneficiary a detailed statement in writing of income, rents, profits, and operating expenses of the premises, and the names of the occupants and tenants in possession, together with the expiration dates of their leases and full information regarding all rental and occupancy agreements, and the rents provided for by such leases and rental and occupancy agreements, and such other information regarding the Property and their use as may be requested by Beneficiary.

29. The full principal amount outstanding plus accrued but unpaid interest thereon, shall be due and payable on the earlier to occur of the following:

(a) As more particularly provided in the Authority Subordinate Loan Note, sale, transfer, assignment or refinancing of the Property as provided further in this paragraph 29; unless: (i) in the case of a sale in which the sale proceeds are insufficient to repay in full the Authority Subordinate Loan, the Beneficiary approves such sale and the purchaser assumes the balance of the Authority Subordinate Loan in accordance with the terms of the Authority Subordinate Loan Note; or (ii) in the case of a refinancing in which the refinancing proceeds are insufficient to repay in full the Authority Subordinate Loan, the Beneficiary approves such refinancing and the Borrower remains obligated pursuant to the terms of the Note.

(b) In order to induce Beneficiary to make the loan evidenced hereby, Trustor agrees that in the event of any transfer of the Property without the prior written consent of Beneficiary (other than a transfer resulting from a foreclosure, or conveyance by deed in lieu of foreclosure, by the holder of the Senior Loan Deed of Trust), Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Beneficiary may grant or deny such consent in its sole discretion and, if consent should be given, any such transfer shall be subject to this paragraph 29, and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release Trustor from any liability thereunder without the prior written consent of Beneficiary.

(c) As used herein, "*transfer*" includes the sale, agreement to sell, transfer or conveyance of the Property, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract or similar instrument affecting all or a portion of the Property, or the lease of all or substantially all of the Property. "Transfer" shall not include the leasing of individual residential units on the Property.

(d) The term "Sale" means any transfer, assignment, conveyance or lease (other than to a tenant for occupancy) of the Property and/or the improvements thereon, or any portion thereof, or any interest therein by the Trustor, and (if Trustor is a partnership) includes any transfer, assignment or sale of any partnership interest in the Trustor by an individual or entity which is a general or limited partner in the Trustor, or any interest by any individual or entity which holds an interest in any such general or limited partner in the Trustor, which brings the cumulative total of all such direct and indirect transfers, assignments and sales during the term of this Deed of Trust to more than thirty-five percent (35%) of the ownership interests in the Trustor, and any such transfer, assignment or sale of a direct or indirect partnership interest thereafter. Sale includes a sale in condemnation or under threat thereof. Sale does not include dedications and grants of easements to public and private utility companies of the kind customary in real estate development.

Notwithstanding anything to the contrary contained in this Deed of Trust or in the Authority Subordinate Loan Note, prior to declaring any default or taking any remedy permitted under this Deed of Trust, the Authority Subordinate Loan Note or applicable law based upon an

alleged default, _____ and _____ (collectively, “_____”) shall have a period of not less than thirty (30) days to cure such alleged default; provided, however, if in order to cure such default _____ reasonably believes that it must remove a general partner of Trustor, or all of them, pursuant to that certain Agreement of Limited Partnership dated as of _____, 202_____, _____ shall so notify Beneficiary and so long as _____ is reasonably and diligently attempting to remove the general partner or general partners, _____ shall have until the date thirty (30) days after the effective date of the removal of the general partner or general partners to cure such default.

30. Trustor shall permit Beneficiary and its agents or representatives, to inspect the Property at any and all reasonable times, with or without advance notice. Inspections shall be conducted so as not to interfere with the tenants’ use and enjoyment of the Property.

31. It is hereby expressly agreed and acknowledged by Trustor and Beneficiary that this Deed of Trust is a second and subordinate deed of trust, and that the Authority Subordinate Loan secured hereby, and the Authority Subordinate Loan Note are subject and subordinate only to the deed of trust securing a loan to Trustor in an approximate original principal amount not to exceed \$_____ in which _____ (“Senior Lender”) is the Beneficiary, including any loan that refinances the balance of the Senior Loan or an assignment of the Senior Loan (collectively referred to as the “Senior Loan”).

32. For purposes of this Deed of Trust, “Hazardous Materials” mean and include any hazardous, toxic or dangerous waste, substance or material including, without limitation, flammable explosives, radioactive materials, asbestos, hazardous wastes, toxic substances and any materials or substances defined as hazardous materials, hazardous substances or toxic substances in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), as amended (42 U.S.C. §9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.) and those substances defined as hazardous wastes in §25117 of the California Health and Safety Code or as hazardous substances in §25316 of the California Health and Safety Code or in any regulations promulgated under either such law, any so-called “Superfund” or “Superlien” law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

33. In addition to the general and specific representations, covenants and warranties set forth in the Deed of Trust or otherwise, Trustor represents, covenants and warrants, with respect to Hazardous Materials, as follows:

(a) Neither Trustor nor, to the best knowledge of Trustor, any other person, has ever caused or permitted any Hazardous Materials to be manufactured, placed, held, located or disposed of on, under or at the Property or any part thereof, and neither the Property nor any part thereof, or any property adjacent thereto, has ever been used (whether by the Trustor or, to the best knowledge of the Trustor, by any other person) as a manufacturing site, dump site or storage site (whether permanent or temporary) for any Hazardous Materials;

(b) Trustor hereby agrees to indemnify Beneficiary, its officers, employees, contractors and agents, and hold Beneficiary, its officers, employees, contractors and agents harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Beneficiary, its officers, employees, contractors or agents for, with respect to, or as a direct or indirect result of, the presence or use, generation, storage, release, threatened release or disposal of Hazardous Materials on or under the Property or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Materials from the Property (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under CERCLA, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials), caused by Trustor.

(c) Trustor has not received any notice of (i) the happening of any event involving the use, spillage, discharge or cleanup of any Hazardous Materials ("Hazardous Discharge") affecting Trustor or the Property or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, noise emissions or any other environmental, health or safety matter affecting Trustor or the Property ("Environmental Complaint") from any person or entity, including, without limitation, the United States Environmental Protection Agency ("EPA"). If Trustor receives any such notice after the date hereof, then Trustor will give, within seven (7) business days thereafter, oral and written notice of same to Beneficiary.

(d) Without limitation of Beneficiary's rights under this Deed of Trust, Beneficiary shall have the right, but not the obligation, to enter onto the Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any such Hazardous Materials or Environmental Complaint upon its receipt of any notice from any person or entity, including without limitation, the EPA, asserting the existence of any Hazardous Materials or an Environmental Complaint on or pertaining to the Property which, if true, could result in an order, suit or other action against Trustor affecting any part of the Property by any governmental agency or otherwise which, in the sole opinion of Beneficiary, could jeopardize its security under this Deed of Trust. All reasonable costs and expenses incurred by Beneficiary in the exercise of any such rights shall be secured by this Deed of Trust and shall be payable by Trustor upon demand together with interest thereon at a rate equal to the highest rate payable under the Authority Subordinate Loan Note secured hereby.

34. The following shall be an Event of Default:

(a) Failure of Trustor to pay, when due, principal and interest and any other sums or charges on the Authority Subordinate Loan Note, in accordance with the provisions set forth in the Authority Subordinate Loan Note;

(b) A violation of the terms, conditions or covenants of the Authority Subordinate Loan Note or this Deed of Trust; or

(c) A default under the Senior Loan Deed of Trust to which the lien of this Deed of Trust is subordinate.

35. Subject to the extensions of time set forth in paragraph 36, and subject to the further provisions of this paragraph 35 and of paragraph 37, failure or delay by the Trustor to perform any term or provision of this Deed of Trust constitutes a default under this Deed of Trust. The Trustor must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.

(a) The Beneficiary shall give written notice of default to the Trustor, specifying the default complained of by the Beneficiary. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

(b) The Trustor shall not be in default so long as it endeavors to complete such cure, correction or remedy with reasonable diligence, provided such cure, correction or remedy is completed within thirty (30) days after receipt of written notice (or such additional time as may be deemed by the Beneficiary to be reasonably necessary to correct the cause).

(c) Any failures or delays by the Beneficiary in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the Beneficiary in asserting any of its rights and remedies shall not deprive the Beneficiary 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.

36. Notwithstanding specific provisions of this Deed of Trust, performance hereunder shall not be deemed to be in default where delays or defaults are due to: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God or other deities; acts of the public enemy; epidemics; pandemics; 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 or supplier; acts of the other party; acts or failure to act of the Beneficiary, or any other public or governmental agency or entity (except that any act or failure to act of Beneficiary shall not excuse performance by Beneficiary); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time the party claiming such extension gives notice to the other party, provided notice by the party claiming such extension is given within thirty (30) days after the commencement of the cause. Times of performance under this Deed of Trust may also be extended in writing by the Beneficiary and Trustor.

37. If a monetary event of default occurs under the terms of the Authority Subordinate Loan Note or this Deed of Trust, prior to exercising any remedies thereunder Beneficiary shall give Trustor written notice of such default. Trustor shall have a period of ten (10) days after such notice is given within which to cure the default prior to exercise of remedies by Beneficiary under the Authority Subordinate Loan Note and this Deed of Trust.

38. If a non-monetary event of default occurs under the terms of the Authority Subordinate Loan Note or this Deed of Trust, prior to exercising any remedies thereunder, Beneficiary shall give Trustor notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Trustor shall have such period to effect a cure prior to exercise of remedies by the Beneficiary under the Authority Subordinate Loan Note and this Deed of Trust. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Trustor (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Trustor shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Beneficiary. In no event shall Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the first notice of default is given.

39. Upon the occurrence of an Event of Default as described in Section 34, Trustor shall be obligated to repay the Authority Subordinate Loan and, subject to the nonrecourse provision of the Authority Subordinate Loan Note, Beneficiary may seek to enforce payment of any and all amounts due by Trustor pursuant to the terms of the Authority Subordinate Loan Note.

40. All expenses (including reasonable attorneys' fees and costs and allowances) incurred in connection with an action to foreclose, or the exercise of any other remedy provided by this Deed of Trust, including the curing of any Event of Default, shall be the responsibility of Trustor.

41. Except as provided in paragraph 31, each successor owner of an interest in the Property, other than through foreclosure, deed in lieu of foreclosure or an owner who takes an interest in the Property after a foreclosure has occurred, shall take its interest subject to this Deed of Trust.

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[signature page next page]

TRUSTOR:

FONTANA COURTPLACE I HOUSING PARTNERS,
L.P.,
a California limited partnership

By: Related/Fontana Courtplace I Development Co.,
LLC, a California limited liability company, its
administrative general partner

By: _____
Frank Cardone, President

By: Foundation for Affordable Housing V, Inc.,
a California nonprofit public benefit corporation, its
managing general partner

By: _____
Deborrah A. Willard, President

By: LBI Southridge Fontana LLC, a California limited
liability company, its co-general partner

By: LaBarge Industries, LLC, a Delaware
limited liability company, its sole member

By: _____
Josh LaBarge, President

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

[BENEFICIARY SIGNATURE BLOCK]

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO DESCRIBED AS FOLLOWS:

Real property in the City of Fontana, County of San Bernardino, State of California, described as follows:

EXHIBIT H

SUBORDINATE COMPLETION GUARANTY

(Follows this page)

SUBORDINATE COMPLETION GUARANTY

(Fontana Courtplace I Family Apartments)

1. Obligations Guaranteed. For valuable consideration, the adequacy and sufficiency of which is acknowledged, the undersigned (“Guarantor”) unconditionally guarantees the timely completion of the construction required pursuant to the terms of that certain Disposition and Development Agreement, dated as of _____, 2023, by and among the Fontana Housing Authority (the “Authority”), the City of Fontana and Fontana Courtplace I Housing Partners, L.P. (“F-CP”) (the “Construction” required by the “DDA”). This Guaranty is in addition to and independent of any other guaranty previously, concurrently or hereafter given to Authority and/or City by Guarantor.

2. Completion of Improvements By Guarantor. Guarantor irrevocably and unconditionally agrees that if for any reason (a) F-CP fails to diligently proceed with or complete the Construction in the manner and within the time limits set forth in the DDA, (b) F-CP fails to pay all costs of construction of the Construction, or (c) Authority takes possession of the Property and the Improvements prior to the completion of the Construction, then, in any such event, and upon demand by Authority, Guarantor shall diligently complete the Construction in accordance with the terms of the DDA, all at Guarantor’s sole cost and expense. In addition, Guarantor shall defend, indemnify and hold Authority harmless from and against all claims, demands, causes of action, liabilities, losses, costs and expenses (including, without limitation, costs of suit and reasonable attorneys’ fees) arising from or in connection with the items described in clauses (a), (b) and (c) above. Authority hereby agrees that if demand is made hereunder for Guarantor to complete the Construction, Guarantor shall have the right to have any undisbursed portion of the Authority Subordinate Loan and the City Subordinate Loan applied to the costs of that Construction.

3. Remedies of Authority. If Guarantor fails to perform its obligations hereunder, then Authority may, in its sole and absolute discretion and without any obligation to do so, (a) elect to complete the Construction (with such changes to the General Contract and the Plans as Authority reasonably deems necessary), in which event Guarantor shall, upon demand, reimburse Authority for all reasonable expenditures made and reasonable costs incurred by Authority in connection with such completion, together with interest thereon at Authority’s option at either the per annum rate of interest (the “Note Rate”) set forth in that certain Authority Subordinate Loan Note of even date herewith made by F-CP in favor of Authority (the “Note”) or the default rate of interest provided for in the Note (the “Default Rate”), or (b) from time to time and without first requiring performance on the part of F-CP or being required to exhaust or proceed against any or all security held by Authority, enforce performance by Guarantor of any obligation on the part of Guarantor to be performed hereunder, by action at law or in equity or both, in which event Authority shall be entitled to recover from Guarantor all losses, costs, damages, liabilities and expenses (including

reasonable attorneys' fees and costs) sustained or incurred by Authority as a result of Guarantor's failure to perform its obligations hereunder, together with interest thereon at Authority's option at either the Note Rate or the Default Rate.

4. Reinstatement. All of Authority's rights pursuant to this Guaranty continue with respect to amounts previously paid to Authority on account of any obligations which are thereafter restored or returned by Authority, whether in a bankruptcy, reorganization, insolvency, receivership or similar proceeding ("Insolvency Proceeding") of F-CP or for any other reason, all as though such amounts had not been paid to Authority, and Guarantor's liability under this Guaranty (and all its terms and provisions) shall be reinstated and revived, notwithstanding any surrender or cancellation of this Guaranty. Authority, in its sole discretion, may determine whether any amount paid to it must be restored or returned; provided, however, that if Authority elects to contest any claim for return or restoration, Guarantor agrees to indemnify and hold Authority harmless from and against all costs and expenses, including reasonable attorneys' fees, expended or incurred by Authority in connection with such contest. If any Insolvency Proceeding is commenced by or against F-CP or Guarantor, at Authority's election, Guarantor's obligations under this Guaranty shall immediately and without notice or demand become due and payable, whether or not then otherwise due and payable.

5. Authorization. Guarantor authorizes Authority, without notice and without affecting Guarantor's liability under this Guaranty, from time to time, whether before or after any revocation of this Guaranty, to alter, modify or amend the Plans, the General Contract or any of the relevant terms, covenants and conditions of the DDA.

6. Waivers. To the maximum extent permitted by law, Guarantor waives (a) all rights to require Authority or City to proceed against F-CP, or any other guarantor, or proceed against, enforce or exhaust any security for the Construction or to marshal assets or to pursue any other remedy in Authority's power whatsoever; (b) all defenses arising by reason of any disability or other defense of F-CP, the cessation for any reason of the liability of F-CP, any defense that any other indemnity, guaranty or security was to be obtained, any claim that Authority and/or City has made Guarantor's obligations more burdensome or more burdensome than F-CP's obligations; (c) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Guaranty, and all other notices or demands to which Guarantor might otherwise be entitled; (d) all conditions precedent to the effectiveness of this Guaranty; (e) all rights to file a claim in connection with the obligations in an Insolvency Proceeding filed by or against F-CP; and (f) all rights to require Authority to enforce any of its remedies.

7. Guarantor to Keep Informed. Guarantor warrants having established with F-CP adequate means of obtaining, on an ongoing basis, such information as Guarantor may require concerning all matters bearing on the risk of nonperformance of the Construction. Guarantor assumes sole,

continuing responsibility for obtaining such information from sources other than from Authority. Authority has no duty to provide any information to Guarantor until Authority receives Guarantor's written request for specific information in Authority's possession and F-CP has authorized Authority to disclose such information to Guarantor.

8. Authorization. Where F-CP is a corporation, partnership or other entity, Authority need not inquire into or verify the powers or authority of those acting or purporting to act on behalf of F-CP, and this Guaranty shall be enforceable in reliance on the purported exercise of such powers or authority.

9. Assignments. Without notice to Guarantor, Authority may assign its rights with respect to the Construction and this Guaranty, in whole or in part, and may disclose to any prospective or actual purchaser any and all information Authority has or acquires concerning Guarantor and/or this Guaranty.

10. Counsel Fees and Costs. The prevailing party shall be entitled to attorneys' fees (including the allocated costs of Authority's in-house counsel and legal staff), and all other costs and expenses which it may incur in connection with the enforcement or preservation of its rights under, or defense of, this Guaranty or in connection with any other dispute or proceeding relating to this Guaranty, whether or not incurred in any Insolvency Proceeding, arbitration, litigation or other proceeding.

11. Integration/Severability/Amendments. This Guaranty is intended by Guarantor and Authority as the complete, final expression of their agreement concerning its subject matter. It supersedes all prior understandings or agreements with respect thereto and may be changed only by a writing signed by Guarantor and Authority. No course of dealing, or parol or extrinsic evidence shall be used to modify or supplement the express terms of this Guaranty. If any provision of this Guaranty is found to be illegal, invalid or unenforceable, such provision shall be enforced to the maximum extent permitted, but if fully unenforceable, such provision shall be severable, and this Guaranty shall be construed as if such provision had never been a part of this Guaranty and the remaining provisions shall continue in full force and effect.

12. Notice. Any notice given by any party under this Guaranty shall be effective only upon its receipt by the other party and only if (a) given in writing and (b) personally delivered or sent by United States mail or recognized overnight courier service, postage prepaid, and addressed to Authority or Guarantor at their respective addresses for notices indicated below. Guarantor and Authority may change the place to which notices, requests, and other communications are to be sent to them by giving written notice of such change to the other.

13. California Law. This Guaranty shall be governed by and construed according to the laws of California, and Guarantor submits to the nonexclusive jurisdiction of the state or federal courts in California.

14. Subordinate Obligation. Notwithstanding anything contained in this Guaranty to the contrary, Authority acknowledges and agrees that this Guaranty is subject and subordinate to a prior and superior guaranty made by Guarantor in favor of _____.

15. Termination of Guaranty. Notwithstanding anything contained in this Guaranty to the contrary, this Guaranty shall terminate and be of no further force and effect upon the issuance of the Certificate of Completion, as defined in the DDA.

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SIGNATURE PAGE NEXT PAGE

Executed as of , 202 . Guarantor acknowledges having received a copy of this Guaranty and having made each waiver contained in this Guaranty with full knowledge of its consequences.

AUTHORITY:

FONTANA HOUSING AUTHORITY,
a public body, corporate and politic

By:

Name:

Title:

Address for notices sent to Authority:

Fontana Housing Authority
8353 Sierra Avenue
Fontana, California 92335
Attn: Executive Director

GUARANTOR:

THE RELATED COMPANIES, L.P.,
a New York limited partnership

By:

Name:

Title:

Address for notices sent to Guarantor:

The Related Companies, L.P.
30 Hudson Yards, 72nd Floor
New York, NY 10001
Attn: General Counsel

APPROVED AS TO FORM:

CITY:

CITY OF FONTANA

EXHIBIT I

ASSIGNMENT OF ARCHITECTURAL AGREEMENTS AND PLANS AND SPECIFICATIONS

(Follows this page)

**ASSIGNMENT OF ARCHITECTURAL AGREEMENTS
AND PLANS AND SPECIFICATIONS**

(Fontana Courtplace I Family Apartments)

FOR VALUE RECEIVED, the undersigned, **FONTANA COURTPLACE I HOUSING PARTNERS, L.P.**, a California limited partnership (“Partnership”), assigns to **FONTANA HOUSING AUTHORITY**, a public body, corporate and politic (“Authority”), all of its right, title and interest in and to:

1. All architectural, design, engineering and development agreements, and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively, “Architectural Agreements”), and
2. All plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively, “Plans and Specifications”), heretofore or hereafter entered into or prepared by any architect, engineer or other person or entity (collectively, “Architect”), for or on behalf of Partnership in connection with the construction of the Improvements on the Real Property described on Exhibit A attached hereto. The Plans and Specifications, as of the date hereof, are those which Partnership has heretofore, or will hereafter deliver to Authority. The Architectural Agreements include, but are not limited to, the architectural agreement or contract between Partnership and _____, dated _____.

This **ASSIGNMENT OF ARCHITECTURAL AGREEMENTS AND PLANS AND SPECIFICATIONS** (“Assignment”) constitutes a present, absolute and unconditional assignment to Authority.

Partnership acknowledges that by accepting this Assignment, Authority does not assume any of Partnership’s obligations under the Architectural Agreements with respect to the Plans and Specifications.

Partnership represents and warrants to Authority that: (a) all Architectural Agreements entered into by Partnership are in full force and effect and are enforceable in accordance with their terms and no default, or event which would constitute a default after notice or the passage of time, or both, exists with respect to said Architectural Agreements; (b) all copies of the Architectural Agreements and Plans and Specifications delivered to Authority are complete and correct; and (c) Partnership has not assigned any of its rights under the Architectural Agreements or with respect to the Plans and Specifications other than to **insert Construction Lender**, which assignment shall be senior and superior to the assignment contemplated hereby in all respects.

This Assignment shall be governed by the laws of the State of California, except to the extent that federal laws preempt the laws of the State of California, and Partnership consents to the jurisdiction of any federal or state court within the State of California having proper venue for the filing and maintenance of any action arising hereunder and agrees that the prevailing party in any such action shall be entitled, in addition to any other recovery, to reasonable attorneys' fees and costs.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, and successors-in-interest of Partnership and Authority.

The attached Architect's/Engineer's Consent and Exhibit A are incorporated by reference.

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SIGNATURE PAGE NEXT PAGE

Executed by Partnership on _____, 202_.

PARTNERSHIP:

FONTANA COURTPPLACE I HOUSING PARTNERS, L.P.,
a California limited partnership

By: Related/Fontana Courtplace I Development Co., LLC,
a California limited liability company, its administrative general partner

By: _____
Frank Cardone, President

By: Foundation for Affordable Housing V, Inc.,
a California nonprofit public benefit corporation, its managing general partner

By: _____
Deborrah A. Willard, President

By: LBI Southridge Fontana LLC,
a California limited liability company, its co-general partner

By: LaBarge Industries, LLC,
a Delaware limited liability company, its sole member

By: _____
Josh LaBarge, President

ARCHITECT'S/ENGINEER'S CONSENT

(Fontana Courtplace I Family Apartments)

The undersigned architect and/or engineer (collectively referred to as "Architect") hereby consents to the foregoing Assignment to which this Architect's/Engineer's Consent ("Consent") is a part, and acknowledges that there presently exists no unpaid claims due to the Architect arising out of the preparation and delivery of the Plans and Specifications to Partnership and/or the performance of the Architect's obligations under the Architectural Agreements described in the Assignment.

Architect agrees that, by virtue of the foregoing Assignment, Authority has succeeded to all of Partnership's right, title and interest in, to and under the Architectural Agreements and the Plans and Specifications and, therefore, so long as the Architect continues to receive the compensation called for under the Architectural Agreements, Authority and its successors and assigns may, at their option, use and rely on the Plans and Specifications for the purposes for which they were prepared, and Architect will continue to perform its obligations under the Architectural Agreements for the benefit and account of Authority and its successors and assigns in the same manner as if performed for the benefit or account of Partnership in the absence of the Assignment.

Architect warrants and presents that it/he has no knowledge of any prior assignment(s) of any interest in either the Plans and Specifications and/or the Architectural Agreements. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment.

Executed on _____, 202_.

ARCHITECT

[Signature block TBD]

Exhibit I-1

PROPERTY DESCRIPTION

THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO DESCRIBED AS FOLLOWS:

Real property in the City of Fontana, County of San Bernardino, State of California, described as follows:

EXHIBIT J

CITY SUBORDINATE LOAN NOTE

(see attached)

CITY SUBORDINATE DEVELOPMENT LOAN NOTE
(Fontana Courtplace I Family Apartments)

\$ _____

Fontana, California

As of _____, 202_____

R E C I T A L S

A. WHEREAS, FONTANA COURTPLACE I HOUSING PARTNERS, L.P., a California limited partnership (“Borrower”), the FONTANA HOUSING AUTHORITY, a public body, corporate and politic (“Authority”) and the CITY OF FONTANA (“Lender”), entered into that certain Disposition and Development Agreement dated as of _____, 2023 (the “DDA”); and

B. WHEREAS, pursuant to the DDA, Lender has made the “City Subordinate Loan” to Borrower to finance up to _____ **Dollars (\$[TBD])** in Project Costs.

NOW, THEREFORE, FOR VALUE RECEIVED, Borrower promises to pay to the order of Lender, at _____, Fontana, California _____, or at such other place as Lender may from time to time designate in writing, (a) the principal sum of _____ **Dollars (\$[TBD])**, with interest from the Recordation Date until paid at the simple rate of one quarter of one percent (0.25%) per annum, and (b) all fees, costs and expenses payable hereunder.

1. **Definitions; Interpretation; Accounting.**

1.1 **Definitions.** Initially capitalized words and terms used in this Note without definition shall have the meanings ascribed thereto in the DDA or the following definitions, unless the context or use clearly requires otherwise:

“**Appraisal Process**” shall mean the parties shall first attempt to agree on the Fair Market Value of the subject property. If they are unable to come to an agreement within ten (10) business days, the Fair Market Value shall be determined by appraisal. Lender and Borrower shall each name one (1) M.A.I. appraiser within five (5) business days. If the two (2) appraisers cannot agree on the Fair Market Value within thirty (30) days after the date on which the second appraiser is named, they shall appoint a third M.A.I. appraiser. If the third appraiser agrees with either of the originally asserted appraisals of the first two (2) appraisers, then the agreed value shall be the Fair Market Value. If there is no such agreement, then the arithmetic average of the two (2) closest of the three (3) appraisals shall be the Fair Market Value. Each party shall bear the cost of its own appraiser. The cost of the third appraiser, if any, shall be borne equally by the parties.

“**Area**” means the Primary Metropolitan Statistical Area in which the Property is located, as promulgated by the U.S. Department of Housing and Urban Development.

“**Authority Loan**” means that certain loan in the original principal amount of \$_____ to be made by the Authority to the Partnership on or about the date hereof.

“**Base Rate**” means a fluctuating interest rate per annum as shall be in effect from time to time, which rate at all times shall be equal to the rate of interest announced publicly by Bank of America, N.A., from time to time as its base rate.

“**Capital Improvements**” means all work and improvements with respect to the Property for which costs and expenses may be capitalized in accordance with GAAP.

“**Cash Flow**” means, for the applicable period of time, the remainder of Net Operating Income less Debt Service.

“**City Subordinate Loan Deed of Trust**” means the Deed of Trust of even date herewith by which this Note is secured.

“**City’s Proportionate Share**” has the meaning set forth in Section 6.1.

“**Commencement Date**” shall mean the earlier of (a) when the Construction has been completed as evidenced by recordation in the Official Records of the Notice of Completion therefor, or (b) when the Improvements have been placed in service.

“**Construction**” means the construction to be performed by Borrower pursuant to the DDA.

“**CPI**” means the Consumer Price Index-Urban Wage Earners and Clerical Workers (Los Angeles-Anaheim-Riverside, California, All Items, Base 1982-84 = 100) as published by the United States Department of Labor, Bureau of Labor Statistics. Should the Bureau discontinue the publication of the Index, or publish the same less frequently or in a different schedule, or alter the same in some other manner including, without limitation, changing the name of the Index or the geographic area covered by the Index, Borrower and Lender shall adopt a substitute index or procedure which reasonably reflects and monitors consumer prices.

“**Debt Service**” means scheduled debt service on the Senior Loan.

“**Effective Gross Income**” means Operating Income after allowance for vacancy and collection losses.

[“**Executive Director**” means the Executive Director of Lender or his designee.]

“**Fair Market Value**” shall have the meaning provided in Section 1263.320(a) of the California Code of Civil Procedure or any successor statute thereto.

“**Fiscal Year**” means the fiscal year of Borrower, which is the calendar year.

“**GAAP**” has the meaning set forth in Section [1.3] of this Note.

“Improvements” means the improvements to be made to the Property by Borrower in accordance with the DDA.

“Median Income for the Area” means the median income for the Area as determined and published annually by the Secretary of Housing and Urban Development under Section 8 of the United States Housing Act of 1937, as amended, or if programs under Section 8 are terminated, median income for the Area determined under the method used by the Secretary prior to such termination.

“Net Operating Income” means, for the applicable period of time, the amount, if any, by which Operating Income for such period exceeds Operating Expenses paid by Borrower during such period. The calculation of Net Operating Income for each Fiscal Year shall be computed based on GAAP (whether or not Operating Expenses are properly deductible or must be characterized as a capital expenditure under the Internal Revenue Code).

“Net Refinancing Proceeds” means, from time to time, the proceeds of any Refinancing in excess of (a) the amount of any senior obligation or debt secured by the Property and satisfied out of such proceeds, and (b) the reasonable and customary costs and expenses incurred in connection with such Refinancing.

“Net Sale Proceeds” means, from time to time, the gross proceeds of a Sale, irrespective of the form of said proceeds, less (a) payment in full of the Senior Loan, (b) return of the cash equity invested in the Project by the partners in Borrower, (c) any reserve reasonably contemplated by Borrower’s partnership agreement at the time this Note was executed by Borrower, and (d) the reasonable and customary costs and expenses incurred by Borrower in connection with the subject Sale. If Lender reasonably determines that any Sale is not made in an arm’s length transaction, other than to a general partner in Borrower pursuant to an option or right of first refusal granted to such general partner (or its affiliate) on or before the date this Note was executed by Borrower, then instead of the Net Sale Proceeds being the result of the aforementioned deductions from the gross proceeds of the subject Sale, the Net Sale Proceeds shall be the result of the aforementioned deductions from the Fair Market Value of the Property.

“Official Records” means the Official Records of the County of San Bernardino, California.

“Operating Expenses” means, for the applicable period of time, all costs and expenses incurred by Borrower in the ordinary course of the management, ownership, and/or operation of the Property by Borrower, including, without limitation, (a) tax credit syndication and other fees including an asset management fee payable to the partners of Borrower in the aggregate amount of up to Thirty Five Thousand Dollars (\$35,000.00) per year, as such sum shall be adjusted annually on January 1 by three percent (3%), (b) all amounts deposited in the reserve fund of the Project for replacements, provided, however, such amounts shall not, without the prior approval of the Executive Director, which approval shall not be unreasonably withheld, exceed those amounts deposited as reserves for similar projects in California, (c) any fee payable to Developer and approved by the Executive Director, the payment of which has been deferred, (d) amounts necessary to provide social services to the residents of the Property, a€(e) a property management fee not to exceed sixty five dollars (\$65.00) per unit per month. Debt Service is not

an Operating Expense. Operating Expenses shall not include any expenses for Capital Improvements, except for Capital Improvements approved by the Senior Lender and by the Executive Director for treatment as an Operating Expense. Operating Expenses shall be calculated on a cash basis.

“Operating Income” means, for the applicable period of time, all proceeds received by Borrower from the operation of the Property and from any and all sources resulting from or attributable to the operation of the Property, including, without limitation, all rentals, parking receipts, laundry receipts, forfeited Security Deposits, and all expense reimbursements paid to Borrower by tenants of the Property. Operating Income shall be calculated on a cash basis. Operating Income shall not include any Senior Loan funds, payments for tax credits or the sale of partnership interests in Borrower, or proceeds of a casualty loss or condemnation.

“Property” has the meaning ascribed thereto in the City Subordinate Loan Deed of Trust.

“Recordation Date” means the date on which the City Subordinate Loan Deed of Trust records in the Official Records.

“Refinancing” means changing the existing financing on the Property, or relating to the Property, by increasing the amount of the existing mortgage(s), adding one or more mortgages to the existing mortgage(s), or paying off an existing mortgage or mortgages and obtaining a new, larger mortgage or mortgages. A Refinancing may be in any form, including, without limitation, debt or a sale and leaseback. Notwithstanding anything contained herein to the contrary, the taking of the Take-Out Loan by Borrower shall not constitute a Refinancing under this Note.

“Sale” has the meaning set forth in subparagraph [29(d)] of the City Subordinate Loan Deed of Trust.

“Security Deposits” means all security deposits collected from tenants of the Property.

“Senior Loan” means that certain construction loan made to Borrower by _____, for the Construction, and take-out financing therefor to be provided by _____ or such other lender as may be approved by the Executive Director (the “Take Out Loan”).

“Senior Loan Documents” means the documents evidencing and securing the Senior Loan.

“Subordinate Loans” has the meaning set forth in Section 6.1.

1.2 **Interpretation.** In this Note, (a) the singular includes the plural and the plural the singular; (b) words and terms which include a number of constituent parts, things or elements, unless otherwise specified, shall be construed as referring separately to each constituent part, thing or element thereof, as well as to all of such constituent parts, things or elements as a whole; (c) words importing any gender include the other genders; (d) references to

statutes are to be construed as including all rules and regulations adopted pursuant to the statute referred to and all statutory provisions consolidating, amending or replacing the statute referred to; (e) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms; (f) the words “*hereto*” or “*herein*” or “*hereof*” or “*hereunder*” or words of similar import refer to this Note in its entirety; (g) the words “*include*” or “*including*” or words of similar import, unless otherwise specified herein, shall be deemed to be followed by the words “*without limitation*”; (h) all references to Articles and Sections, unless otherwise specified, are to the Articles and Sections of this Note; and (i) headings of Articles and numberings and headings of Sections and paragraphs are inserted as a matter of convenience and shall not affect the construction of this Note.

1.3 **Accounting Terms and Determinations.** Unless otherwise specified herein, (a) all accounting terms used herein shall be interpreted, (b) all accounting determinations hereunder shall be made, and (c) all books, records and financial statements required to be delivered hereunder shall be prepared in accordance with generally accounting principles as in effect from time to time, consistently applied (“GAAP”), except for changes approved by Lender.

2. **Disposition and Development Agreement.** The principal sums hereunder are being loaned by Lender to Borrower in accordance with and pursuant to the DDA. The terms of the DDA are incorporated herein and made a part hereof to the same extent and with the same force and effect as if fully set forth herein. An Event of Default by Developer [Borrower] under the DDA shall be a default hereunder, and a default hereunder, after delivery of notice and expiration of the cure period described in Section [15] below, shall be an Event of Default by Developer [Borrower] under the DDA.

3. **Intentionally Omitted.**

4. **[Intentionally Omitted].**

5. **Financial Reporting and Accounting Covenants.** Borrower will permit the representatives of Lender at any time or from time to time, upon one (1) business days’ notice and during normal business hours, to inspect, audit and copy all of Borrower’s books, records, and accounts relating to the Property. Borrower shall furnish or cause to be furnished to Lender the following:

(a) **Quarterly Statements.** As soon as available, and in no event later than forty-five (45) days after the close of each of the first three calendar quarters of each Fiscal Year, commencing with the calendar quarter ending, 202__, financial statements of Borrower, including a balance sheet and profit-and-loss statement, as at the close of and for such quarter, all in reasonable detail and prepared in accordance with GAAP; such statements to be accompanied by a certificate signed by a general partner of Borrower to the effect that such statements fairly present the financial condition of Borrower as at the date indicated and the results of operations for the period indicated, subject, however, to year-end audit adjustments;

(b) **Annual Statements.** As soon as available, but in no event later than one hundred twenty (120) days after the close of each Fiscal Year, financial statements of Borrower, including a profit-and-loss statement, reconciliation of capital accounts and a consolidated statement of changes in financial position of Borrower as at the close of and for such Fiscal Year, all in reasonable detail, certified as provided in clause (a) above by a general partner of Borrower;

(c) **Annual Operating Statements.** As soon as available but in no event later than one hundred twenty (120) days after the close of each Fiscal Year, an "Annual Operating Statement" showing all Operating Income, Operating Expenses, Debt Service and any other amounts taken into consideration in computing Net Operating Income and Cash Flow, if any, for the subject Fiscal Year, in a form reasonably satisfactory to the Executive Director;

(d) **Tax Returns.** As soon as available, but in no event later than at the time of filing with the Internal Revenue Service, the federal tax returns (and supporting schedules, if any) of Borrower;

(e) **Audit Reports.** Promptly upon receipt thereof, copies of all reports submitted to Borrower by independent public accountants in connection with each annual, interim or special audit of the financial statements of Borrower, made by such accountants, including the comment letter submitted by such accountants to management in connection with their annual audit;

(f) **Notices, Certificates or Communications.** Immediately upon giving or receipt thereof, copies of any material notices, certificates or other communications given by or on behalf of Borrower or received by or on behalf of Borrower from Senior Lender pursuant to or in connection with any of the Senior Loan Documents, as well as any material notices and other communications delivered to the Property or to Borrower naming Lender or the "Construction Lender" as addressee, or which could reasonably be deemed to affect the construction of the Improvements or the ability of Borrower to perform its obligations to Lender.

6. **Payment.** Borrower shall make payment on this Note in accordance with the following:

6.1 **Annual Payment.** If, when Borrower delivers each Annual Operating Statement to Lender pursuant to Subdivision [5(c)], above, said Annual Operating Statement shows that there was Cash Flow for the subject Fiscal Year, or part thereof, Borrower shall make payment to Lender on account of this Note in the amount of ____ percent (____%) of such Cash Flow (the "**City's Proportionate Share**"). The City's Proportionate Share of Cash Flow shall be calculated as a percentage of Cash Flow in which the denominator is the sum of all loans made to Borrower, secured by the Property, payable from cash flow (the "**Subordinate Loans**"), and the numerator being the original principal amount of the City Loan. The Subordinate Loans shall share in 50% of Cash Flow and the Borrower shall receive 50% of Cash Flow.

6.2 **Refinancing.** As and when there is any Refinancing of the Property, Borrower shall pay the City's Proportionate Share of Net Refinancing Proceeds to Lender on account of this Note to the extent of the outstanding balance of principal and accrued interest.

6.3 **Mandatory Prepayments.** If, upon completion of construction and when an independent audit of the total cost of the development has been prepared as required by the Tax Credit Allocation Committee, the remainder of said total cost of the development less the sum of (a) the actual syndication proceeds of the State (if any) and Federal Low-Income Housing Tax Credits, and (b) the permanent loan proceeds (whether the product of a take-out or sale of the Senior Loan) for the Project is less than [Fill-in Original Principal Amount of this Note] Dollars (\$[TBD]), then Borrower shall, in connection with the closing of the permanent loan, make a prepayment to Lender in the amount of such difference.

6.4 **Sale.** As and when there is any Sale, Borrower shall pay the City's Proportionate Share of Net Sale Proceeds to Lender on account of this Note to the extent of the outstanding balance of principal and accrued interest.

6.4.1 **Seller Financing.** In the event that the Net Sale Proceeds include financing to be provided by Borrower as a purchase money lender, Lender shall not be obligated to accept any part of said financing. All or any part of the payment to Lender shall be made in cash.

6.4.2 **In Kind Consideration.** In the event that the Net Sale Proceeds include in kind consideration, Lender shall not be obligated to accept any part of such in kind consideration, but Borrower shall be entitled to substitute cash for the cash equivalent value of the in kind consideration. The cash equivalent value of the in kind consideration shall be its Fair Market Value as determined by the Appraisal Process.

7. **Distribution of Profits.** From and after the Commencement Date, Borrower covenants and agrees that, except for fees payable as Operating Expenses pursuant to this Note, Borrower shall not withdraw or distribute to the partners in Borrower any of the rents, issues and/or profits of the Project for any Fiscal Year unless payment is concurrently made to Lender of the percentage of such rents, issues and profits payable to Lender pursuant to Section [6.1].

8. **Maturity.** This Note shall be all due and payable on fifty eight (58) years from the date hereof .

9. **Application of Payments.** Any payments received by Lender pursuant to the terms hereof shall be applied first to sums, other than principal and interest, due Lender pursuant to this Note; next to the payment of all interest accrued to the date of such payment; and the balance, if any, to the payment of principal.

10. **Form of Payment.** All amounts due hereunder are payable in immediately available funds and lawful monies of the United States of America.

11. **Dispute Regarding Annual Operating Statement.** If Lender disputes any Annual Operating Statement, Lender shall notify Borrower of such dispute and the parties shall cause their representatives to meet and confer concerning the dispute and to use all reasonable efforts to reach a mutually acceptable resolution of the matter in question within thirty (30) days after Lender's notice of such dispute. If the parties are unable to achieve a mutually acceptable resolution within such 30-day period, then, within twenty (20) days after the expiration of such

period, Borrower and Lender shall appoint a national firm of certified public accountants to review the dispute and to make a determination as to the matter in question within thirty (30) days after such appointment. If the parties cannot, within ten (10) days, agree on the firm to be appointed, then, upon the application of either party, such firm shall be appointed by the Presiding Judge of the Superior Court for the County of San Bernardino, California. Such firm's determination shall be final and binding upon the parties. Such firm shall have full access to the books, records and accounts of the Borrower and the Project.

11.1 **Underpayment.** If any audit by Lender reports an underpayment by Borrower on this Note, Borrower shall pay the amount of any such underpayment, together with the late charge specified in Section [14] of this Note, to Lender within five (5) days after notice thereof to Borrower or, in the event of a dispute, after notice to Borrower of the resolution of such dispute by the independent firm of certified public accountants, as the case may be, and, if such underpayment amounts to more than three percent (3%) of the disputed payment for the period audited, then, notwithstanding anything to the contrary in this Section, Borrower shall pay to Lender, within five (5) days after demand, Lender's reasonable costs and expenses in conducting such audit and exercising its rights under Section [11] of this Note (including a reasonable charge for the services of any employees of Lender conducting such audit and exercising its rights under this Section).

12. **Prepayment.** At any time, Borrower may prepay in whole or in part, without penalty, the outstanding principal balance under this Note, together with all accrued and unpaid interest, fees, costs and expenses payable hereunder.

13. **Security.** This Note and all amounts payable hereunder are secured by the City Subordinate Loan Deed of Trust. The terms of the City Subordinate Loan Deed of Trust are incorporated herein and made a part hereof to the same extent and with the same force and effect as if fully set forth herein. A default under any of the provisions of the City Subordinate Loan Deed of Trust shall be a default hereunder, and a default hereunder shall be a default under the City Subordinate Loan Deed of Trust.

14. **Late Payment.** If any annual payment of accrued interest and principal is not received by the Lender within ten (10) calendar days after the installment is due, Borrower shall pay to the Lender a late charge of five percent (5%) of such payment, such late charge to be immediately due and payable without demand by Lender.

15. **Acceleration and Other Remedies.** If:

(a) any payment under this Note is not made when due and Borrower fails to cure said default within ten (10) days after notice from Lender;

(b) Borrower defaults under any other provision of this Note and Borrower shall have failed to cure said default within thirty (30) days after notice from Lender, provided, however, if cure of such default reasonably requires more than thirty (30) days, then, provided that Borrower commences to cure within such thirty (30)-day period and thereafter diligently and continuously prosecutes the cure to completion, Borrower shall not be in default during the cure period;

(c) Borrower, subject to force majeure (as defined in Article [24] of the DDA, fails to complete the Construction as required by the Schedule of Performance attached to the DDA; or

(d) there is an event or occurrence which, pursuant to the City Subordinate Loan Deed of Trust, gives rise to acceleration of the indebtedness evidenced by this Note,

the entire principal amount outstanding hereunder and accrued interest thereon shall at once become due and payable, at the option of Lender.

16. **Remedies.** Upon the occurrence of an event of default and the expiration of any cure period therefor as provided in this Note without such event of default having been cured, then, at the option of Lender, the entire balance of principal together with all accrued interest thereon shall, without demand or notice, but subject to the non-recourse provisions of Section [22] of this Note, immediately become due and payable. Upon the occurrence of an event of default (and so long as such event of default shall continue), the entire balance of principal together with all accrued interest shall bear interest at the lesser of (a) the maximum rate permitted by law, and (b) the Base Rate plus three percent (3%) per annum. No delay or omission on the part of Lender in exercising any right under this Note or under the City Subordinate Loan Deed of Trust shall operate as a waiver of such right.

17. **Third Party Cure Rights.** Notwithstanding anything to the contrary contained in this Note or the City Subordinate Loan Deed of Trust (collectively, the "Subordinate Loan Documents"), prior to declaring any default or taking any remedy permitted under the Subordinate Loan Documents or applicable law based upon an alleged default under the Subordinate Loan Documents, _____, a _____, and _____, a _____ (collectively, with their successors and assigns, "_____"") shall have a period of not less than (a) ten (10) days to cure such alleged default if of a monetary nature, and (b) thirty (30) days to cure such alleged default if of a nonmonetary nature; provided, however, if in order to cure such a default _____ reasonably determines that it must remove the general partner of the Borrower, _____ shall so notify the Lender and so long as _____ is diligently and continuously attempting to so remove such general partner, _____ shall have until the date thirty (30) days after the effective date of the removal of the general partner or general partners to cure such default.

18. **Waiver.** Except as otherwise expressly provided herein, Borrower hereby waives diligence, presentment, protest and demand, notice of protest, dishonor and nonpayment of this Note, and expressly agrees that, without in any way affecting the liability of Borrower hereunder, Lender may extend any maturity date or the time for payment of any installment due hereunder, accept additional security, release any party liable hereunder and release any security now or hereafter securing this Note. Borrower further waives, to the full extent permitted by law, the right to plead any and all statutes of limitations as a defense to any demand on this Note, or on any deed of trust, security agreement, lease assignment, guaranty or other agreement now or hereafter securing this Note.

19. **Attorneys' Fees.** If this Note is not paid when due or if any event of default occurs, Borrower promises to pay all costs of enforcement and collection, including but not

limited to, reasonable attorney's fees, whether or not any action or proceeding is brought to enforce the provisions hereof.

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

21. **Interest Rate Limitation.** Lender and Borrower stipulate and agree that none of the terms and provisions contained herein or in any of the loan instruments shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of California. In such event, if any holder of this Note shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on this Note to a rate in excess of the maximum rate permitted to be charged by the laws of the State of California, all such sums deemed to constitute interest in excess of such maximum rate shall, at the option of such holder, be credited to the payment of the sums due hereunder or returned to Borrower.

22. **Non-Recourse.** Notwithstanding anything to the contrary contained in this Note or in the City Subordinate Loan Deed of Trust referred to in this Note, but without in any manner affecting the validity of this Note or the lien or charge of the City Subordinate Loan Deed of Trust, in the event of any default under the terms of this Note or the City Subordinate Loan Deed of Trust, the sole recourse of the Lender for any and all such defaults shall be by judicial foreclosure or by the exercise of the trustee's power of sale, or such other appropriate means of enforcing the City Subordinate Loan Deed of Trust, and the undersigned, and the partners of the undersigned, shall not be personally liable for the payment of this Note or for any other default under the City Subordinate Loan Deed of Trust or for the payment of any deficiency established after judicial foreclosure or trustee's sale under the City Subordinate Loan Deed of Trust. Notwithstanding the limitations of liability set forth above, Borrower shall be fully liable for:

(a) Cash Flow payable to Lender pursuant to Section [6.1] but not applied to this Note; and

(b) all legal costs and expenses reasonably incurred by Lender in the enforcement of this Note.

23. **Headings.** Headings at the beginning of each numbered Section of this Note are intended solely for convenience and are not to be deemed or construed to be a part of this Note.

24. **Giving of Notice.** Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by mailing it by first class mail to Borrower at the following address:

Fontana Courtplace I Housing Partners, L.P.
c/o The Related Companies of California, LLC
18201 Von Karman Avenue, Suite 900

Irvine, CA 92612
Attn: Frank Cardone, President

or at a different address if Borrower gives Lender a notice of that different address.

Any notice that must be given to Lender under this Note will be given by mailing it by first class mail to Lender at the following address:

8353 Sierra Avenue
Fontana, California 92335
Attention: City Manager

or at a different address if Lender gives Borrower a notice of that different address.

25. **Choice of Law.** This Note shall be governed by and construed and enforced in accordance with the laws of the State of California.

[remainder of page intentionally left blank]

[signature page next page]

BORROWER:

FONTANA COURTPLACE I HOUSING PARTNERS,
L.P., a California limited partnership

By: Related/Fontana Courtplace I Development Co.,
LLC, a California limited liability company, its
administrative general partner

By: _____
Frank Cardone, President

By: Foundation for Affordable Housing V, Inc.,
a California nonprofit public benefit corporation, its
managing general partner

By: _____
Deborrah A. Willard, President

By: LBI Southridge Fontana LLC, a California limited
liability company, its co-general partner

By: LaBarge Industries, LLC, a Delaware
limited liability company, its sole member

By: _____
Josh LaBarge, President

EXHIBIT K

CITY SUBORDINATE DEED OF TRUST

RECORDING REQUESTED BY:
CITY OF FONTANA
AND WHEN RECORDED RETURN TO:
CITY OF FONTANA

Fontana, California _____
Attention: _____

[Free Recording Requested

Government Code § 6103]

**SUBORDINATED DEED OF TRUST
WITH ASSIGNMENT OF RENTS**

[FONTANA COURTPLACE I FAMILY APARTMENTS]

[CITY SUBORDINATE LOAN DEED OF TRUST]

This DEED OF TRUST is made as of _____, 202_____, by and between **FONTANA COURTPLACE I HOUSING PARTNERS, L.P.**, a California limited partnership ("Trustor"), _____ **TITLE COMPANY**, a California corporation ("Trustee"), and **CITY OF FONTANA**, a _____ ("Beneficiary").

Trustor grants, transfers and assigns to Trustee in trust, upon the trusts, covenants, conditions and agreements and for the uses and purposes hereinafter contained, with power of sale, and right of entry and possession, all of its title and interest in that real property (the "Property") in the City of Fontana, County of San Bernardino, State of California, described in Exhibit A attached hereto and incorporated herein by this reference.

Together with Beneficiary's interest in all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Property; and

Together with the rents, issues and profits thereof; and together with all buildings and improvements of every kind and description now or hereafter erected or placed thereon, and all fixtures, including but not limited to all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, laundry equipment, steam and hot-water boilers, stoves, ranges, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating fixtures, mantles, cabinets, refrigerating plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, and all shades, awnings, screens, blinds and other furnishings, it being hereby agreed that all such fixtures and furnishings shall to the extent permitted by law be deemed to be permanently affixed to and a part of the realty; and

Together with all building materials and equipment now or hereafter delivered to said premises and intended to be installed therein; and

Together with all plans, drawings, specifications, and articles of personal property now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the completion and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner.

To have and to hold the property hereinbefore described (including the Property and all appurtenances), all such property being referred to collectively herein as the "Property," to Trustee, its successors and assigns forever.

FOR THE PURPOSE of securing (1) payment of indebtedness of Trustor to the Beneficiary in the principal sum of _____ Dollars (\$[TBD]) (the "City Subordinate Loan"), evidenced by a promissory note of even date herewith between Trustor and Beneficiary (the "City Subordinate Loan Note"), together with all sums due thereunder including interest and other charges; and (2) the performance of each agreement of Trustor in this Deed of Trust and the City Subordinate Loan Note. Said City Subordinate Loan Note and all of its terms are incorporated herein by reference and this conveyance shall secure any and all extensions, amendments, modifications or renewals thereof however evidenced, and additional advances of the City Subordinate Loan evidenced by any note reciting that it is secured hereby.

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

1. That it will pay the City Subordinate Loan Note at the time and in the manner provided therein;
2. That it will not permit or suffer the use of any of the Property for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed, namely, as affordable rental housing;
3. That the City Subordinate Loan Note is incorporated herein and made a part of this Deed of Trust. Upon default under the City Subordinate Loan Note or this Deed of Trust, Beneficiary, at its option, may declare the whole of the indebtedness secured hereby to be due and payable;
4. That all rents, profits and income from the Property covered by this Deed of Trust are hereby assigned to Beneficiary for the purpose of discharging the debt hereby secured. Permission is hereby given to Trustor so long as no default exists hereunder, to collect such rents, profits and income;
5. That upon default hereunder, Beneficiary shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the Property described herein and operate same and collect the rents, profits and income therefrom;

6. That Trustor will keep the improvements now existing or hereafter erected on the Property insured against loss by fire and such other hazards, casualties and contingencies as may be required in writing from time to time by Beneficiary, and all such insurance shall be evidenced by standard fire and extended coverage insurance policy or policies, in the amount of the replacement value of the improvements. Such policies shall be endorsed with a standard mortgage clause with loss payable to Beneficiary subordinate to the rights and interest of the beneficiary of the Senior Loan Deed of Trust described in paragraph 31, below) and certificates thereof together with copies of original policies shall be deposited with Beneficiary;

7. To pay, at least ten (10) days before delinquency, any taxes and assessments affecting said Property when due, all encumbrances, charges and liens, with interest, on said Property or any part thereof which appear to be prior or superior hereto, all costs, fees and expenses of this Trust;

8. To keep said Property in good condition and repair, not to remove or demolish any buildings thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor (unless contested in good faith if Trustor provides security satisfactory to Beneficiary that any amounts found to be due will be paid and no sale of the Property or other impairment of the security hereunder will occur); to comply with all laws affecting said Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said Property in violation of law and/or covenants, conditions and/or restrictions affecting said Property; not to permit or suffer any alteration of or addition to the buildings or improvements hereafter constructed in or upon said Property without the consent of Beneficiary;

9. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear;

10. Should Trustor fail to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. Beneficiary or Trustee, being authorized to enter upon said Property for such purposes, may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; may pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, may pay necessary expenses, employ counsel, and pay counsel's reasonable fees;

11. Beneficiary shall have the right to pay fire and other property insurance premiums when due should Trustor fail to make any required premium payments. All such payments made by Beneficiary shall be added to the principal sum secured hereby;

12. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, under permission given under this Deed of Trust, with interest from date of expenditure at the rate specified in the City Subordinate Loan Note;

13. That the City Subordinate Loan advanced hereunder is to be used in the development of the Property; and upon the failure of Trustor to keep and perform such covenants, the principal sum and all arrears of interest, and other charges provided for in the City Subordinate Loan Note shall, at the option of Beneficiary, become due and payable, anything contained herein to the contrary notwithstanding;

14. Trustor further covenants that it will not voluntarily create, suffer or permit to be created against the Property, subject to this Deed of Trust, any lien or liens except as authorized by Beneficiary and further that it will keep and maintain the Property free from the claims of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on the Property;

15. That any and all improvements made or about to be made upon the Property, and all plans and specifications, comply with all applicable municipal ordinances and regulations and all other regulations made or promulgated, now or hereafter, by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office;

16. Trustor herein agrees to pay to Beneficiary or to the authorized loan servicing representative of Beneficiary a charge not to exceed that permitted by law for providing a statement regarding the obligation secured by this Deed of Trust as provided by Section 2954, Article 2, Chapter 2, Title 14, Division 3 of the California Civil Code.

IT IS MUTUALLY AGREED THAT:

17. Subject to the additional cure rights in Section 17 of the City Subordinate Loan Note, if the construction of any improvements as herein referred to shall not be carried on with reasonable diligence, or shall be discontinued at any time for any reason other than events of Force Majeure pursuant to Section 36 hereof, Beneficiary, after due notice to Trustor or any subsequent owner, is hereby invested with full and complete authority to enter upon the Property, employ watchmen to protect such improvements from depredation or injury and to preserve and protect the personal property therein, and to continue any and all outstanding contracts for the erection and completion of said building or buildings, to make and enter into any contracts and obligations wherever necessary, either in its own name or in the name of Trustor, and to pay and discharge all debts, obligations and liabilities incurred thereby. All such sums so advanced by Beneficiary (exclusive of advances of the principal of the indebtedness secured hereby) shall be added to the principal of the indebtedness secured hereby and shall be secured by this Deed of Trust and shall be due and payable on demand;

18. In the event of any fire or other casualty to the Project or eminent domain proceedings resulting in condemnation of the Project or any part thereof, Trustor shall have the right to rebuild the Project, and to use all available insurance or condemnation proceeds therefor, provided that (a) such proceeds are sufficient to rebuild the Project in a manner that provides

adequate security to Beneficiary for repayment of the City Subordinate Loan or if such proceeds are insufficient then Trustor shall have funded any deficiency, (b) Beneficiary shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no material default then exists under the City Subordinate Loan Note or this Deed of Trust. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the City Subordinate Loan in a manner that provides adequate security for repayment of the remaining balance of the City Subordinate Loan. The rights of the Beneficiary to any insurance proceeds or condemnation awards pursuant to this Section 18 are and shall be subject to the prior right to any insurance proceeds or condemnation awards of the beneficiary of the Senior Loan Deed of Trust described in Section 31;

19. Upon default by Trustor in making any payments provided for herein or in the City Subordinate Loan Note secured hereby, and if such default is not made good within ten (10) days after notice from Beneficiary, or if Trustor shall fail to perform any covenant or agreement in this Deed of Trust within thirty (30) days after written demand therefor by Beneficiary (or, in the event that more than thirty (30) days is reasonably required to cure such default, should Trustor fail to promptly commence such cure, and diligently prosecute same to completion), Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale, and of written notice of default and of election to cause the Property to be sold, which notice Trustee shall cause to be duly filed for record and Beneficiary may foreclose this Deed of Trust. Beneficiary shall also deposit with Trustee this Deed of Trust, the City Subordinate Loan Note and all documents evidencing expenditures secured hereby;

20. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said Property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. Trustee shall apply the proceeds of sale to payment of (1) the expenses of such sale, together with the reasonable expenses of this trust including therein reasonable Trustee's fees or attorneys' fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (2) the cost of any search and/or other evidence of title procured in connection with such sale and revenue stamps on Trustee's deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate specified in the City Subordinate Loan Note; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto;

21. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Deed of Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee;

22. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law;

23. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the City Subordinate Loan Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto";

24. The trust created hereby is irrevocable by Trustor;

25. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "Beneficiary" shall include not only the original Beneficiary hereunder but also any future owner and holder including pledgees, of the City Subordinate Loan Note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of each Trustor hereunder are joint and several;

26. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee;

27. The undersigned Trustor requests that copies of any notice of default and of any notice of sale hereunder be mailed to it c/o Related/Fontana Courtplace I Development Co., LLC, 18201 Von Karman Avenue, Suite 900, Irvine, California 92612 and to [Limited Partner] at _____.

28. Trustor agrees at any time and from time to time upon receipt of a written request from Beneficiary, to furnish to Beneficiary a detailed statement in writing of income, rents, profits, and operating expenses of the premises, and the names of the occupants and tenants in possession, together with the expiration dates of their leases and full information regarding all rental and occupancy agreements, and the rents provided for by such leases and rental and occupancy agreements, and such other information regarding the Property and their use as may be requested by Beneficiary.

29. The full principal amount outstanding plus accrued but unpaid interest thereon, shall be due and payable on the earlier to occur of the following:

(a) As more particularly provided in the City Subordinate Loan Note, sale, transfer, assignment or refinancing of the Property as provided further in this paragraph 29; unless: (i) in the case of a sale in which the sale proceeds are insufficient to repay in full the City Subordinate Loan, the Beneficiary approves such sale and the purchaser assumes the balance of the City Subordinate Loan in accordance with the terms of the City Subordinate Loan Note; or (ii) in the case of a refinancing in which the refinancing proceeds are insufficient to repay in full the City Subordinate Loan, the Beneficiary approves such refinancing and the Borrower remains obligated pursuant to the terms of the Note.

(b) In order to induce Beneficiary to make the loan evidenced hereby, Trustor agrees that in the event of any transfer of the Property without the prior written consent of Beneficiary (other than a transfer resulting from a foreclosure, or conveyance by deed in lieu of foreclosure, by the holder of the Senior Loan Deed of Trust), Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Beneficiary may grant or deny such consent in its sole discretion and, if consent should be given, any such transfer shall be subject to this paragraph 29, and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release Trustor from any liability thereunder without the prior written consent of Beneficiary.

(c) As used herein, "*transfer*" includes the sale, agreement to sell, transfer or conveyance of the Property, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract or similar instrument affecting all or a portion of the Property, or the lease of all or substantially all of the Property. "Transfer" shall not include the leasing of individual residential units on the Property.

(d) The term "Sale" means any transfer, assignment, conveyance or lease (other than to a tenant for occupancy) of the Property and/or the improvements thereon, or any portion thereof, or any interest therein by the Trustor, and (if Trustor is a partnership) includes any transfer, assignment or sale of any partnership interest in the Trustor by an individual or entity which is a general or limited partner in the Trustor, or any interest by any individual or entity which holds an interest in any such general or limited partner in the Trustor, which brings the cumulative total of all such direct and indirect transfers, assignments and sales during the term of this Deed of Trust to more than thirty-five percent (35%) of the ownership interests in the Trustor, and any such transfer, assignment or sale of a direct or indirect partnership interest thereafter. Sale includes a sale in condemnation or under threat thereof. Sale does not include dedications and grants of easements to public and private utility companies of the kind customary in real estate development.

Notwithstanding anything to the contrary contained in this Deed of Trust or in the City Subordinate Loan Note, prior to declaring any default or taking any remedy permitted under this Deed of Trust, the City Subordinate Loan Note or applicable law based upon an alleged default,

and _____ (collectively, "____") shall have a period of not less than thirty (30) days to cure such alleged default; provided, however, if in order to cure such default _____ reasonably believes that it must remove a general partner of Trustor, or all of them, pursuant to that certain Agreement of Limited Partnership dated as of _____, 20____, _____ shall so notify Beneficiary and so long as _____ is reasonably and diligently attempting to remove the general partner or general partners, _____ shall have until the date thirty (30) days after the effective date of the removal of the general partner or general partners to cure such default.

30. Trustor shall permit Beneficiary and its agents or representatives, to inspect the Property at any and all reasonable times, with or without advance notice. Inspections shall be conducted so as not to interfere with the tenants' use and enjoyment of the Property.

31. It is hereby expressly agreed and acknowledged by Trustor and Beneficiary that this Deed of Trust is a second and subordinate deed of trust, and that the City Subordinate Loan secured hereby, and the City Subordinate Loan Note are subject and subordinate only to the deed of trust securing a loan to Trustor in an approximate original principal amount not to exceed \$_____ in which _____ ("Senior Lender") is the Beneficiary, including any loan that refinances the balance of the Senior Loan or an assignment of the Senior Loan (collectively referred to as the "Senior Loan").

32. For purposes of this Deed of Trust, "Hazardous Materials" mean and include any hazardous, toxic or dangerous waste, substance or material including, without limitation, flammable explosives, radioactive materials, asbestos, hazardous wastes, toxic substances and any materials or substances defined as hazardous materials, hazardous substances or toxic substances in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended (42 U.S.C. §9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.) and those substances defined as hazardous wastes in §25117 of the California Health and Safety Code or as hazardous substances in §25316 of the California Health and Safety Code or in any regulations promulgated under either such law, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

33. In addition to the general and specific representations, covenants and warranties set forth in the Deed of Trust or otherwise, Trustor represents, covenants and warrants, with respect to Hazardous Materials, as follows:

(a) Neither Trustor nor, to the best knowledge of Trustor, any other person, has ever caused or permitted any Hazardous Materials to be manufactured, placed, held, located or disposed of on, under or at the Property or any part thereof, and neither the Property nor any part thereof, or any property adjacent thereto, has ever been used (whether by the Trustor or, to the best knowledge of the Trustor, by any other person) as a manufacturing site, dump site or storage site (whether permanent or temporary) for any Hazardous Materials;

(b) Trustor hereby agrees to indemnify Beneficiary, its officers, employees, contractors and agents, and hold Beneficiary, its officers, employees, contractors and agents harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Beneficiary, its officers, employees, contractors or agents for, with respect to, or as a direct or indirect result of, the presence or use, generation, storage, release, threatened release or disposal of Hazardous Materials on or under the Property or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Materials from the Property (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under CERCLA, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials), caused by Trustor.

(c) Trustor has not received any notice of (i) the happening of any event involving the use, spillage, discharge or cleanup of any Hazardous Materials ("Hazardous Discharge") affecting Trustor or the Property or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, noise emissions or any other environmental, health or safety matter affecting Trustor or the Property ("Environmental Complaint") from any person or entity, including, without limitation, the United States Environmental Protection Agency ("EPA"). If Trustor receives any such notice after the date hereof, then Trustor will give, within seven (7) business days thereafter, oral and written notice of same to Beneficiary.

(d) Without limitation of Beneficiary's rights under this Deed of Trust, Beneficiary shall have the right, but not the obligation, to enter onto the Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any such Hazardous Materials or Environmental Complaint upon its receipt of any notice from any person or entity, including without limitation, the EPA, asserting the existence of any Hazardous Materials or an Environmental Complaint on or pertaining to the Property which, if true, could result in an order, suit or other action against Trustor affecting any part of the Property by any governmental agency or otherwise which, in the sole opinion of Beneficiary, could jeopardize its security under this Deed of Trust. All reasonable costs and expenses incurred by Beneficiary in the exercise of any such rights shall be secured by this Deed of Trust and shall be payable by Trustor upon demand together with interest thereon at a rate equal to the highest rate payable under the City Subordinate Loan Note secured hereby.

34. The following shall be an Event of Default:

(a) Failure of Trustor to pay, when due, principal and interest and any other sums or charges on the City Subordinate Loan Note, in accordance with the provisions set forth in the City Subordinate Loan Note;

(b) A violation of the terms, conditions or covenants of the City Subordinate Loan Note or this Deed of Trust; or

(c) A default under the Senior Loan Deed of Trust to which the lien of this Deed of Trust is subordinate.

35. Subject to the extensions of time set forth in paragraph 36, and subject to the further provisions of this paragraph 35 and of paragraph 37, failure or delay by the Trustor to perform any term or provision of this Deed of Trust constitutes a default under this Deed of Trust. The Trustor must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.

(a) The Beneficiary shall give written notice of default to the Trustor, specifying the default complained of by the Beneficiary. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

(b) The Trustor shall not be in default so long as it endeavors to complete such cure, correction or remedy with reasonable diligence, provided such cure, correction or remedy is completed within thirty (30) days after receipt of written notice (or such additional time as may be deemed by the Beneficiary to be reasonably necessary to correct the cause).

(c) Any failures or delays by the Beneficiary in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the Beneficiary in asserting any of its rights and remedies shall not deprive the Beneficiary 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.

36. Notwithstanding specific provisions of this Deed of Trust, performance hereunder shall not be deemed to be in default where delays or defaults are due to: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God or other deities; acts of the public enemy; epidemics; pandemics; 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 or supplier; acts of the other party; acts or failure to act of the Beneficiary, or any other public or governmental agency or entity (except that any act or failure to act of Beneficiary shall not excuse performance by Beneficiary); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time the party claiming such extension gives notice to the other party, provided notice by the party claiming such extension is given within thirty (30) days after the commencement of the cause. Times of performance under this Deed of Trust may also be extended in writing by the Beneficiary and Trustor.

37. If a monetary event of default occurs under the terms of the City Subordinate Loan Note or this Deed of Trust, prior to exercising any remedies thereunder Beneficiary shall give Trustor written notice of such default. Trustor shall have a period of ten (10) days after such notice is given within which to cure the default prior to exercise of remedies by Beneficiary under the City Subordinate Loan Note and this Deed of Trust.

38. If a non-monetary event of default occurs under the terms of the City Subordinate Loan Note or this Deed of Trust, prior to exercising any remedies thereunder, Beneficiary shall give Trustor notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Trustor shall have such period to effect a cure prior to exercise of remedies by

the Beneficiary under the City Subordinate Loan Note and this Deed of Trust. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Trustor (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Trustor shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Beneficiary. In no event shall Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the first notice of default is given.

39. Upon the occurrence of an Event of Default as described in Section 34, Trustor shall be obligated to repay the City Subordinate Loan and, subject to the nonrecourse provision of the City Subordinate Loan Note, Beneficiary may seek to enforce payment of any and all amounts due by Trustor pursuant to the terms of the City Subordinate Loan Note.

40. All expenses (including reasonable attorneys' fees and costs and allowances) incurred in connection with an action to foreclose, or the exercise of any other remedy provided by this Deed of Trust, including the curing of any Event of Default, shall be the responsibility of Trustor.

41. Except as provided in paragraph 31, each successor owner of an interest in the Property, other than through foreclosure, deed in lieu of foreclosure or an owner who takes an interest in the Property after a foreclosure has occurred, shall take its interest subject to this Deed of Trust.

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[signature page next page]

TRUSTOR:

FONTANA COURTPLACE I HOUSING PARTNERS,
L.P.,
a California limited partnership

By: Related/Fontana Courtplace I Development Co.,
LLC, a California limited liability company, its
administrative general partner

By: _____
Frank Cardone, President

By: Foundation for Affordable Housing V, Inc.,
a California nonprofit public benefit corporation, its
managing general partner

By: _____
Deborrah A. Willard, President

By: LBI Southridge Fontana LLC, a California limited
liability company, its co-general partner

By: LaBarge Industries, LLC, a Delaware
limited liability company, its sole member

By: _____
Josh LaBarge, President

(signatures continue on following page)

[BENEFICIARY SIGNATURE BLOCK]

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO DESCRIBED AS FOLLOWS:

Real property in the City of Fontana, County of San Bernardino, State of California, described as follows:

EXHIBIT L

REGULATORY AGREEMENT

(attached)

EXHIBIT M

RESERVED

EXHIBIT N
AUTHORITY PRE-DEVELOPMENT LOAN NOTE

(Follows this page)

AUTHORITY PRE-DEVELOPMENT LOAN NOTE

(Fontana Courtplace I Family Apartments)

\$[TBD]

Fontana, California

As of _____, 202____

FOR VALUE RECEIVED, the undersigned FONTANA COURTPLACE I HOUSING PARTNERS, L.P., A California limited partnership (“Borrower”), whose address is _____, California _____, hereby promises to pay to the order of the FONTANA HOUSING AUTHORITY, a public body, corporate and politic (“Lender”), the principal sum of up to _____ Dollars (\$[TBD]) (“Loan”), pursuant to the DDA (as defined below), at 8353 Sierra Avenue, Fontana, California 92335, or at such other place as Lender may designate to Borrower in writing.

1. Borrower’s Obligation; Reference to Agreement. This Predevelopment Note (“Predevelopment Note”) evidences Borrower’s obligation to pay Lender the principal amount of the Loan for the funds loaned to Borrower by Lender for funding or reimbursing Borrower’s predevelopment expenses with respect to the Project.

2. Loan Disbursement.

2.1 As of the date hereof, Lender has disbursed Three Hundred Forty-Nine Thousand Nine Hundred Seventy Five Dollars and Fifty Seven Cents (\$349,975.57) of the Predevelopment Loan to Borrower.

2.2 Lender shall disburse the remaining Two Hundred Fifty Thousand Twenty Four Dollars and Forty-Nine Cents (\$250,024.49) to Borrower upon satisfaction of the following conditions:

- 2.2.1 Borrower is not in default under that certain Disposition and Development Agreement by and among Lender, Borrower and the City of Fontana, dated as of _____ (the “DDA”) or this Agreement;
- 2.2.2 Borrower has executed and delivered to Authority, the Predevelopment Note and the Assignment of Work Product;
- 2.2.3 Borrower has delivered to Authority a copy of Borrower’s organizational documents and a corporate authorizing resolution authorizing Borrower’s execution of this Agreement, the Predevelopment Note, and the Assignment of Work Product;
- 2.2.4 Borrower has furnished Authority with evidence of the insurance coverage meeting the requirements of Article 9 below; and

2.2.5 Borrower has submitted a written draw request to Authority no sooner than five (5) days following execution of the DDA.

3. Interest.

3.1 Subject to the provisions of Section 3.2 below, so long as there is no default under this Predevelopment Note, the Deed of Trust, or the DDA, no interest shall accrue under this Predevelopment Note.

3.2 From and after an Event of Default, if an event of default occurs under this Predevelopment Note or the DDA (subject to all applicable notice and cure periods), the entire unpaid principal balance of this Predevelopment Note shall automatically bear an annual interest rate (instead of the rate set forth above) equal to the lesser of: (a) ten percent (10%); compounded annually, or (b) the maximum interest rate allowed by law (“Default Rate”). Such Default Rate shall accrue as of the date of the Event of Default and continue until such time as the Loan funds are repaid in full or the Event of Default is cured.

3.3 Interest shall be computed based on a 365-day year and the actual number of days elapsed.

4. Term and Repayment Requirements.

4.1 The Term of this Predevelopment Note (the “Term”) shall commence with the date of this Predevelopment Note as first set forth above and shall expire on the earliest of those events immediately set forth below:

4.1.1 Upon Close of Escrow, as that term is defined in the DDA;

4.1.2 The occurrence of an Event of Default for which the Lender exercises its right to cause the Loan indebtedness to become immediately due and payable, following the continuation of an Event of Default that remains uncured after expiration of the applicable cure period; or

4.1.3 The termination of the DDA.

4.2 The repayment of the Loan shall be required as follows:

4.2.1 Subject to Subsections 4.2.2 and 4.2.3 below, all principal and interest, if any, on the Loan will, at the option of the Authority, be due and payable upon the expiration of the Term.

4.2.2 Notwithstanding Subsection 4.2.1 above, if the Borrower proceeds to develop the Project, upon Close of Escrow: (a) the Borrower will execute (1) the Authority

Subordinate Loan Note, which note will include the outstanding principal balance of the Loan, in addition to the Authority Subordinate Loan amount, and (2) the Authority Subordinate Loan Deed of Trust, and (b) this Predevelopment Note will be marked as “cancelled” and returned to the Borrower.

4.2.3 Notwithstanding Subsection 4.2.1 above, if the DDA is terminated for infeasibility and Borrower is not in default under this Note and/or the DDA, subject to applicable notice and cure periods, and Borrower delivers the Work Product to the Authority (as such term is defined in the Assignment, the Authority will mark this Predevelopment Note as “cancelled” upon termination of the DDA.

4.3 All sums due under this Predevelopment Note are payable in lawful money of the United States and the other terms and conditions of this Predevelopment Note.

4.4 All payments on this Predevelopment Note shall be without expense to Lender, and Borrower agrees to pay all costs and expenses, including re-conveyance fees and reasonable attorney’s fees of Lender, incurred in connection with the payment of this Predevelopment Note and the release of any security hereof.

4.5 Notwithstanding any other provision of this Predevelopment Note, or any instrument securing the obligations of Borrower under this Predevelopment Note, if, for any reason whatsoever, the payment of any sum by Borrower under the terms of this Predevelopment Note would result in the payment of interest that would exceed the amount that Lender may legally charge under the laws of the State of California, then the amount by which payments exceeds the lawful interest rate shall automatically be deducted from the principal balance owing on this Predevelopment Note, so that in no event shall Borrower be obligated under the terms of this Predevelopment Note to pay any interest that would exceed the lawful rate.

5. **Application of Payments.** Each payment under this Predevelopment Note shall be credited in the following order: (a) costs, fees, charges and advances paid or incurred by Lender under this Predevelopment Note or otherwise payable to Lender by Borrower under this Predevelopment Note, in such order as Lender elects, in Lender’s sole and absolute discretion; (b) accrued interest, if any; and (c) principal due under this Predevelopment Note.

6. **Prepayment.** The principal and interest under this Predevelopment Note may be prepaid at any time, without penalty.

7. **Security.**

7.1 This Predevelopment Note is secured by an Assignment of Work Product, dated [Date of Assignment of Work Product], 20__, (the “Assignment”) wherein Borrower assigned to Lender the Borrower’s rights and obligations with respect to certain Collateral

Documents (as that term is defined in the Assignment) prepared by the Architect or other Consultants, which shall become effective upon an uncured Event of Default, pursuant to the terms of the DDA, or upon termination of the DDA. Upon: (i) an Event of Default that has not been cured pursuant to the DDA, or (ii) the termination of DDA prior to Close of Escrow, the Lender may use any of the foregoing assigned Collateral Documents for any purpose for which the Borrower could have used them for development of the Project. The Borrower will cooperate with the Lender to implement the Assignment of Work Product and immediately deposit with the Lender for the Lender's use all the Collateral Documents.

7.2 Upon Close of Escrow, Borrower will execute and record against the Property, the Authority Subordinate Loan Deed of Trust, to secure Borrower's payment of the loan provided under the Authority Subordinate Loan Note.

8. **Subordination.** This Predevelopment Note and the Assignment securing this Predevelopment Note shall not be subject or subordinate to any other interest in the Collateral Documents .

9. **Default.**

9.1 Any of the following shall constitute an "Event of Default" or "Default" under this Predevelopment Note: (a) Borrower's failure to pay any installment or other sum due under this Predevelopment Note within fifteen (15) days after Lender delivers written notice to Borrower of such failure; or (b) any breach of any other promise or obligation in this Predevelopment Note, in the DDA, or in any other instrument now or hereafter securing the indebtedness evidenced by this Predevelopment Note; provided, however, that Lender has given Borrower thirty (30) days' notice to Borrower describing the default in reasonable detail in which to cure the Default, and such Default not having been cured within 30 days (or, if a greater amount of time is reasonably necessary to effect a cure, if actions to cure such Default are not undertaken within said 30 day period and pursued with reasonable diligence thereafter).

9.2 On and following any Default, Lender may, in Lender's sole and absolute discretion, declare the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Predevelopment Note, immediately due and payable upon written notice by Lender to Borrower without further demand.

9.3 The failure to exercise the remedy set forth in Subsection 9.2 above, or any other remedy provided by law upon the occurrence of one or more of the foregoing events of Default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other Default. The acceptance by Lender hereof of any payment that is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any

subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of Lender, except as and to the extent otherwise provided by law.

10. Collection Costs. Subject to Section 21, Borrower agrees to pay the following costs, expenses, and attorney fees paid or incurred by Lender, or adjudged by a court: (a) reasonable costs of collection and costs, expenses, and attorney fees paid or incurred in connection with the collection or enforcement of this Predevelopment Note, whether or not suit is filed; (b) reasonable costs, expenses, and attorney fees paid or incurred in connection with representing Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving this Predevelopment Note; and (c) costs of suit and such sum as the court may adjudge as reasonable attorney fees in any action to enforce or collect payment of this Predevelopment Note or any portion thereof.

11. Waiver.

11.1 Borrower, endorsers, and all other Persons liable or to become liable on this Predevelopment Note waive diligence, presentment, protest, and demand; notice of protest, demand, and dishonor; notice of non-payment of this Predevelopment Note, and all other notices or matters of a like nature. Borrower expressly agrees that this Predevelopment Note or any payment hereunder may be extended from time to time, and that Lender may accept further security or release any security for this Predevelopment Note, all without in any way affecting the liability of Borrower.

11.2 No extension of time for payment of this Predevelopment Note made by agreement by Lender with any Person now or hereafter liable for the payment of this Predevelopment Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Predevelopment Note, either in whole or in part.

11.3 The provisions of this Predevelopment Note and the obligations of Borrower under this Predevelopment Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Predevelopment Note for any reasons whatsoever.

12. Notice. Any notice required to be provided under this Predevelopment Note shall be given in the manner set forth in Section 25.1 of the DDA.

13. Forbearance Not a Waiver. If Lender delays in exercising or fails to exercise any of its rights under this Predevelopment Note, that delay or failure shall not constitute a waiver of any Lender right or of any breach, Default, or failure of condition under this Predevelopment Note. No waiver by Lender of any of its rights or of any such breach, Default, or failure of condition shall be effective, unless the waiver is expressly stated in a writing signed by Lender.

14. **Assignment.** This Predevelopment Note inures to and binds the heirs, legal representatives, successors, and assigns of Borrower and Lender; provided, however, that Borrower may not assign this Predevelopment Note nor any proceeds of it, nor assign or delegate any of its rights or obligations under this Predevelopment Note, except as otherwise permitted in the DDA, without Lender's prior written consent in each instance, which consent may be given, withheld, delayed or conditioned in Lender's sole and absolute discretion. Lender, in its sole and absolute discretion, may transfer this Predevelopment Note and may sell or assign participations or other interests in all or any part of this Predevelopment Note, all without notice to or the consent of Borrower.

15. **Dissolution of Organization.** In the event that Borrower, or its legally sanctioned and Lender-approved successor terminates or ceases to function within the term of this Predevelopment Note, then, in that event, the outstanding amount due under this Predevelopment Note (including principal or balance of principal and interest) shall be immediately due and payable.

16. **Governing Law.** This Predevelopment Note shall be construed and enforceable according to the laws of the State of California for all purposes, without application of conflicts or choice of laws principles or statutes.

17. **Usury.** To the extent that the indebtedness evidenced by this Predevelopment Note is determined not to be exempt from the usury laws of the State of California, all agreements between Borrower and Lender are expressly limited, so that in no event or contingency, whether because of the advancement of the proceeds of this Predevelopment Note, acceleration of maturity of the unpaid principal balance, or otherwise, shall the amount paid or agreed to be paid to Lender for the use, forbearance, or retention of the money to be advanced under this Predevelopment Note exceed the highest lawful rate permissible under applicable usury laws. If, under any circumstances, fulfillment of any provision of this Predevelopment Note or any other agreement pertaining to this Predevelopment Note, after timely performance of such provision is due, shall involve exceeding the limit of validity prescribed by law that a court of competent jurisdiction deems applicable, then, ipso facto, the obligations to be fulfilled shall be reduced to the limit of such validity. If, under any circumstances, Lender shall ever receive as interest an amount that exceeds the highest lawful rate, the amount that would be excessive interest shall be applied to reduce the unpaid principal balance under this Predevelopment Note and not to pay interest, or, if such excessive interest exceeds the unpaid principal balance under this Predevelopment Note, such excess shall be refunded to Borrower. This provision shall control every other provision of all agreements between Borrower and Lender.

18. **Non-Revolving Credit.** This Predevelopment Note evidences a non-revolving loan from Lender to Borrower. The accrued and unpaid interest and principal balance owing on this Predevelopment Note at any time may be evidenced by an unpaid balance acknowledgment of

Lender on this Predevelopment Note or by the internal accounting records of Lender regarding this Predevelopment Note.

19. **Time Is of the Essence.** Time is of the essence with respect to all obligations of Borrower under this Predevelopment Note.

20. **Severability.** If any provision of this Predevelopment Note, or the application of it to any Person or circumstance, is held void, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Predevelopment Note, and the application of such provision to other Persons or circumstances, shall not be affected thereby, the provisions of this Predevelopment Note being severable in any such instance.

21. **Non-Recourse.** The Loan is nonrecourse, and the sole recourse of the Authority with respect to the principal of, and interest on, this Predevelopment Note and defaults by Borrower in the performance of its covenants under such note will be to the security described in Section 7 hereof.

22. **Amendment or Modification.** The terms of this Predevelopment Note may only be amended or modified by a written agreement executed by all of the parties hereto.

23. **Acknowledgment.** PRIOR TO SIGNING THIS NOTE, BORROWER HAS READ AND UNDERSTANDS ALL OF ITS PROVISIONS AND HAS CONSULTED WITH LEGAL COUNSEL OF BORROWER'S INDEPENDENT SELECTION REGARDING BORROWER'S OBLIGATIONS UNDER THIS NOTE. BORROWER UNDERSTANDS AND AGREES THAT THIS NOTE SHALL BE BINDING UPON BORROWER AND BORROWER'S HEIRS, LEGAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS. AGREES TO THE TERMS AND CONDITIONS OF THIS NOTE AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTE.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Predevelopment Note has been duly executed as of the date first set forth above by:

BORROWER:

FONTANA COURTPLACE I HOUSING PARTNERS,
L.P.,
a California limited partnership

By: Related/Fontana Courtplace I Development Co.,
LLC, a California limited liability company, its
administrative general partner

By: _____
Frank Cardone, President

By: Foundation for Affordable Housing V, Inc.,
a California nonprofit public benefit corporation, its
managing general partner

By: _____
Deborrah A. Willard, President

By: LBI Southridge Fontana LLC, a California limited
liability company, its co-general partner

By: LaBarge Industries, LLC, a Delaware
limited liability company, its sole member

By: _____
Josh LaBarge, President

EXHIBIT O

ASSIGNMENT OF WORK PRODUCT

(Follows this page)

ASSIGNMENT OF WORK PRODUCT

(Fontana Courtplace I Family Apartments)

This Assignment of Work Product (the “Assignment”) is entered into as _____, 2023 (the “Effective Date”), by and between the FONTANA HOUSING AUTHORITY, a public body, corporate and politic (the “Authority”), and FONTANA COURTPLACE I HOUSING PARTNERS, L.P., A California limited partnership (the “Assignor”), (individually a “Party” and collectively, the “Parties”), with reference to the following facts:

RECITALS

A. Pursuant to the terms of that certain Disposition and Development Agreement (“DDA”) dated the same date as the Effective Date of this Assignment, by and between the Assignor and the Authority (the “Loan Agreement”), the Assignor desires to assign to the Authority, and the Authority desires to accept from the Assignor, the assignment of the Assignor's right, title, and interest in and under those agreements, contracts and other work product described below and incurred by the Assignor in connection with the Project, as defined in the DDA.

B. The consent to such assignments by various third parties may be required in the form of consent attached to this Assignment as Schedule 1, (the “Consent”).

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the Parties and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties mutually agree as follows:

TERMS

1. Assignment by Assignor. Assignor assigns and delegates to the Authority, and the Authority accepts from the Assignor, all of the Assignor's right, title, and interest in and obligations under the following:

(a) all architectural designs, construction, engineering and consulting contracts, including any and all amendments, modifications, supplements, addenda and general conditions (collectively, the “Project Agreements”) previously or later entered into by the Assignor and any Contractor (as defined below) pertaining to the development of the Project;

(b) all plans and specifications, shop drawings, working drawings, reports, studies, amendments, modifications, changes, supplements, general conditions, addenda and work product (collectively, the “Reports, Plans and Specifications”) previously or later prepared by the Assignor or any Contractor pertaining to the development of the Project;

(c) all land use approvals, conditional use permits, building permits and other governmental entitlements and approvals of any nature obtained for the Project (collectively, the “Government Approvals”); and

(d) all applications for financing or other approvals and all other tangible documents, except those of a proprietary or confidential nature pertaining to the development of the Project (“General Documents”).

For purposes of this Assignment, the term “Contractor” means any architect, contractor, engineer, consultant or other person or entity entering into Project Agreements with the Assignor (other than attorney agreements for the provision of legal services) and/or preparing Reports, Plans and Specifications or other documents for the Assignor with respect to the Project. Such Project Agreements, Reports, Plans and Specifications, Government Approvals, and General Documents, will be collectively referred to in this Assignment as the “Collateral Documents”. It is intended that all Collateral Documents, whenever produced, be assigned through this Assignment to the Authority as security for the Authority Subordinate Loan, and the applicable Consent executed. The Assignor will periodically provide the Authority a list of all Collateral Documents.

2. Consent. The Assignor agrees to obtain and deliver to the Authority, such consents to the assignment of Collateral Documents as may be required by the terms of the Collateral Documents or as otherwise requested by the Authority in the form attached as Schedule 1. This Assignment and any consents to this Assignment will not relieve the Assignor of the Assignor's obligations under the Collateral Documents.

3. Purpose. This Assignment is made to secure: (i) payment to the Authority of all sums owing under the Predevelopment Note, dated the same date as the Effective Date of this Assignment and made by the Assignor to the order of the Authority, and any and all additional advances, modifications, extensions, renewals, and amendments of the Predevelopment Note; and (ii) payment and performance by the Assignor of all the Assignor's obligations under the DDA.

4. No Assumption of Obligations. The Assignor agrees that the Authority does not assume any of the Assignor's obligations or duties under any Collateral Documents, including, but not limited to, the obligation to pay for the preparation of any Collateral Documents prepared prior to the time the Authority exercise the Authority's rights under this Assignment. The Authority will not be responsible for any default, liability or obligation of the Assignor under the Collateral Document occurring prior to the time the Authority exercises the Authority's rights under this Assignment. Notwithstanding the foregoing, if, following assignment of the Collateral Documents to the Authority, Authority requires or requests additional scope of work, studies or actions by the Contractors on the Collateral Documents, the costs of said additional scope of work shall be an Authority obligation.

5. Attorney-In-Fact. The Assignor irrevocably appoints the Authority as the Assignor's attorney-in-fact, which power is coupled with an interest, so that the Authority will have the right to demand, receive, and enforce any and all of the Assignor's rights with respect to the Collateral Documents, and to perform any and all acts in the name of the Assignor or in the name of the Authority with the same force and effect as if performed by the Assignor in the absence of this Assignment, upon the occurrence of: (i) an Event of Default under the DDA by the Assignor (after notice and opportunity to cure) or an event which, with notice or the passage

of time or both, would constitute an Event of Default under the DDA, or (ii) any termination of the DDA. Until such occurrences, the Assignor will be entitled to exercise all rights pertaining to the Collateral Documents.

6. Representations and Warranties. The Assignor represents and warrants to the Authority that: (i) no previous assignment(s) of the Assignor's right or interest in or to the Collateral Documents has or have been made; (ii) the Assignor has done no act nor omitted to do any act that might prevent the Authority from exercising any of the rights, powers and privileges conferred by the Collateral Documents; and (iii) the copy of each Collateral Document provided by the Assignor to the Authority is the complete and entire agreement between the parties to those Collateral Documents in all material respects.

7. Governing Law. This Assignment is governed by the laws of the State of California, except to the extent that federal law preempts the laws of the State of California. The Assignor consents to the jurisdiction of any federal or state court within the State of California having proper venue for the filing and maintenance of any action arising under this Assignment and agrees that the prevailing party in any such action will be entitled, in addition to any other recovery, to reasonable attorneys' fees and costs.

8. Binding Upon Successors and Assigns. This Assignment is binding upon and will inure to the benefit of the heirs, legal representatives, successors-in-interest, and assigns of the Assignor and the Authority; provided, however, this Section 8 may not be construed and is not intended to waive the restrictions on assignment, sale, transfer, mortgage, pledge, hypothecation, or encumbrance by the Assignor contained in the DDA.

9. Remedies. In the event of the Assignor's default under this Assignment, the Authority may exercise all or any one or more of the Authority's rights and remedies available under this Assignment, at law or in equity. Such rights and remedies will be cumulative and concurrent, and may be enforced separately, successively or together, and the exercise of any particular right or remedy will not in any way prevent the Authority from exercising any other right or remedy available to the Authority.

10. Capitalized Terms. Capitalized terms used but not defined in this Assignment have the meanings set forth in the DDA.

11. Headings. Section headings contained in this Assignment are inserted as a matter of convenience and for ease of reference only and will be disregarded for all other purposes, including the construction or enforcement of this Assignment or any of the provisions of this Assignment.

12. No Agency or Partnership. Nothing contained in this Assignment will constitute the Authority as a joint venturer, partner or agent of the Assignor, or render the Authority liable for any debts, obligations, acts, omissions, representations or contracts of the Assignor.

13. Further Assurances. The Assignor will at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action that may be reasonably necessary or desirable, or that the Authority may reasonably request, in

order to protect any right or interest granted by this Assignment or to enable the Authority to exercise and enforce the Authority's rights and remedies under this Assignment.

14. Termination. This Assignment will terminate, and the security of the Authority under this Assignment will be released upon the earlier of (i) the Assignor's repayment in full of the Authority Subordinate Loan, or (ii) after termination of the DDA, or (iii) completion of construction of the Project.

15. Counterparts. This Assignment may be executed in counterparts by the Parties, each of which will be deemed to be an original, and all such counterparts will constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have duly executed this Assignment by their duly authorized signatories effective as of the Effective Date.

APPROVED AS TO FORM:

AUTHORITY:

FONTANA HOUSING AUTHORITY, a public body, corporate and politic

By: _____

DEVELOPER

FONTANA COURTPPLACE I HOUSING
PARTNERS, L.P.,
a California limited partnership

By: Related/Fontana Courtplace I Development
Co., LLC, a California limited liability
company, its administrative general partner

By: _____
Frank Cardone, President

By: Foundation for Affordable Housing V, Inc.,
a California nonprofit public benefit
corporation, its managing general partner

By: _____
Deborrah A. Willard, President

By: LBI Southridge Fontana LLC, a California
limited liability company, its co-general
partner

By: LaBarge Industries, LLC,
a Delaware limited liability company, its sole
member

By: _____
Josh LaBarge, President

SCHEDULE 1

CONSENT

_____, a _____ (the "Contractor") consents to the foregoing Assignment, of which this Consent is a part, and acknowledges that at present there exist no unpaid claims presently due to the Contractor, except as disclosed to the Authority, arising out of the preparation and delivery to the Assignor of the Collateral Documents for which the Contractor is responsible and/or the performance of the Contractor's obligations under any Project Agreement.

The Contractor agrees that if, at any time, the Authority, pursuant to the Authority's rights under the DDA, elects to undertake or cause the completion of any of the Predevelopment Component activities for the Project, and gives the Contractor written notice of such election; then, so long as the Contractor has received, receives, or continues to receive the compensation called for under the applicable Project Agreement, the Authority may, at the Authority's option, use and rely on the Collateral Documents for the purposes for which the Collateral Documents were prepared, and the Contractor will continue to perform the Contractor's obligations under the applicable Project Agreement for the benefit and account of the Authority in the same manner as if performed for the benefit or account of the Assignor in the absence of this Assignment.

The Contractor further agrees that, in the event of a breach by the Assignor of the applicable Project Agreement, or any agreement entered into with the Contractor in connection with the Collateral Documents, so long as the Assignor's interest in the applicable Project Agreement and Collateral Documents is assigned to the Authority, the Contractor will give written notice to the Authority. The Authority will have thirty (30) days from the receipt of such written notice of default to remedy or cure said default; provided, however, nothing in this Consent will require the Authority to cure said default or to undertake completion of the Predevelopment Activities.

The Contractor warrants and represents that the Contractor has no knowledge of any prior assignment(s) of any interest in either the applicable Project Agreement or the Collateral Documents. Except as otherwise defined in this Consent, the terms used in this Consent will have the meanings given them in the foregoing Assignment or the Loan Agreement, as applicable.

Execution date: _____, 202_____

Title of Contract:

By: _____

Name: _____

Its: _____

Date of Contract: _____

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Fontana Housing Authority
8353 Sierra Avenue
Fontana, CA 92335
Attn: Executive Director Housing Authority

SPACE ABOVE FOR RECORDER'S USE ONLY
EXEMPT FROM RECORDING FEE PER
GOVERNMENT CODE §27383

**REGULATORY AGREEMENT
(FONTANA COURTPLACE I FAMILY APARTMENTS)**

By and between

**FONTANA HOUSING AUTHORITY,
a public body, corporate and politic**

And

**FONTANA COURTPLACE I HOUSING PARTNERS, L.P.,
a California limited partnership**

[Dated as of _____, 2023 for reference purposes only]

REGULATORY AGREEMENT

(FONTANA COURTPLACE I FAMILY APARTMENTS)

THIS REGULATORY AGREEMENT (the “Agreement”), dated, for identification purposes only, as of _____, 202_____, is entered into by and between the **FONTANA HOUSING AUTHORITY**, a public body, corporate and politic (“Authority”), and **FONTANA COURTPLACE I HOUSING PARTNERS, L.P.**, a California limited partnership (“Developer”).

RECITALS

A. Authority is a California housing authority acting under the California Housing Authorities Law, Part 2 of Division 24 of the Health and Safety Code;

B. Developer is controlled by an experienced owner, developer and manager of affordable housing for low and moderate-income families;

C. City of Fontana is the owner of certain real property situated in the City of Fontana, County of San Bernardino, State of California, and legally described in Exhibit A (the “Property”);

D. Authority and Developer entered into that certain “Disposition and Development Agreement” dated as of _____, 2023 (the “DDA”);

E. The DDA provided that Authority would make a loan in the original principal amount equal to \$ _____ (the “Authority Loan”), and in connection with the Authority Loan, Developer would agree to encumber the Property with this Agreement.

F. In consideration of the mutual promises, covenants, and conditions herein contained, Authority and Developer agree as follows:

TERMS AND CONDITIONS

1. RESERVED

2. **DEFINITIONS.** All capitalized terms used herein may be defined where first used in this Agreement and/or as set forth in this Section 2. Unless otherwise defined herein, all capitalized terms shall have the same meanings ascribed to them in the DDA. For the purpose of supplying such definitions, the DDA, notwithstanding anything contained therein or herein to the contrary, shall not merge with this Agreement.

2.1 “Award” means any compensation or payment made or paid for the Total, Partial or Temporary Taking of all of any part of or interest in the Property and/or the Improvements, whether pursuant to judgment, agreement or otherwise.

2.2 “Capital Improvements” means all work and improvements with respect to the Property for which costs and expenses may be capitalized in accordance with GAAP.

2.3 **“Cash Flow”** means, for the applicable period, Net Operating Income less Debt Service.

2.4 **“Compliance Period”** has the meaning set forth in Section 42(i)(l) of the Internal Revenue Code of 1986, as amended.

2.5 **“Construction”** means the improvement of the Property pursuant to the Plans.

2.6 **“Construction Loan”** refers to the loan from a lender (or consortium of lenders) acceptable to the Executive Director of Authority, the proceeds of which are used to construct the Project.

2.7 **“Debt Service”** means scheduled debt service on Mortgage loans and other sums due and payable under such Mortgage loan documents.

2.8 **“Effective Date”** means the date on which the Grant Deed granting the Property from the City to the Partnership is recorded in the real property records in San Bernardino County.

2.9 **“Environmental Law”** means any federal, state or local environmental, health and/or safety-related law, rule, regulation, requirement, order, ordinance, directive, guideline, permit or permit condition, currently existing and as amended, enacted, issued or adopted in the future. The term Environmental Law includes, but is not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and similar state or local laws.

2.10 **“Event of Default”** has the meaning set forth in Section 21.

2.11 **“Executive Director”** means the Executive Director of Authority or his designee.

2.12 **“Hazardous Materials”** means flammable materials, explosives, radioactive materials, hazardous wastes, toxic substances and similar substances and materials, including all substances and materials defined as hazardous or toxic wastes, substances or materials under any applicable law, including, without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 42 §§ 9601, et seq., as amended. Hazardous Materials expressly exclude substances typically used in the construction, development, operation and maintenance of an apartment complex provided such substances are used in accordance with all applicable laws.

2.13 **“Impositions”** means all taxes (including, without limitation, sales and use taxes); assessments (including, without limitation, all assessments for public improvements or benefits whether or not commenced or completed prior to the Effective Date and whether or not to be completed within the Term); water, sewer or other rents, rates and charges; excises; levies; license fees; permit fees; inspection fees and other authorization fees and other charges; in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character (including all interests and penalties thereon), which are attributable or applicable to any portion of the Term and may be assessed, levied, confirmed or imposed on or in respect of, or be a lien upon (a) the Property or the Improvements, or any part thereof, or any estate, right or interest therein, (b) any occupancy, use or possession of or activity conducted on the Property or the

Improvements, or any part thereof, or (c) this Agreement. The term "Impositions" shall also include any and all increases in the foregoing, whether foreseen or unforeseen, ordinary or extraordinary, including, without limitation, any increase in real property taxes resulting from a sale of the Property by Authority.

2.14 "Improvements" means all buildings, structures and other improvements, including the building fixtures thereon, now located on the Property or hereafter constructed on the Property; all landscaping, fencing, walls, paving, curbing, drainage facilities, lighting, parking areas, roadways and similar site improvements now located or hereafter placed upon the Property.

2.15 "Indemnitees" means Authority, the City and their respective officers, employees, representatives, agents, officials and volunteers.

2.16 "Index" means the Consumer Price Index Urban Wage Earners and Clerical Workers (Los Angeles Anaheim Riverside, CA, All Items, Base 1982 84 = 100) as published by the United States Department of Labor, Bureau of Labor Statistics. Should the Bureau discontinue the publication of the Index, or publish the same less frequently or on a different schedule, or alter the same in some other manner including, without limitation, changing the name of the Index or the geographic area covered by the Index, Authority and Developer shall adopt a substitute index or procedure which reasonably reflects and monitors consumer prices.

2.17 "Institutional Lender" means any one or combination (including, without limitation, a consortium) of the following lending institutions: a commercial or savings bank; a trust company; an insurance company; a savings and loan association; a building and loan association; an educational institution; a pension, retirement or welfare fund; a charity; an endowment fund or foundation authorized to make loans in the State of California; a company engaged in the ordinary course of business as a lender with net unencumbered assets in the amount of not less than \$50,000,000 which is duly licensed or registered with any regulatory agency having jurisdiction over its operation, if any, and is not under any order or judgment of any court or administrative agency restricting or impairing its operation as a lender where the restriction or impairment would be directly related to a proposed loan to Developer, and which is regularly engaged in business in an office or location in the State of California; or any other entity having a net worth of \$75,000,000 or more whether or not a so-called institution; or any division, subsidiary, parent or affiliate owned or controlled by, owning or in control of or in common control or ownership with any of the foregoing entities.

2.18 "Insurance Requirements" means all terms of any insurance policy covering or applicable to the Property or the Improvements, or any part thereof, all requirements imposed by the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Property or the Improvements, or any part thereof, or any use or condition of the Property or the Improvements, or any part thereof.

2.19 "Legal Requirements" means all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agents, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which

now or at any time hereafter may be applicable to the Property or the Improvements, or any part thereof, or to any of the adjoining sidewalks, streets or ways, or to any use or condition of the Property or the Improvements, or any part thereof.

2.20 “Memorandum of Lease”

2.21 “Mortgage” has the meaning set forth in Section 18.1.1 of this Agreement.

2.22 “Mortgagee” has the meaning set forth in Section 18.1.1 of this Agreement.

2.23 “Net Operating Income” means, for any period of time, the amount, if any, by which Operating Income for such period exceeds Operating Expenses which Developer paid during such period.

2.24 “Official Records” means the Official Records of San Bernardino County, California.

2.25 “Operating Expenses” means, for the applicable period of time, all costs and expenses incurred by Developer in the ordinary course of the management, ownership and/or operation of the Property by Developer. Debt Service is not an Operating Expense. Operating Expenses shall not include any expenses for Capital Improvements, except for Capital Improvements approved, for the purposes of this Agreement, by the Executive Director or by a mortgage lender for treatment as an Operating Expense. Operating Expenses shall be calculated on a cash basis.

2.26 “Operating Income” means, for the applicable period of time, all proceeds received by Developer from the operation of the Property in the ordinary course of business and from any and all sources resulting from or attributable to the operation of the Property in the ordinary course of business, including, without limitation, all rentals, parking receipts, laundry receipts, forfeited Security Deposits, and all expense reimbursements paid to Developer by tenants. Operating Income shall be calculated on a cash basis.

2.27 “Partial Taking” means any taking of the fee title of the Property and/or the Improvements that is not either a Total, Substantial or Temporary Taking.

2.28 “Permitted Transfer” Any sale, transfer, assignment or conveyance of the Property or the Project:

2.28.1 that is approved by the Authority or is expressly permitted by the terms of this Regulatory Agreement;

2.28.2 a conveyance of a security interest in the Property or any portion thereof or interest therein in connection with a Senior Loan approved in advance by the Authority, and any refinancing of such Senior Loan;

2.28.3 the inclusion of equity participation in the Project by addition of limited partners or similar mechanism, and any transfers of limited partnership interests in the Developer;

2.28.4 the lease for occupancy of any part of the Improvements on the Property in accordance with this Agreement;

2.28.5 the granting of easements, rights of way or permits to facilitate the development of the Project in accordance with this Agreement; and

2.28.6 the withdrawal, removal or replacement of a general partner of the Developer pursuant to the terms of Developer's agreement of limited partnership, or the conveyance of the Property and Project to an affiliate of Developer in accordance with that certain option or right of first refusal granted under Developer's agreement of limited partnership.

2.29 "Plans" means the plans and specifications for the Construction, a set of which, initiated by Developer, are on file in the offices of Authority.

2.30 "Potential Default" means any condition or event which, with the lapse of time or the giving of notice, or both, would constitute an Event of Default.

2.31 "Project" refers to the Property and the Improvements constructed and maintained thereon.

2.32 "Property" has the meaning set forth in Recital C above.

2.33 "Substantial Taking" means the taking of so much of the Property and/or the Improvements that the portion of the Property and/or the Improvements not taken cannot be repaired or reconstructed, taking into consideration the amount of the Award available for repair or reconstruction, so as to constitute a complete, rentable structure, capable of producing a proportionately fair and reasonable net annual income after payment of all Operating Expenses, and all other charges payable under this Agreement, and after performance of all covenants and conditions required by Developer by law and under this Agreement. Eminent domain actions filed by Authority against owners of portions of the Property and pending as of the Effective Date shall not be deemed, construed or interpreted as a Substantial Taking under this Agreement.

2.34 "Take-Out Loan" refers to the loan, if any, from an Institutional Lender acceptable to the Executive Director of Authority, pursuant to which said lender agrees to make a take-out loan for the purpose of paying all amounts due under the Construction Loan. Authority hereby acknowledges that _____ is an approved Institutional Lender.

2.35 "Taking" means a taking or damaging, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute. The taking may occur as a result of a transfer pursuant to the recording of a final order in condemnation, a voluntary transfer or conveyance to the taking authority under threat of condemnation, or a transfer while condemnation proceedings are pending. Unless otherwise provided, the taking shall be deemed to occur as of the earlier of (a) the date actual physical possession is taken by the condemnor, or (b) the date on which the right to compensation and damages accrues under the law applicable to the Property and/or the Improvements. A taking as used in this Agreement does not include the voluntary dedication of any portion of the Property necessary to obtain building permits

or to comply with any other applicable governmental rule, regulation or statute; nor does it include the enactment of any law, ordinance or regulation which may affect the use or value of the Property but which does not involve an actual taking of any portion thereof.

2.36 “Tax Credit Partner” means _____, and its successors and assigns.

2.37 “Temporary Taking” means a taking of all or any part of the Property or Improvements for a term certain which term is specified at the time of taking. Temporary Taking does not include a taking which is to last for an indefinite period or a taking which will terminate only upon the happening of a specified event unless it can be determined at the time of the taking substantially when such event will occur. If a taking for an indefinite term should take place, it shall be treated as a Total, Substantial or Partial Taking in accordance with the definitions set forth herein.

2.38 “Term” has the meaning set forth in Section 3 of this Agreement.

2.39 “Total Taking” means the taking of the fee title to all of the Property.

2.40 Transfer. With respect to any property, right or obligation, any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect:

2.40.1 Any total or partial sale, assignment, conveyance, trust, power, or transfer in any other mode or form, by Developer of more than a 49% interest in Developer's interest in this Regulatory Agreement, the Property, or the Project or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest in Developer's interest in this Regulatory Agreement, the Property or the Project, even if Developer is not technically the transferor; or

2.40.2 Any Property Transfer; or

2.40.3 The recordation of any deed of trust, mortgage, lien or similar encumbrance against all or any portion of the Property, other than a Permitted Security Instrument.

2.40.4 A “Transfer” shall not include a Permitted Transfer.

3. TERM. The term of this Agreement (the “Term”) shall commence on the Effective Date, and shall continue thereafter until the date that is the 99th anniversary of the Effective Date.

4. RESERVED.

5. RESERVED.

6. RESERVED.

7. DEVELOPMENT OF THE PROPERTY.

7.1 Construction. Within ten (10) business days after the Construction Loan Closing, or such longer period as the Executive Director may approve, Developer shall commence Construction. All Improvements, together with all off-site improvements that may be made by reason of governmental requirements as a condition to the Construction upon the Property, shall be constructed in a good and workmanlike manner using materials of good quality and in substantial compliance with the Plans as modified pursuant to this Section 7, and shall comply with all applicable governmental permits, laws, ordinances and regulations. Any of the Plans, including, without limitation, landscaping plans, not approved by the Executive Director as of the Construction Loan Closing shall be subject to the prior approval of the Executive Director. Construction shall be completed pursuant to the DDA Schedule of Performance. Failure to complete construction pursuant to the Schedule of Performance shall be a Default under this Agreement, subject to Section 7.10.

7.2 Construction Cost. Developer shall bear the cost of the Construction, including all fees and mitigation measures.

7.3 Changes; Authority Consent.

7.3.1 Changes. Except as otherwise provided in this Agreement, Developer shall not make any changes in the Plans without the Executive Director's prior written consent if such change (a) constitutes a material change in the building material or in the architectural design, value or quality of any of the Improvements, or (b) would result in an increase in construction costs in excess of One Hundred Thousand Dollars (\$100,000.00) for any single change or in excess of Five Hundred Thousand Dollars (\$500,000.00) for all such changes. Without limiting the above, Authority agrees that Developer may make minor changes which do not change the Projects aesthetics without the Executive Director's prior written consent, provided that such changes do not violate any of the conditions specified herein.

7.3.2 Submission Requirement; Consent Process. Developer shall submit any proposed changes in the Plans to the Executive Director at least ten (10) business days prior to the commencement of construction relating to such proposed change. Requests for any change which requires consent shall be accompanied by working drawings and a written description of the proposed change, submitted on a change order form acceptable to the Executive Director, signed by Developer and, if required by the Executive Director, also by the Project architect. If a proposed change is approved, then Developer shall be notified in writing within ten (10) business days after submission. If the Executive Director fails to disapprove a proposed change within said ten-day period, and state the reason(s) for such disapproval with reasonable particularity, then the proposed change shall be deemed approved.

7.4 Authority's Review. Authority does not have, and by this Agreement expressly disclaims, the right to or duty for any review of the Plans for the purpose of determining compliance with building codes, safety features or standards or for the purpose of determining or approving engineering or structural design, sufficiency or integrity. Authority's approval of a direction or request to change the plans, specifications or drawings submitted by Developer is not and shall not be a review or approval of the quality, adequacy or suitability of such plans, specifications or drawings, nor of the labor, materials, services or equipment to be furnished or supplied in connection therewith. Any change or alteration in any construction document pursuant

to a direction or request in writing by Authority shall similarly be subject to the provisions of this Section unless in response to such direction or request Developer or its representative shall notify Authority in writing that the direction or request, if executed as directed or requested, shall constitute a danger or hazard to life, safety or property or shall create a dangerous condition that would or might constitute such a danger or hazard and Authority nevertheless requires such change or alteration. Authority does not have and expressly disclaims any right of supervision or control over the architects, designers, engineers or other draft persons and professionals responsible for the drafting and formulation of the Plans, or any right of supervision or control of contractors, builders, trades and other persons engaged in constructing and fabricating the improvements pursuant to the Plans. Authority further acknowledges that it shall not have any right to disapprove any plan, specification or drawing which logically evolves from any previously approved plan, specification or drawing or to request or require a change in any previously approved item.

7.5 Reserved.

7.6 Diligent Prosecution to Completion. Once the work is begun, Developer shall, with reasonable diligence, prosecute the Construction to completion. The Construction shall be completed and ready for use within twenty four (24) months after the Construction Loan Closing. Additionally, upon the written request of Developer, the Executive Director may, at his sole and absolute discretion, grant one or more extensions of the date by which the Construction must be completed of, in the aggregate, not more than ninety (90) days. All work shall be performed in a good and workmanlike manner, shall substantially comply with the Plans, and shall comply with all applicable governmental permits, laws, ordinances, and regulations.

7.7 Right of Access. During normal construction hours, subject to prior written notice of no less than 48 hours, representatives of Authority shall have the reasonable right of access to the Property without charges or fees for the purpose of inspecting the work of the Construction; provided, however, that such representatives shall present and identify themselves at Developer's construction office, be accompanied by a representative of Developer while on the Property and obey Developer's, or its contractor's, safety rules and regulations. In addition, Authority shall have the right to authorize the City and other public agencies to enter the Property, upon the same terms after reasonable prior written notice to Developer, for the purpose of constructing, reconstructing, maintaining or repairing any public improvements or public facilities located on the Property. Authority shall deliver written notice of the identity of its representatives to Developer before such representatives enter the Property. Authority hereby indemnifies and holds Developer, and its contractors, subcontractors, agents, representatives and employees, and the Property, harmless from and against any loss, cost, damage or liability, including, without limitation, attorneys' fees, which results from the exercise by Authority, or any party acting under Authority's authority, of the rights granted by this Section.

7.8 Governmental Approvals. If requested by Authority in writing, Developer covenants and agrees to deliver to Authority conformed copies (and certified copies of all recorded instruments) of all governmental approvals and permits obtained by Developer for the construction, alteration or reconstruction of any Improvements upon the Property in accordance with the Plans. In no event shall Developer commence construction of any Improvements pursuant to the provisions of this Section 7 until such time as Developer shall have obtained all necessary governmental approvals and permits to so construct such Improvements.

7.9 Authority's Right to Discharge Lien. If Developer does not cause to be recorded the bond described in California Civil Code Section 3143 or otherwise protect the Property under any alternative or successor statute, and a final judgment has been entered against Developer by a court of competent jurisdiction for the foreclosure of a mechanic's, materialman's, contractor's, or subcontractor's lien claim, and if Developer fails to stay the execution of the judgment by lawful means or to pay the judgment, Authority shall have the right, but not the duty, subject to the notice and cure rights of Mortgagees and the Tax Credit Partner set forth elsewhere in this Agreement, to pay or otherwise discharge, stay, or prevent the execution of any such judgment or lien or both. Developer shall reimburse Authority for all sums paid by Authority under this Section, together with all Authority's reasonable attorneys' fees and costs, plus interest on those sums, fees, and costs from the date of payment until the date of reimbursement at the rate of ten percent (10% per annum.

7.10 Force Majeure. All obligations of Developer to promptly commence and thereafter diligently prosecute to completion the Construction shall be extended by such number of days as Developer shall be delayed by reason of events of force majeure pursuant to Section 24.

8. USE OF THE PROPERTY, HAZARDOUS MATERIALS, AND NON-DISCRIMINATION.

8.1 Definitions Applicable to this Section. All capitalized terms used in this Section 8 and not elsewhere defined shall have the following meanings:

8.1.1 **“Adjusted Income”** means the adjusted income of a person (together with the adjusted income of all persons of the age of eighteen (18) years or older who intend to reside with such person in one residential unit) as calculated in the manner prescribed under Section 142(d)(2)(B) of the Code.

8.1.2 **“Affordable Rent for 30% of Median Income Tenants”** means monthly rent (including the Utility Allowance, and excluding any supplemental rental assistance from the State of California, the federal government or any other public agency) not in excess of thirty percent (30%) of one-twelfth (1/12th) of thirty percent (30%) of the Median Income for the Area adjusted for family size appropriate for the Unit in accordance with the CTCAC Regulations.

8.1.3 **“Affordable Rent for 40% of Median Income Tenants”** means monthly rent (including the Utility Allowance, and excluding any supplemental rental assistance from the State of California, the federal government or any other public agency) not in excess of thirty percent (30%) of one-twelfth (1/12th) of forty percent (40%) of the Median Income for the Area adjusted for family size appropriate for the Unit in accordance with the CTCAC Regulations.

8.1.4 **“Affordable Rent for 50% of Median Income Tenants”** means monthly rent (including the Utility Allowance, and excluding any supplemental rental assistance from the State of California, the federal government or any other public agency) not in excess of thirty percent (30%) of one-twelfth (1/12th) of fifty percent (50%) of the Median Income for the Area adjusted for family size appropriate for the Unit in accordance with the CTCAC Regulations.

8.1.5 **“Affordable Rent for 60% of Median Income Tenants”** means monthly rent (including the Utility Allowance, and excluding any supplemental rental assistance from the

State of California, the federal government or any other public agency) not in excess of thirty percent (30%) of one-twelfth (1/12th) of sixty percent (60%) of the Median Income for the Area adjusted for family size appropriate for the Unit in accordance with the CTCAC Regulations.

8.1.6 **“Certificate of Continuing Program Compliance”** shall mean the Certificate to be filed annually (or quarterly at the written request of the Executive Director) by Developer with the Executive Director which shall be substantially in the form attached to this Agreement as Exhibit C.

8.1.7 **“City Units”** means those Units restricted under Section 8.2.1.

8.1.8 **“Code”** means the Internal Revenue Code of 1986, as amended, including the Regulations promulgated thereunder or under any predecessor statute.

8.1.9 **“CTCAC Regulations”** means California Code of Regulations Title 4, Division 17, Chapter 1.

8.1.10 **“Median Income for the Area”** means: for the City Units, the median income for San Bernardino County, California, adjusted for actual household size, as determined by CTCAC Regulations, and for the SLA Units, the median income for Santa Clara County, California, adjusted for actual household size, as determined by HUD pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by HCD in Section 6932 of Title 25 of the California Code of Regulations or successor provision.

8.1.11 **“30% of Median Income Tenants”** means persons or families with Adjusted Income that does not exceed thirty percent (30%) of the Median Income for the Area, adjusted for household size.

8.1.12 **“40% of Median Income Tenants”** means persons or families with Adjusted Income that does not exceed forty percent (40%) of the Median Income for the Area, adjusted for household size.

8.1.13 **“50% of Median Income Tenants”** means persons or families with Adjusted Income that does not exceed fifty percent (50%) of the Median Income for the Area, adjusted for household size.

8.1.14 **“60% of Median Income Tenants”** means persons or families with Adjusted Income that does not exceed sixty percent (60%) of the Median Income for the Area, adjusted for household size.

8.1.15 **“SLA”** means the Surplus Land Act (California Government Code Section 54220-54234).

8.1.16 **“SLA Units”** means the Units described in Section 8.2.2 which are restricted in accordance with the SLA.

8.1.17 **“Unit”** means a dwelling unit on the Property.

8.1.18 **“Utility Allowance”** means a monthly allowance for Utility Services based on a utility allowance schedule published annually by Authority or the schedule provided in the California Utility Allowance Calculator.

8.1.19 **“Utility Services”** means all utility services included on the utility allowance schedule published annually by Authority.

8.2 Affordable Housing.

8.2.1 **Affordable Unit Mix (City Units).** As hereinafter more particularly provided, Developer shall use the Property and the Improvements as multi-family rental housing and ancillary purposes as follows:

(A) 5 of the Units shall be leased to families who are 30% of Median Income Tenants at Affordable Rent for 30% of Median Income Tenants, of which 0 of said units shall be a one-bedroom unit, 3 shall be two-bedroom units, and 2 shall be three-bedroom units;

(B) 10 of the Units shall be leased to families who are 40% of Median Income Tenants at Affordable Rent for 40% of Median Income Tenants, of which 2 of said units shall be a one-bedroom unit, 6 shall be two-bedroom units, and 2 shall be three-bedroom units;

(C) 15 of the Units shall be leased to families who are 50% of Median Income Tenants at Affordable Rent for 50% of Median Income Tenants, of which 3 of said units shall be a one-bedroom unit, 10 shall be two-bedroom units, and 2 shall be three-bedroom units;

(D) 19 of the Units shall be leased to families who are 60% of Median Income Tenants at Affordable Rent for 60% of Median Income Tenants, of which 2 of said units shall be one-bedroom units, 10 shall be two-bedroom units, and 7 shall be three-bedroom units; and

(E) one manager’s unit which shall be a two-bedroom unit.

8.2.2 **SLA Units.** Pursuant to the SLA, of the fifty (50) units identified above in Section 8.2.1, Developer shall cause at all times:

(A) 10 of the Units shall be leased to families who are at or below 60% of Median Income Tenants at an Affordable Rent determined in accordance with Health and Safety Code Section 50053, and maximum household Gross Income determined in accordance with Health and Safety Code Sections 50093, 50105, and 50196, as applicable; and

(B) 10 of the Units shall be leased to families who are 50% of Median Income Tenants at an Affordable Rent determined in accordance with Health and Safety Code Section 50053, and maximum household Gross Income determined in accordance with Health and Safety Code Sections 50093, 50105, and 50196, as applicable.

8.2.3 **Timely Re-Leasing.** Except for such reasonable periods during which a Unit is, or Units are, being maintained, repaired or rehabilitated, Developer shall actively market

any vacant unit or units and lease it or them as soon as reasonably possible so as to satisfy the subleasing requirements immediately above.

8.2.4 Tenant Selection.

(A) In the selection of tenants for occupancy of the Units, Developer shall give priority to certain classes of persons and families according to the following:

- (1) Eligible persons and families on City's waiting list; and
- (2) Eligible persons and families displaced by Authority.

(B) Any such priority shall be subject to the rules and regulations of the Tax Credit Program, federal, state and local fair housing law, and to each such tenant meeting screening criteria approved by the Executive Director, which approval shall not be unreasonably withheld.

8.3 Increase in Person's or Family's Income. For purposes of satisfying the obligation to sublease the dwelling units as set forth in Section 8.2 above, a person or family who at the commencement of his, hers or its occupancy qualified as a 60% of Median Income Tenant shall continue to be treated as such tenant irrespective of any later increase in their income. A Unit occupied by a 60% of Median Income Tenant shall be deemed, upon the termination of such person's or family's occupancy, to be continuously occupied by such 60% of Median Income Tenant until reoccupied, provided that Developer actively, diligently and continuously markets such Unit for occupancy by a tenant of the same income classifications.

8.4 Section 8 Certificate Holders. Developer shall accept as Low-Income Tenants, on the same basis as all other prospective Low-Income Tenants, persons and families that are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, as amended, or its successor, and shall not apply selection criteria to Section 8 certificate holders that are more burdensome than the criteria applied to all other prospective Low-Income Tenants. Developer agrees to modify the subleases for the Units, as necessary, to allow the rental of Units to Section 8 certificate holders.

8.5 Rent Increases. Developer may adjust the Affordable Rents in accordance with periodic revisions to the Median Income for the area by the U.S. Secretary of Housing and Urban Development; provided, however, that the Affordable Rent for any Unit may not be increased more often than one time per 12-month period, and only after at least thirty (30) days prior written notice to the affected Low-Income Tenant.

8.6 Initial Income Certification.

8.6.1 Immediately prior to the initial occupancy of each tenant, and at least annually thereafter, Developer shall obtain, in substantially the form set forth on Exhibit B, current income certification statements for each tenant.

8.6.2 Developer shall make a good faith effort to verify each income certification statement provided by an applicant for subtenancy or a tenant by taking one or more of the following steps as part of the verification process:

- (A) obtain a pay stub for the most recent pay period,
- (B) obtain an income tax return for the most recent tax year,
- (C) conduct a credit rating or similar search,
- (D) obtain an income verification form from the applicant's or tenant's current employer,
- (E) obtain an income verification form from the Social Security Administration or the California Department of Social Services if the applicant receives assistance from either of such agencies, or
- (F) if the applicant is unemployed and has no such tax return, obtain another form of independent verification.

8.6.3 Developer shall maintain each such income certification statement on file for not less than three years.

8.7 Annual Recertification. Not less than annually, Developer shall obtain and maintain a file, again in substantially the form set forth in Exhibit B, of current income recertification statements for each tenant. Developer shall make a good faith effort to verify each income recertification statement in the manner described in Section 8.6. Developer shall also maintain each such income recertification statement on file for not less than three years.

8.8 Form of Sublease. The form of sublease or subrental agreement used by Developer shall clearly notify tenants that Developer has relied on the income certification supplied by the tenant, and will rely on the annual income recertification to be supplied by the tenant, in determining qualification for occupancy at Affordable Rent, and that any material misstatement in such certification or recertification will be cause for immediate termination of such sublease or subrental agreement.

8.9 Low-Income Housing Tax Credit Program. Notwithstanding anything contained in this Agreement to the contrary, if and when the Property is subject to the requirements of the California and/or Federal Low-Income Housing Tax Credit Program under the provisions of Section 42 of the Code and Section 23610.5 of the California Revenue and Taxation Code, as applicable (collectively, the "Tax Credit Program") and there is a conflict between the requirements of the Tax Credit Program and the affordability provisions set forth in Sections 8.1 (excluding Section 8.2.2.) through 8.8 above, inclusive, then the provisions of the Tax Credit Program (including, without limitation, the calculation of Area Median Income and Affordable Rent shall be calculated in the same manner as calculated by the Tax Credit Program) shall prevail. Notwithstanding the foregoing, in all events, the Property shall be subject to, and shall comply with all applicable provisions of the Surplus Land Act. To the extent of any conflict between the Tax Credit Program and the Surplus Land Act, the more restrictive provision shall apply. That

notwithstanding, the fact that this Agreement and the Tax Credit Program provide for greater, lesser or different obligations or requirements shall not be deemed a conflict unless the applicable provisions are inconsistent and could not be simultaneously enforced or performed.

8.10 Access and Reporting. Developer shall permit the representatives of Authority at any time or from time to time, upon one day's notice, to inspect, audit and copy all of its properties, books, records and accounts. Developer shall maintain a system of accounting established and administered in accordance with sound business practices to permit preparation of financial statements which shall be in conformity with GAAP basis of accounting. Developer shall furnish or cause to be furnished to Authority the following:

8.10.1 Notice of Default. As soon as possible, and in any event not later than five (5) business days after the occurrence of any Event of Default, a statement of an officer of Developer describing the details of such Event of Default and any curative action Developer proposes to take;

8.10.2 Annual Statements. As soon as available, and in any event not later than one hundred twenty (120) days after the close of each fiscal year of Developer, financial statements of Developer, including a profit and loss statement, reconciliation of capital accounts and a consolidated statement of changes in financial position of Developer as at the close of and for such fiscal year, all in reasonable detail, certified as provided in clause (a) above by an officer or partner of Developer and, upon request of Authority, if total Operating Expenses for such year exceed the total amount set forth in the Approved Budget by more than five percent (5%), accompanied by a compilation report prepared by a firm of certified public accountants, and in a format, each reasonably acceptable to the Executive Director;

8.10.3 Pro Forma Budget.

(A) As soon as available and in any event not later than December 15 of each calendar year beginning with the year in which Construction is completed, Developer shall provide Authority, for the Executive Director's approval, with a detailed projection of Operating Income and budgets of estimated Operating Expenses for the immediately succeeding calendar year (the "Pro Forma Budget") and a detailed Cash Flow projection for the next succeeding year. Developer shall also submit to Authority on request additional detail, information and assumptions used in the preparation of the Pro Forma Budget.

(B) Within fifteen (15) days following its receipt of the Pro Forma Budget, Authority shall deliver to Developer its written approval or disapproval thereto, which approval shall not be unreasonably withheld. If Authority disapproves the Pro Forma Budget, it shall set forth its reasons with reasonable specificity. If Authority fails to indicate either its approval or disapproval of the Pro Forma Budget within such period, then Authority shall be deemed to have approved the Pro Forma Budget as submitted by Developer.

(C) Once the Pro Forma Budget is approved or deemed approved by Authority, such approved Pro Forma Budget shall become the "Approved Budget" for the entire applicable calendar year. Developer shall use commercially reasonable efforts to operate the Property during such calendar year within the Approved Budget; provided, however, that the

Developer shall not be required to obtain the approval of Authority for any deviation from the Approved Budget so long as the total Operating Expenses and expenditures for Capital Improvements paid or incurred during such calendar year do not exceed the originally budgeted amount thereof in the Approved Budget by more than five percent (5%) in the aggregate. To the extent required hereunder, any request by Developer to deviate from the Approved Budget shall be submitted to Authority in writing with an explanation thereof and shall be accompanied by supporting information for the request. Authority shall reasonably respond to any such request within fifteen (15) days of the receipt of same and if Authority fails to do so, such request shall be deemed to be approved;

8.10.4 Tax Returns. As soon as available, and in any event not later than at the time of filing with the Internal Revenue Service, the federal tax returns (and supporting schedules, if any) of Developer;

8.10.5 Certificate of Performance. Concurrently with delivery of each of the financial statements provided for in paragraph 8.10.3(A) above, a certificate of an officer or partner of Developer stating that Developer has, in all material respects, performed and observed each of its covenants contained in this Agreement and that no Event of Default or Potential Default has occurred or, if any such event has occurred, specifying its nature;

8.10.6 Monitoring. Developer shall submit to Authority on an annual basis the annual report required by Section 33418 of the California Health and Safety Code. The annual report shall include for each dwelling unit the rental rate and the income and the family size of the occupants.

8.10.7 Rent Roll. As soon as possible and in any event not later than forty five (45) days after the close of each calendar quarter, the rent roll as of the end of such calendar quarter setting forth such information, and in such format, as is reasonably acceptable to the Executive Director;

8.10.8 Audit Reports. Promptly upon receipt thereof, copies of all reports submitted to Developer by independent certified public accountants in connection with each annual, interim or special audit of the financial statements of Developer made by such accountants, including the comment letter submitted by such accountants to management in connection with their annual audit;

8.10.9 Notices, Certificates or Communications. Immediately upon giving or receipt thereof, copies of any notices, certificates or other communications given by or on behalf of Developer or received by or on behalf of Developer from lenders pursuant to or in connection with any of the loan documents, as well as any notices and other communications delivered to the Property or to Developer naming Authority or the "Construction Lender" as addressee, or which could reasonably be deemed to affect the Construction or the ability of Developer to perform its obligations to Authority;

8.10.10 Monthly Leasing Report. As soon as available and in no event later than the 25th day of every calendar month, a monthly property analysis report for the Property indicating the current leasing status for the Property;

8.10.11 Monthly Operating Statements. As soon as available and in no event later than the 25th day of every calendar month, commencing with the first full calendar month following commencement of lease-up of the Property, a “Monthly Operating Statement” showing all Operating Income, Operating Expenses, Debt Service and any other amounts taken into consideration in computing Net Operating Income, Operating Deficits, and/or Cash Flow, as applicable, for the prior month, in a form reasonably satisfactory to the Executive Director;

8.10.12 Certificate of Continuing Program Compliance. Developer shall submit to Authority on an annual basis the Certificate of Continuing Program Compliance.

8.10.13 Other Information. Such other documents and information relating to the affairs of Developer and the Property as Authority reasonably may request from time to time which Developer can provide for a reasonable cost.

8.11 Onsite Manager. Developer, through an onsite professional property manager or property management company, shall manage the Project or cause it to be managed. Any manager or management company retained to act as agent for Developer in meeting the obligation of providing an onsite manager shall be subject to prior written approval of the Executive Director, which approval shall not be unreasonably withheld or delayed. John Stewart Company (“JSC”) or another reputable and experienced property manager for management of the Project is hereby approved by Authority as the initial property manager. In exercising his/her approval rights hereunder, the Executive Director may require proof of ability and qualifications of the manager and/or management company based upon (i) prior experience, (ii) assets, and (iii) other factors determined by the Executive Director as necessary. Furthermore, upon sixty (60) days prior written demand from Authority with cause, Developer shall remove and replace a property manager and/or property management company. In any agreement with a property manager or property management company (“Management Agreement”), Developer shall expressly reserve the right to terminate such agreement upon written demand of Authority with cause. That notwithstanding, Authority agrees that the property manager shall be entitled to a 30-day notice of default and a reasonable opportunity to cure before any such termination.

8.12 No Use of Hazardous Materials on the Property. Developer covenants and agrees that it shall not, and that it shall not permit any tenant to, treat, use, store, dispose, release, handle or otherwise manage Hazardous Materials on the Property from and after the date hereof except in connection with any construction, operation, maintenance or repair of the Improvements or in the ordinary course of its business, and that such conduct shall be done in compliance with all applicable federal, state and local laws, including all Environmental Laws. Developer’s violation of the foregoing prohibition shall constitute a breach hereunder and Developer shall indemnify, hold harmless and defend the Authority for such violation as provided below.

8.13 Notice and Remediation by Developer. Developer shall promptly give the Authority written notice of any significant release of any Hazardous Materials, and/or any notices, demands, claims or orders received by Developer from any governmental agency pertaining to Hazardous Materials which may affect the Property.

8.14 Environmental Indemnity. Developer agrees to indemnify, protect, hold harmless, and defend (with counsel reasonably satisfactory to Authority) the Indemnitees from and

against any and all losses, costs, claims, expenses, damages (including, without limitation, foreseeable or unforeseeable consequential damages), and liabilities directly or indirectly arising out of or in any way connected with (a) Developer's breach or violation of any covenant, prohibition or warranty in this Agreement concerning Hazardous Materials, or (b) the activities, acts or omissions of Developer, its employees, contractors or agents on or affecting the Property from and after the Effective Date, including but not limited to the release of any Hazardous Materials or other kinds of contamination or pollutants of any kind into the air, soil, groundwater or surface water on, in, under or from the Property. This indemnification supplements and in no way limits the scope of the indemnification set forth in Section 14.

8.15 Termination; Tenants. The agreements and obligations of Developer under this Section 8 with regard to indemnification of Authority shall survive the scheduled termination or sooner expiration of the Term for any reason, for five years and all claims relating thereto must be delivered in writing to Developer within such period. That notwithstanding, the extension of time within which to deliver a claim to Developer shall not extend, beyond the date of expiration or termination of this Agreement, the period in which Claims may arise.

8.16 Nondiscrimination. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Property nor shall the Developer itself, or any person claiming under or through Developer, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Developers, lessees, sublessees, tenants, or vendees in the Property.

8.17 Form of Nondiscrimination and Nonsegregation Clauses. Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that it shall refrain from restricting the lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Property (or any part thereof) on the basis of sex, marital status, race, color, religion, creed, ancestry or national origin of any person. All such leases, or contracts pertaining thereto shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

8.17.1 In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this Agreement is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, religion, creed, national origin, or ancestry, in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall lessee itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, or occupancy of Developers, lessees, sublessees, Developers, or vendees in the land herein leased."

8.17.2 In contracts: "There shall be no discrimination against or segregation of, any person or group of persons on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it,

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, tenants, sublessees, or vendees of the land.”

8.18 Social Services. From not later than six (6) months after the date of issuance of a permanent certificate of occupancy for the Project until the expiration of the Term of this Agreement, Developer shall provide services to the residents of the Project (the “Services”). The scope of the Services to be provided for not less than fifty-five (55) years from the date on which the Project is placed in service is attached hereto as Exhibit D, as such plan may be amended from time to time with the consent of the Executive Director. Upon expiration of the foregoing fifty-five (55) year period, Developer and the City may meet and confer to discuss an appropriate scope of Services for the remainder of the forty-four (44) years.

8.19 Effect and Duration of Covenants. The covenants established in this Section 8.19 shall, without regard to technical classification and designation, be binding on Developer and any successor in interest to the Property, or any part thereof, for the benefit and in favor of the Authority, its successors and assigns, and the City until the expiration of the Term, except to the extent said covenant expressly provides that it shall survive the expiration of the Term.

8.20 Indemnification. Developer hereby saves, defends, indemnifies and holds the Indemnitees harmless from and against any and all losses, costs, damages or liabilities, including, without limitation, attorneys’ fees and costs, which result from the breach of any representations and warranties contained in this Section 8.

9. INSURANCE.

9.1 Authority Not Liable. Except as the result of any grossly negligent or intentional acts or omissions by Authority or its representatives, employees or agents, or as otherwise expressly set forth herein, Authority shall not be liable for injury to Developer’s business or any loss of income therefrom or for any damage or liability of any kind or for any injury to or death of persons or damage to property of Developer, or to Developer’s agents, employees, servants, contractors, tenants, licensees, concessionaires, customers or business invitees or any other person which occurs on the Property during the Term.

9.2 Indemnification. Except with respect to any negligent or intentional acts or omissions by Authority or its representatives, employees or agents, Developer shall indemnify, defend and hold the Indemnitees harmless from and against all liability, loss, damage, cost or expense (including 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 caused by Developer’s performance of its obligations under this Agreement or any errors or omissions of Developer, whether such performance, errors or omissions of Developer be made by Developer, its contractors or subcontractors, or anyone directly or indirectly employed by Developer, and whether such damage shall accrue or be discovered before or after the termination of this Agreement. This indemnification provision supplements and in no way limits the scope of the indemnifications in Section 14. The indemnity obligation of Developer under this Section shall survive the expiration or termination, for any reason, of this Agreement. This Section

notwithstanding, indemnification with respect to Hazardous Materials shall be governed by Section 8.14.

9.3 Insurance. From and after the Effective Date until the termination of this Agreement, Developer shall take out and maintain the following types of insurance in the forms and amounts (as may be increased each calendar year by the corresponding increase in the Index) set forth below, at Developer's sole expense. Notwithstanding the amounts of insurance set forth below, the Executive Director shall have the right, but not the obligation, to reduce the amounts required from time to time.

9.3.1 Comprehensive General Liability in an amount not less than Two Million Dollars (\$2,000,000.00) combined single limit for each occurrence or Four Million Dollars (\$4,000,000.00) general aggregate for bodily injury, personal injury and property damage including contractual liability. The limits of this insurance shall be increased to an amount not less than Five Million Dollars (\$5,000,000.00) combined single limit upon the recordation of the Certificate of Completion for any of the Improvements in the Official Records. The Indemnitees shall be covered as additional insureds with respect to liability arising out of activities by or on behalf of Developer or in connection with the use or occupancy of the Property. Coverage shall be in a form acceptable to the City Risk Manager and shall be primary and non-contributing with any insurance or self-insurance maintained by City or Authority.

9.3.2 Automobile Liability 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, non-owned and hired vehicles.

9.3.3 Workers' Compensation as required by the Labor Code of the State of California and Employers' Liability insurance in an amount not less than One Million Dollars (\$1,000,000.00).

9.3.4 "All Risk" property including builder's risk protection during the course of construction, covering the full replacement value of the Improvements constructed on or about the Property by Developer. Said insurance shall include debris removal, and, if typically carried upon similar affordable housing projects in San Bernardino County, California, coverage for earthquake and flood if this protection is required by the Senior Lender. Authority shall be named as insured under a standard loss payable endorsement.

9.4 Other Insurance. Developer shall also obtain and maintain such other insurance in forms and amounts reasonably required from time to time by Authority or the City Risk Manager for protection against the same or other insurable hazards which are then typically insured against by similar properties in San Bernardino County, California, provided that such coverage is available at commercially reasonable rates.

9.5 Contractors. All contractors employed by Developer with contracts of Fifty Thousand Dollars (\$50,000.00) or more shall be required to furnish evidence of Comprehensive General Liability insurance subject to all the requirements stated herein with limits of not less than One Million Dollars (\$1,000,000.00) combined single limit each occurrence. The Indemnitees

shall have the right to receive evidence of compliance with the foregoing by contractors at any time upon written request therefor.

9.6 Acceptable Terms of Coverage. Acceptable insurance coverage shall be placed with carriers admitted to write insurance in California, or carriers with a rating of or equivalent to A:VIII by A.M. Best & Company. Any deviation from this rule shall require specific approval in writing from the City's Risk Manager. Any deductibles in excess of Twenty-Five Thousand Dollars (\$25,000.00) per occurrence or self-insured retentions must be declared to and approved by the City Risk Manager. At the option of the City Risk Manager, Developer may be required to reduce or eliminate such deductibles or self-insured retentions or to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense costs. In the event such insurance provides for deductibles or self-insured retention, Developer agrees that it will fully protect the Indemnitees in the same manner as those interests would have been protected had the policy or policies not contained a deductible or retention. Coverage under each policy shall not be suspended, avoided or canceled by either party except after thirty (30) days' prior written notice to Authority. Developer shall furnish the Indemnitees with certificates of insurance and with original endorsements effecting coverage as required under this Section. The certificates and endorsements for each insurance policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The Indemnitees reserve the right to require complete certified copies of all insurance policies not previously provided at any time.

9.7 Blanket Coverage. Notwithstanding anything to the contrary set forth in this Section 9, Developer's obligations to carry the insurance provided for herein may be brought within the coverage of a so called blanket policy or policies of insurance carried and maintained by Developer; provided, however, (i) that the Indemnitees and other parties in interest to it shall be named as additional insureds as their interests may appear, and (ii) that the coverage afforded the Indemnitees will not be reduced or diminished by reason of the use of such blanket policy of insurance, and (iii) that the requirements set forth in this Section 9, are otherwise satisfied.

9.8 Waiver of Subrogation. Each policy of insurance procured pursuant to this Section 9 shall contain, if obtainable upon commercially reasonable terms, either (i) a waiver by the insurer of the right of subrogation against either party hereto for negligence of such party, or (ii) a statement that the insurance shall not be invalidated should any insured waive in writing prior to a loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy. Each of the parties hereto waives any and all rights of recovery against the other, or against the officers, employees, agents and representatives of such other party, for loss or damage to such waiving party or its property or the property of others under its control, arising from any cause insured against under the form of insurance policies required to be carried pursuant to this Section 9 of this Agreement or under any other policy of insurance carried by such waiving party.

10. MAINTENANCE; REPAIRS; ALTERATIONS; RECONSTRUCTION.

10.1 General Maintenance. Throughout the Term, Developer shall, at Developer's sole cost and expense, maintain the Property and the Improvements in good condition and repair, ordinary wear and tear excepted, and in accordance with all applicable federal, state and local laws, ordinances and regulations of (a) governmental agencies and bodies having or claiming

jurisdiction and all their respective departments, bureaus, and officials, (b) insurance underwriting boards or insurance inspection bureaus having or claiming jurisdiction, and (c) all insurance companies insuring all or any part of the Property or the Improvements, or both.

10.2 Program Maintenance.

10.2.1 In addition to the routine maintenance and repair required pursuant to Section 10.1, Developer shall perform the following programmed maintenance on the Improvements:

- (A) Interior painting and window covering replacement at least every five years;
- (B) Exterior painting at least every ten years;
- (C) Repair and resurfacing of parking areas and walkways at least every five years; and
- (D) Replacement of all deteriorated or worn landscaping and play equipment at least every five years.

10.2.2 Upon the request of Developer, the Executive Director, at his sole and absolute discretion, may grant a waiver or deferral of any program maintenance requirement. Developer shall keep such records of maintenance and repair as are necessary to prove performance of the program maintenance requirements.

11. RESERVED.

12. RESERVED.

13. INDEMNIFICATION.

13.1 Developer will protect, indemnify and save the Indemnitees harmless from and against all liabilities, obligations, claims, damages, penalties, causes of action, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against Authority, or the Property or the Improvements during the Term, unless caused solely by the willful act or gross negligence of Authority, by reason of (a) any accident or injury to or death of persons or loss of or damage to property occurring on or about the Property or the Improvements, (b) any failure on the part of Developer to perform or comply with any of the terms of this Agreement, or (c) any negligence or tortious act on the part of Developer or any of its agents, employees, contractors, tenants, licensees or invitees. In the event that any action, suit or proceeding is brought against the Indemnitees by reason of any such occurrence, Developer, upon Authority's request, will, at Developer's expense, defend such action, suit or proceeding with counsel approved by Authority.

13.2 This Section notwithstanding, indemnification with respect to Hazardous Materials shall be governed by Section 8.14.

14. DAMAGE OR DESTRUCTION OF PROPERTY OR IMPROVEMENTS.

14.1 Developer's Repair Obligation.

14.1.1 In case of damage to or destruction of the Property or the Improvements, or any part thereof, by fire or other cause at any time during the Term of this Agreement, Developer, if and to the extent insurance proceeds are available, shall restore the same as nearly as possible to their value, condition and character immediately prior to such damage or destruction. Such restoration shall be commenced with due diligence and in good faith, and prosecuted with due diligence and in good faith, unavoidable delays excepted.

14.1.2 In case of damage to or destruction of the Improvements by fire or other cause resulting in a loss exceeding in the aggregate Ten Thousand Dollars (\$10,000), Developer shall promptly give written notice thereof to Authority.

14.2 Mortgagee Protection. The following provisions are for the protection of a Mortgagee and shall, notwithstanding anything contained in this Agreement to the contrary, control:

14.2.1 **Insurance.** Any insurance proceeds payable from any policy of insurance (other than liability insurance) required by the Lease shall be paid to the Mortgagee, if any, to the extent required by the Mortgage. The Mortgagee, if any, shall have the right to participate in all adjustments, settlements, negotiations or actions with the insurance company regarding the amount and allocation of any such insurance proceeds. Any insurance policies permitted or required by this Agreement shall name the Mortgagee, if any, as an additional insured or loss payee, as appropriate, if required by such Mortgage.

14.2.2 **Restoration.** Developer shall have no obligation to restore or repair the Improvements following the occurrence of any casualty for which insurance is not required under this Agreement. The Mortgagee, if any and if it exercises any of its remedies set forth in this Agreement, shall have no obligation to restore or repair damage to the Improvements that cost in excess of available insurance proceeds.

15. EMINENT DOMAIN.

15.1 Obligation to Repair on Partial Taking. Promptly after any Partial Taking and regardless of the amount of the Award for such Taking, Developer shall, to the extent of the Award received by Developer, and subject to the terms of the Senior Loan Documents, repair, alter, modify or reconstruct the Improvements and/or other improvements on the Property so as to make them usable for the designated purpose and capable of producing a fair and reasonable net income.

15.2 Mortgagee Protection. Notwithstanding anything contained in this Agreement to the contrary, any and all condemnation proceeds shall be paid first to the Mortgagee, if any, to be applied to reduce the Mortgage if required by the mortgage documents.

16. RESERVED.

17. ASSIGNMENT.

17.1 Prohibition Against Transfer.

17.1.1 Qualifications of Developer. In connection with the above prohibition and limitation on assignments, Developer acknowledges that the qualifications, expertise and identities of Developer are of particular concern to Authority, and that Authority continues to rely on such expertise to ensure the satisfactory completion of the construction and operation of the Improvements on the Property. Developer further recognizes that it is because of such qualifications and identities that Authority is entering into this Agreement with Developer. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly set forth in this Agreement.

17.1.2 Conditions. Developer's right to make a Transfer after the recordation of the Certificate of Completion shall be subject to compliance with the following further conditions:

(A) **No Default.** At the time of such Transfer, this Agreement shall be in full force and effect and either no Event of Default (as defined in Section 21.1) then exists or no Event of Default will exist upon consummation of the assignment.

(B) **Assumption.** The transferee shall have executed an express assumption of the obligations and liabilities of Developer under this Agreement from and after the date of delivery and recording of the assignment and there shall have been delivered to Authority at the time of the request for such assignment a conformed copy of such assumption.

17.1.3 Further Assignments. The consent by Authority to a Transfer shall not in any way be construed to relieve Developer from obtaining the express consent in writing of Authority to any further Transfer if required by the terms of this Agreement.

17.2 Terminable Upon Foreclosure. Notwithstanding anything contained in this Agreement to the contrary, upon foreclosure of a Mortgage, or acceptance by a Mortgagee of an assignment or deed in lieu of foreclosure, Section 17 of this Agreement shall be terminable by the purchaser at the foreclosure sale, or the assignee or grantee of a deed in lieu of foreclosure, by notice to Authority.

17.3 Other Rights of Mortgagees. Authority agrees that none of the restrictions or limitations on assignment or transfer by Developer set forth in this Section 17 shall be construed to limit or abrogate the rights of a Mortgagee to (a) seek the appointment of a receiver, or (b) delegate or assign its rights under this Agreement to any third party in connection with the exercise of said Mortgagee's rights and remedies under its Mortgage.

17.4 Transfer by Tax Credit Partner. Notwithstanding the foregoing limitations on transfer and assignment, nothing herein shall limit or condition a transfer, sale, assignment or other conveyance of all or a portion of the limited partner interests of the Tax Credit Partner to any affiliate of the Tax Credit Partner, and the interests of the Tax Credit Partner shall be freely transferable to any affiliate of the Tax Credit Partner without the consent or approval of but only with prior, written notice to Authority; provided however that in the event of non-payment of capital contribution obligations by the transferee pursuant to the terms and conditions of the Developer's Partnership Agreement, the Tax Credit Partner shall remain liable for the amount of such unpaid capital contribution obligations.

18. MORTGAGES.

18.1 Leasehold Mortgages.

18.1.1 General Provisions.

(A) At all times during the Term, Developer shall have the right to mortgage, pledge, deed in trust, assign rents, issues and profits and/or collaterally (or absolutely for purposes of security if required by any lender) assign its interest in this Agreement, or otherwise encumber this Agreement, and/or the interest of Developer hereunder, in whole or in part, and any interests or rights appurtenant to this Agreement, and to assign or pledge the same as security for any debt (the holder of any such mortgage, pledge or other encumbrance, and the beneficiary of any such deed of trust being hereafter referred to as "Mortgagee" and the mortgage, pledge, deed of trust or other instrument hereafter referred to as "Mortgage"), upon and subject to each and all of the following terms and conditions:

(1) Prior to the issuance of a Certificate of Completion, Mortgages entered into by Developer shall be limited in purpose to and shall not exceed the amount necessary and appropriate to develop the Improvements, and to acquire and install equipment and fixtures thereon. Said amount shall include all hard and soft costs of acquisition, development, construction, lease-up and operation of the Improvements. After the recordation of the Certificate of Completion, the limitation contained in this subsection shall no longer apply.

(2) Any permitted Mortgages entered into by Developer are to be originated only by lenders approved in writing by Authority, which approval will not be unreasonably withheld. Authority shall state the reasons for any such disapproval. Notwithstanding the forgoing, Authority shall be deemed to have automatically approved (i) a commercial or savings bank, a trust company, an insurance company, a savings and loan association, a building and loan association, an educational institution, a pension, retirement or welfare fund, or other fund authorized to make loans in the State of California; (ii) any other entity having a net worth of \$50,000,000 or more whether or not a so-called institution, or any division, subsidiary, parent or affiliate owned or controlled by, owning or in control of or in common control or ownership with any entities described in (i) or (ii); or (iii) a lender regularly engaged in business in an office or location in the State of California, or who has a registered agent for service of process in California. In addition, any lender must be duly licensed or registered with any regulatory agency having jurisdiction over its operation, if any; and any lender must not be under any order or judgment of any court or administrative agency restricting or impairing its operation as a lender where the restriction or impairment would be directly related to the proposed loan to Developer. If the lender is other than a lender deemed automatically approved pursuant to subdivisions (i), (ii) or (iii) of this Section, then upon the reasonable request of Authority, the beneficial owners of lender must be disclosed to Authority.

(3) All rights acquired by said Mortgagee shall be subject to each and all of the covenants, conditions and restrictions set forth in this Agreement, and to all rights of Authority thereunder, none of which covenants, conditions and restrictions is or shall be waived by Authority by reason of the giving of such Mortgage.

(B) If Developer encumbers its leasehold estate by way of a Mortgage as permitted herein, and should Authority be advised in writing of the name and address of the Mortgagee, then this Agreement shall not be terminated or canceled on account of any Event of Default by Developer in the performance of the terms, covenants or conditions hereof until Authority shall have complied with the provisions of Section 18.2 as to the Mortgagee's rights to cure and to obtain a new lease.

18.1.2 Consent of Mortgagee Required. No cancellation, surrender, termination, or modification of this Agreement shall be effective without the written consent of the holder of any Mortgage.

18.2 Rights and Obligations of Leasehold Mortgagees. If Developer or Developer's successors or assigns shall mortgage the leasehold interest herein demised, then, as long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

18.2.1 No Cancellation. Authority will not cancel, accept a surrender of, terminate or modify this Agreement in the absence of a default by Developer without the prior consent in writing of the Mortgagee.

18.2.2 Notice of Defaults. Authority agrees to give each Mortgagee immediate notice of all defaults by Developer under the Lease, and to simultaneously give to each Mortgagee a written copy of all notices and demands that Authority gives to Developer. No notice or demand under the Lease shall be effective until after notice is received by Mortgagee. Any notices of default given by Authority under the Lease shall describe the default(s) with reasonable detail. Each Mortgagee shall have the right to cure any breach or default within the time periods given below.

18.2.3 Mortgagee's Cure Rights.

(A) Notice and Cure. Authority shall not terminate the Lease or exercise its other remedies under the Lease if:

(1) Within ninety (90) days after Mortgagee's receipt of the Mortgagee's Notice, any Mortgagee (a) cures the default, or (b) if the default reasonably requires more than 90 days to cure, commences to cure said default within such ninety (90)-day period and thereafter diligently prosecutes the same to completion; or

(2) Where the default cannot be cured by payment or expenditure of money or without possession of the Property or otherwise, Mortgagee initiates foreclosure or other appropriate proceedings within ninety (90) days after receipt of the Mortgagee's Notice, thereafter cures all other defaults reasonably capable of cure by the payment of money to Authority, and thereafter continues to pay all rents, real property taxes and assessments, and insurance premiums to be paid by Developer under the Lease. Mortgagee shall then have ninety (90) days following the later to occur of (a) the date of execution and delivery of a new lease of the Property pursuant to Section 18.2.4 of the Lease (a "New Lease"), or (b) the date on which Mortgagee or its nominee is able to occupy the Property following foreclosure under such Mortgage and the eviction of or vacating by Developer of the leased premises, to cure such default; provided, however, that if any such default, by its nature, is such that it cannot practicably

be cured within ninety (90) days, then Mortgagee shall have such additional time as shall be reasonably necessary to cure the default provided that Mortgagee commences such cure within such 90-day period and thereafter diligently prosecutes the cure to completion.

(B) Authority agrees to accept performance by Mortgagee of all cures, conditions and covenants as though performed by Developer, and agrees to permit Mortgagee access to the Property to take all such actions as may be necessary or useful to perform any condition or covenants of the Lease or to cure any default of Developer. Mortgagee shall not be required to perform any act or cure any default which is not reasonably susceptible to performance or cure by Mortgagee.

(C) If Mortgagee elects any of the above-mentioned options, then upon Mortgagee's acquisition of the Lease by foreclosure, whether by power of sale or otherwise or by deed or assignment in lieu of foreclosure, or if a receiver be appointed, the Lease shall continue in full force and effect, provided that, if Mortgagee elects the option provided in Section (A)(1) above, then upon Mortgagee's acquisition of the Lease, Mortgagee shall cure all prior defaults of Developer under the Lease that are reasonably capable of being cured by Mortgagee within the time set forth in said Section, and Authority shall treat Mortgagee as Developer under the Lease. If Mortgagee commences an action as set forth in Section (A)(2) above, and thereafter Developer cures such defaults (which cure Authority shall be obligated to accept) and Mortgagee then terminates all proceedings under the option in said Section, then the Lease shall remain in full force and effect between Authority and Developer.

18.2.4 New Lease. In the event the Lease is terminated for any reason prior to the end of the Lease Term, Authority shall promptly give Mortgagee written notice of such termination and shall enter into a new lease ("New Lease") with Mortgagee or Mortgagee's nominee covering the Property, provided that Mortgagee (a) requests such New Lease by written notice to Authority within 60 days after Mortgagee's receipt of written notice by Authority of termination of the Lease, and (b) cures all prior defaults of Developer that are reasonably capable of being cured by Mortgagee. The New Lease shall be for the remainder of the Lease Term, effective at the date of such termination, and shall only include all the rents and all the covenants, agreements, conditions, provisions, restrictions and limitations contained in the Lease, except as otherwise provided in the Lease. In connection with a New Lease, Authority shall assign to Mortgagee or its nominee all of Authority's interest in all existing subleases of all or any part of the Property and all attornments given by the sublessees. Authority shall not terminate or agree to terminate any sublease or enter into any new lease or sublease for all or any portion of the Property without Mortgagee's prior written consent, unless Mortgagee fails to deliver its request for a New Lease under this Section. In connection with any such New Lease, Authority shall, by grant deed, convey to Mortgagee or its nominee title to the Improvements, if any, which become vested in Authority as a result of termination of the Lease. Authority shall allow to the Developer under the New Lease a credit against rent equal to the net income derived by Authority from the Property during the period from the date of termination of the Lease until the date of execution of the New Lease under this Section.

18.2.5 Security Deposits. Mortgagee or any other purchaser at a foreclosure sale of the Mortgage (or Mortgagee or its nominee if one of them enters into a New Lease with Authority) shall succeed to all the interest of Developer in any security or other deposits or other impound payments paid by Developer to Authority.

18.2.6 Permitted Delays. So long as Mortgagee is prevented by any process or injunction issued by any court or by any statutory stay, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Developer or any other person, from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, Mortgagee shall not be deemed for that reason to have failed to commence such proceedings or to have failed to diligently prosecute such proceedings, provided that Mortgagee uses reasonable efforts to contest and appeal the issuance or continuance of any such process, stay or injunction.

18.2.7 Defaults Deemed Cured. On transfer of the Lease at any foreclosure sale under the Mortgage or by deed or assignment in lieu of foreclosure, or upon creation of a New Lease, any or all of the following defaults relating to the prior owner of the Lease shall be deemed cured:

- (A) Attachment, execution or other judicial levy upon the Lease;
- (B) Assignment of the Lease for the direct or indirect benefit of creditors of the prior Developer;
- (C) Judicial appointment of a receiver or similar officer to take possession of the Lease;
- (D) Filing any petition by, for or against Developer under any chapter of the federal Bankruptcy Act or any federal or state debtor relief statute, as amended;
- (E) Any failure by Developer to make a disclosure of a hazardous substance release as required by the California Health and Safety Code, the Lease or otherwise; and
- (F) Any other defaults personal to Developer and/or not otherwise reasonably curable by Mortgagee.

18.2.8 Mortgage Holders Only. Anything herein contained to the contrary notwithstanding, the provisions of this Section shall inure only to the benefit of the holders of Mortgages. If the holders of more than one such Mortgage shall make written requests upon Authority in accordance with this Agreement, the new lease (as provided for in subsection 18.2.4 above) shall be entered into pursuant to the request of the holder whose Mortgage shall be prior in lien thereto and thereupon the written requests for a new lease of each holder of a Mortgage junior in lien shall be and be deemed to be void and of no force or effect.

18.3 Authority's Forbearance and Right to Cure Defaults on Leasehold Mortgages.

18.3.1 Notice. Authority will give to Mortgagee, at such address as is specified by the Mortgagee in accordance with Section **Error! Reference source not found.** hereof, a copy of each notice or other communication with respect to any claim that a default exists or is about to exist from Authority to Developer hereunder at the time of giving such notice or communication to Developer, and Authority will give to Mortgagee a copy of each notice of any rejection of this Agreement by any trustee in bankruptcy of Developer. Authority will not exercise any right, power

or remedy with respect to any Event of Default hereunder, and no notice to Developer of any such Event of Default and no termination of this Agreement in connection therewith shall be effective, unless Authority has given to Mortgagee written notice or a copy of its notice to Developer of such Event of Default or any such termination, as the case may be.

18.3.2 Mortgagee's Transferees, Etc. In the event the leasehold estate hereunder shall be acquired by foreclosure, trustee's sale or deed or assignment in lieu of foreclosure of a Mortgage, the purchaser at such sale or the transferee by such assignment and its successors as holders of the leasehold estate hereunder shall not be liable for any Rent, if any, or other obligations accruing after its or their subsequent sale or transfer of such leasehold estate and such purchaser or transferee and its successors shall be entitled to transfer such estate or interest without consent or approval of Authority; provided that, the purchaser or transferee or successor as holder of the leasehold estate hereunder shall be liable for the payment of all Rent, if any, becoming due with respect to the period during which such purchaser, transferee or other successor is the holder of the leasehold estate hereunder. This Section shall also apply to the rights of a Mortgagee in connection with the entry into a new lease under Section 18.2.4 and to the appointment of a receiver on behalf of a Mortgagee.

18.3.3 Insurance and Condemnation. In the event of any casualty to, or condemnation of, all or any part of the leased premises or any improvements now or hereafter located thereon, the provisions of the Mortgages relating thereto shall prevail over any provisions of this Agreement relating thereto.

18.4 No Liability of Mortgagee for Prior Indemnified Acts. A Mortgagee shall not be obligated to assume the liability of Developer for any indemnities arising for a period prior to Mortgagee's acquiring the right to possession of the Property under this Agreement.

19. LEASING.

19.1 Leasing of Property. All leases ("Leases") made by Developer shall be subject to the following provisions and restrictions:

19.1.1 Developer may, without the consent of Authority, let individual units of the Improvements to any person who qualifies.

19.1.2 Commencing after recordation of the Certificate of Completion, not later than 30 days after each anniversary of the date of commencement of the term of this Agreement, Developer shall deliver to Authority a current list of the name and mailing address of each Tenant.

19.1.3 Developer shall not accept, directly or indirectly, more than two months prepaid rent plus a reasonable security deposit from any tenant.

20. RESERVED.

21. EVENTS OF DEFAULT; REMEDIES.

21.1 Events of Default. Any one or all of the following events shall constitute an Event of Default ("Event of Default") hereunder:

21.1.1 Any failure by Developer to pay or deposit, when and as this Regulatory Agreement requires, any amount of money, any bond or surety or evidence of any insurance coverage required to be provided under this Regulatory Agreement, and such failure shall continue for more than 5 days after Authority shall have given written notice thereof to Developer;

21.1.2 Developer's (a) failure to perform any of its obligations under this Regulatory Agreement; (b) failure to comply with any affirmative or negative covenant or material restriction or prohibition in this Regulatory Agreement, excepting any such failure constituting a Monetary Default; or (c) any other event or circumstance that, with the passage of time or giving of notice, or both, or neither, would constitute a breach of this Regulatory Agreement, and such failure or default shall continue for more than 30 days after Authority shall have given written notice thereof to Developer, provided, however, if cure of such default reasonably requires more than 30 days, then, provided that Developer commences to cure within such 30 day period and thereafter diligently and continuously prosecutes the cure to completion, Developer shall not be in default during the cure period.

21.1.3 Default or delinquency in the payment of any loan secured by a Mortgage permitted by this Agreement to be placed by Developer against its interest in the Property after expiration of any cure period provided therein; or

21.1.4 The abandonment or vacation of the Property by Developer for a period of 30 days; or

21.1.5 The entry of any decree or order for relief by any court with respect to Developer, or any assignee or transferee of Developer (hereinafter "Assignee"), in any involuntary case under the Federal Bankruptcy Code or any other applicable federal or state law; or the appointment of or taking possession by any receiver, liquidator, assignee, trustee, sequestrator or other similar official of Developer or any Assignee (unless such appointment is in connection with a Mortgagee's exercise of its remedies under its Mortgage), or of any substantial part of the property of Developer or such Assignee, or the ordering or winding up or liquidating of the affairs of Developer or any Assignee and the continuance of such decree or order unstayed and in effect for a period of 90 days or more (whether or not consecutive); or the commencement by Developer or any such Assignee of a voluntary proceeding under the Federal Bankruptcy Code or any other applicable state or federal law or consent by Developer or any such Assignee to the entry of any order for relief in an involuntary case under any such law, or consent by Developer or any such Assignee to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, sequestrator or other similar official of Developer or any such Assignee, or of any substantial property of any of the foregoing, or the making by Developer or any such Assignee of any general assignment for the benefit of creditors; or Developer or any such Assignee takes any other voluntary action related to the business of Developer or any such Assignee or the winding up of the affairs of any of the foregoing.

21.2 Remedies.

21.2.1 If an Event of Default shall occur and continue as aforesaid, then in addition to any other remedies available to Authority at law or in equity, Authority may sue Developer for damages or other relief, from time to time, at the Authority's election, without terminating this

Regulatory Agreement, including by mandamus or other suit, action or proceeding at law or in equity, to require Developer to perform the covenants or agreements or observe the conditions or restrictions of this Regulatory Agreement, or enjoin any acts or things that may be unlawful or in violation of the rights of Authority under this Regulatory Agreement; or by other action at law or in equity, as necessary or convenient to enforce the covenants, agreements, conditions or restrictions of this Regulatory Agreement.

21.2.2 After receipt by Developer of a notice of default under this Regulatory Agreement and the expiration of any applicable period of cure given to Developer under this Regulatory Agreement, Authority shall deliver an additional notice (“Mortgagee’s Notice”) to each Mortgagee specifying the default and stating that Developer’s period of cure has expired. Each Mortgagee shall thereupon have an additional thirty (30) days to cure any uncured default, without payment of default charges, fees, late charges or interest that might otherwise be payable by Developer.

22. RESERVED.

23. RESERVED.

24. FORCE MAJEURE.

24.1 Subject to Section 24.2 below, any prevention, delay, nonperformance or stoppage by Developer due to any of the following causes shall be excused: any regulation, order, act, restriction or requirement or limitation imposed by any federal, state, municipal or foreign government or any department or agency thereof, or civil or military authority; acts of God; acts or omissions of Authority or its agents or employees; fire, explosion or floods and/or earthquakes; strikes, walkouts or inability to obtain materials or labor; war, riots, sabotage or civil insurrection, epidemics, pandemics, quarantine restrictions; or any other causes beyond the reasonable control of Developer.

24.2 No prevention, delay, or stoppage of performance shall be excused unless:

24.2.1 Developer notifies Authority within 30 days of such prevention, delay or stoppage that it is claiming excuse of its obligations under this Section 24; and

24.2.2 Developer diligently proceeds within 30 days of the conclusion of such prevention, delay or stoppage to cure the condition causing the prevention, delay or stoppage; and

24.2.3 Developer effects such cure within a reasonable time.

25. GENERAL PROVISIONS.

25.1 Notices. All notices or demands shall be in writing and shall be served personally, by overnight courier, or by express or certified mail. Service shall be deemed conclusively made at the time of service if personally served; the next business day if sent by overnight courier and receipt is confirmed by the signature of an agent or employee of the party served; the next business

day after deposit in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by express mail; and three days after deposit thereof in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by certified mail.

25.1.1 Any notice to Authority shall be given to:

Fontana Housing Authority
8353 Sierra Avenue
Fontana, California 92335
Attn: Director of Housing

25.1.2 Any notice to Developer shall be given to:

Fontana Courtplace I Housing Partners, L.P.
18201 Von Karman Avenue, Suite 900
Irvine, CA 92612
Attn: Frank Cardone, President

25.1.3 Any party may, by virtue of written notice in compliance with this Section 25.1, alter or change the address or the identity of the person to whom any notice, or copy thereof, is to be sent.

25.2 Certificates (Estoppels). Authority or Developer, as the case may be, shall execute, acknowledge and deliver to the other, promptly upon request, a Certificate of Authority or Developer, as the case may be, certifying (a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the Agreement is in full force and effect, as modified, and stating the date of each instrument so modifying the Agreement), (b) whether there are then existing any offsets or defenses against the enforcement of any term hereof on the part of Developer to be performed or complied with (and, if so, specifying the same), and (c) whether any default exists hereunder and, if any such default exists, specifying the nature and period of existence thereof and what action Authority or Developer, as the case may be, is taking or proposes to take with respect thereto and whether notice thereof has been given to the party in default. Any Certificate may be relied upon by any prospective purchaser, transferee, mortgagee or trustee under a deed of trust of the fee or leasehold estate in the Property or any part thereof or of Authority's or Developer's interest under this Agreement. Developer will also deliver to Authority, promptly upon request, such information with respect to the Property or any part thereof as from time to time may reasonably be requested.

25.3 Reserved.

25.4 Reserved.

25.5 Reserved.

25.6 Reserved.

25.7 Inspection. Authority and its authorized representatives may enter the Property or any part thereof at all reasonable times for the purpose of inspecting, servicing or posting notices,

protecting the Property or the Improvements, or for any other lawful purposes. That notwithstanding, Authority may only enter residential units after giving Developer three days prior written notice.

25.8 No Waiver by Authority. To the extent permitted by applicable law, no failure by Authority to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a default under this Agreement, and no acceptance of rent during the continuance of any such default, shall constitute a waiver of any such default or of any such term. No waiver of any default shall affect or alter this Agreement, which shall continue in full force and effect, or the rights of Authority with respect to any other then existing or subsequent default.

25.9 Reserved.

25.10 Reserved.

25.11 No Partnership. Anything contained herein to the contrary notwithstanding, Authority does not in any way or for any purpose become a partner of Developer in the conduct of its business, or otherwise, or a joint venturer or member of a joint enterprise with Developer hereunder.

25.12 Remedies Cumulative. The various rights, options, elections and remedies of Authority and Developer, respectively, contained in this Agreement shall be cumulative and no one of them shall be construed as exclusive of any other, or of any right, priority or remedy allowed or provided for by law and not expressly waived in this Agreement.

25.13 Attorney's Fees. In the event of a dispute between the parties arising out of or in connection with this Agreement, whether or not such dispute results in arbitration or litigation, the prevailing party (whether resulting from settlement before or after arbitration or litigation is commenced) shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit incurred by the prevailing party.

25.14 Time Is of the Essence. Time is of the essence of this Agreement and all of the terms, provisions, covenants and conditions hereof.

25.15 Survival of Representations, Warranties and Covenants. The respective representations, warranties and covenants contained herein shall survive the Effective Date and continue throughout the Term.

25.16 Construction of Agreement. This Agreement shall be construed in accordance with the substantive laws of the State of California, without regard to the choice of law rules thereof. The rule of construction that a document be construed strictly against its drafter shall have no application to this Agreement.

25.17 Severability. If one or more of the provisions of this Agreement shall be held to be illegal or otherwise void or invalid, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect to the maximum extent permitted under applicable laws and regulations.

25.18 Entire Agreement: Modification. This Agreement contains the entire agreement of the parties with respect to the matters discussed herein. This Agreement may be amended only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extensions or discharge is sought.

25.19 Binding Effect and Benefits. This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective successors and assigns. Except as otherwise set forth herein, nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement.

25.20 Further Assurances. Each party hereto will promptly execute and deliver without further consideration such additional agreement, assignments, endorsements and other documents as the other party hereto may reasonably request to carry out the purposes of this Agreement.

25.21 Counterparts. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

25.22 Number and Gender. Whenever the singular number is used in this Agreement and required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.

25.23 Incorporation by Reference. Every Exhibit attached to this Agreement and referred to herein is hereby incorporated by reference.

25.24 Tax Credit Partner Rights. Notwithstanding anything to the contrary contained in this Agreement, Authority agrees to extent to Tax Credit Partner rights equal to those of the Mortgagee set forth in Sections 18.2 through 18.4, inclusive, provided, however, any and all notices to be given by Authority under said Sections shall be given concurrently with the giving of such notice to Developer and the cure period, if any, for Tax Credit Partner associated with each such notice shall commence to run from the effective date of such notice. Additionally, Authority hereby agrees that Tax Credit Partner shall be entitled to request and receive the Certificate of Authority set forth in Section 25.2.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGE NEXT PAGE

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

AUTHORITY:

FONTANA HOUSING AUTHORITY,

[TBD]

PARTNERSHIP:

FONTANA COURTPPLACE I HOUSING PARTNERS, L.P.,
a California limited partnership

By: Related/Fontana Courtplace I Development Co., LLC,
a California limited liability company, its administrative general partner

By: _____
Frank Cardone, President

By: Foundation for Affordable Housing V, Inc.,
a California nonprofit public benefit corporation, its managing general partner

By: _____
Deborrah A. Willard, President

By: LBI Southridge Fontana LLC,
a California limited liability company, its co-general partner

By: LaBarge Industries, LLC,
a Delaware limited liability company, its sole member

By: _____
Josh LaBarge, President

Exhibit A-1

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Fontana, County of San Bernardino, State of California, described as follows:

[TBD]

Exhibit A-2

INCOME COMPUTATION AND CERTIFICATION

(Following this page)

INCOME COMPUTATION AND CERTIFICATION

NOTE TO APARTMENT OWNER: This form is designed to assist you in computing Annual Income in accordance with the method set forth in the Department of Housing and Urban Development ("HUD") Regulations (24 CFR 813). You should make certain that this form is at all times up to date with the HUD Regulations.

Re: Fontana Courtplace I Family Apartments, Fontana, California

I/We, the undersigned state that I/we have read and answered fully, frankly and personally each of the following questions for all persons who are to occupy the unit being applied for in the above apartment project. Listed below are the names of all persons who intend to reside in the unit:

1.	2.	3.	4.	5.	6.
Names of Members of Household	Relationship to Head of Household	Age	Social Security Number	Place/Source of Employment	Monthly Gross Income Amount (before deductions)
	HEAD				
	SPOUSE				

Income Computation

7. The total anticipated income, calculated in accordance with the provisions of this paragraph 7, of all persons over the age of 18 years listed above for the 12-month period beginning the date that I/we plan to move into a unit is \$_____.

7.1 Inclusions. Included in the total anticipated income listed above are:

7.1.1 all wages and salaries, overtime pay, commissions, fees, tips and bonuses and other compensation for personal services, before payroll deductions;

7.1.2 the net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness or any allowance for depreciation of capital assets),

7.1.3 interest and dividends (including income from assets excluded below);

7.1.4 the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including any lump sum payment for the delayed start of a periodic payment;

7.1.5 payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay;

7.1.6 the maximum amount of public assistance available to the above persons other than the amount of any assistance specifically designated for shelter and utilities;

7.1.7 periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling;

7.1.8 all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household or spouse; and

7.1.9 any earned income tax credit to the extent that it exceeds income tax liability.

7.1.10 **Exclusions.** Excluded from such anticipated income are:

7.1.11 casual, sporadic or irregular gifts;

7.1.12 amounts which are specifically for or in reimbursement of medical expenses;

7.1.13 lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen's compensation), capital gains and settlement for personal or property losses;

7.1.14 amounts of educational scholarships paid directly to the student or the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment. Any amounts of such scholarships or payments to veterans not used for the above purposes are to be included in income;

7.1.15 special pay to a household member who is away from home and exposed to hostile fire;

7.1.16 relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

7.1.17 foster child care payments;

7.1.18 the value of coupon allotments for the purchase of foods pursuant to the Food Stamp Act of 1977;

7.1.19 payments to volunteers under the Domestic Volunteer Service Act of 1973;

7.1.20 payments received under the Alaska Native Claims Settlement Act;

7.1.21 income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes;

7.1.22 payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program;

7.1.23 payments received from the Job Training Partnership Act;

7.1.24 income derived from the disposition of funds of the Grand River Band of Ottawa Indians; and

7.1.25 the first \$2,000.00 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims.

8. Do the persons whose income or contributions are included in item 7 above:

(a) have savings, stocks, bonds, equity in real property or other form of capital investment (excluding the values of necessary items of personal property such as furniture and automobiles and interests in Indian trust land); or _____ Yes _____ No _____

(b) have they disposed of any assets (other than at a foreclosure or Credit Bankruptcy sale) during the last two years at less than fair market value? _____ Yes _____ No _____

(c) If the answer to (a) or (b) above is yes, does the combined total value of all such assets owned or disposed of by all such persons total more than \$5,000? _____ Yes _____ No _____

(d) If the answer to (c) above is yes, state:

(1) the amount of income expected to be derived from such assets in the 12-month period beginning on the date of initial occupancy in the unit that you propose to rent: \$_____

(2) the amount of such income, if any, that was included in item 6 above: \$_____

8. (a) Are all of the individuals who propose to reside in the unit full-time students*? _____ Yes No

* A full-time student is an individual enrolled as a full-time student during each of 5 calendar months during the calendar year in which occupancy of the unit begins at an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance and is not an individual pursuing a full-time course of institutional or farm training under the supervision of an accredited agent of such an educational organization or of a state or political subdivision thereof.

(b) If the answer to 8(a) is yes, is at least 1 of the proposed occupants of the unit a husband and wife entitled to file a joint federal income tax return? _____ Yes No

9. Neither myself nor any other occupant of the unit I/we propose to rent is the owner of the rental housing project in which the unit is located (hereinafter the "Owner"), has any family relationship to the Owner, or owns directly or indirectly any interest in the Owner. For purposes of this paragraph, indirect ownership by an individual shall mean ownership by a family member, ownership by a corporation, partnership, estate or trust in proportion to the ownership or beneficial interest in such corporation, partnership, estate or trustee held by the individual or a family member; and ownership, direct or indirect, by a partner of the individual.

10. This certificate is made with the knowledge that it will be relied upon by the Owner to determine maximum income for eligibility to occupy the unit, and I/we declare that all information set forth herein is true, correct and complete and based upon information I/we deem reliable and that the statement of total anticipated income contained in paragraph 6 is reasonable and based upon such investigation as the undersigned deemed necessary.

11. I/we will assist the Owner in obtaining any information or documents required to verify the statements made herein, including either an income verification from my/our present employer(s) or copies of federal tax returns for the immediately preceding calendar year.

12. I/we acknowledge that I/we have been advised that the making of any misrepresentation or misstatement in this declaration will constitute a material breach of my/our agreement with the Owner to lease the unit and will entitle the Owner to prevent or terminate my/our occupancy of the unit by institution of an action for ejection or other appropriate proceedings.

13. Housing Authority Statistical Information (Optional - will be used for reporting purposes only).

Race (Head of Household)

White _____ Black _____ Asian _____

Hispanic _____ Native American _____ Other _____

Physical Disability:

Yes _____ No: _____

I/we declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____ in the County of _____, California.

Applicant

Applicant

Signatures of all persons over the age of 18 years listed in number 2 above required.

FOR COMPLETION BY APARTMENT OWNER ONLY:

1. Calculation of eligible income:

- a. Enter amount entered for entire household in 6 above: (\$_____)
- b. (1) If answer to 7(c) above is yes, enter the total amount entered in 7(d)(1), subtract from that figure the amount entered in 7(d)(2) and enter the remaining balance (\$_____)
- (2) Multiply the amount entered in 7(c) times the current passbook savings rate to determine what the total annual earnings on the amount in 7(c) would be if invested in passbook savings (\$_____), subtract from that figure the amount entered in 7(d)(2) and enter the remaining balance (\$_____)
- (3) Enter at right the greater of the amount calculated under (1) and (2) above: (\$_____)

c. TOTAL ELIGIBLE INCOME (line 1.a plus line 1.b(3)): (\$_____)

2. The amount entered in 1.c:

Qualifies the applicant(s) as a Very Low-Income Developer(s).

Does not qualify the applicant(s) as a Very Low-Income Developer(s).

3. Number of apartment unit assigned: _____ Bedroom

Size: _____ Rent: (\$_____)

Developer-Paid Utilities:

Water	_____	Gas	_____	Electric	_____
Trash	_____	Other (list Type)	_____		

4. Was this apartment unit last occupied for a period of 31 consecutive days by persons whose aggregate anticipated annual income as certified in the above manner upon their initial occupancy of the apartment unit qualified them as Very Low-Income Developers?

Yes No

5. Method used to verify applicant(s) income:

- Employer income verification.
- Social Security Administration verification.
- Department of Social Services verification.
- Copies of tax returns.
- Other: (_____)

Manager

INCOME VERIFICATION

(For Employed Persons)

The undersigned employee has applied for a rental unit located in a project financed under the _____ Multifamily Housing Program for persons of low income. Every income statement of a prospective Developer must be stringently verified. Please indicate below the employee's current annual income from wages, overtime, bonuses, commissions or any other form of compensation received on a regular basis.

Annual Wages: _____

Overtime: _____

Bonuses: _____

Commissions: _____

Total Current Income: _____

I hereby certify that the statements above are true and complete to the best of my knowledge.

Dated:

Signature

Title: _____

I hereby grant you permission to disclose my income to _____ in order that they may determine my income eligibility for rental of an apartment located in their project which has been financed under _____ Multifamily Housing Program.

Dated:

Signature

Please send form to:

INCOME VERIFICATION
(For Social Security Recipients)

TO: SOCIAL SECURITY ADMINISTRATION

Ladies and Gentlemen:

I have applied for a rental unit located in a project financed under the _____ Multifamily Housing Program for persons of low income. Every income statement of a prospective Developer must be stringently verified. In connection with my application for a rental unit, I hereby give my consent to release to _____ the specific information requested below.

Dated:

Signature

Social Security No.: _____ Name (Print): _____

Address (Print): _____

Monthly Benefits Began/Will Begin: _____

Social Security Benefit Amount: \$

Other Benefit(s): _____ Amount: \$

Medicare Deduction: \$ _____

Are benefits expected to change? _____ Yes _____ No

If yes, please state date and amount of change: _____ Date: _____

Amount: _____

If recipient is not receiving full benefit amount, please indicate reason and date recipient will start receiving full benefit amount:

Reason: _____

Date of Resumption: _____ Amount: \$

Dated: _____

Telephone: _____ Signature _____

Name (Print): _____

Title: _____

Please send form to:

INCOME VERIFICATION

(For Department Of Social Services Aid Recipients)

TO: CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

Ladies and Gentlemen:

I am receiving assistance through your office. I have applied for a rental unit located in a project financed under the _____ Multifamily Housing Program for persons of very low income. Every income statement of a prospective Developer must be stringently verified. In connection with my application for a rental unit, I hereby authorize the Department of Social Services to release to _____ the specific information requested below.

Dated:

Caseload Number:	_____ Case Number:	_____ 1. Number of persons included in budget: 2. Total monthly budget: \$_____	_____ Signature Name (Print): _____ Case Worker: _____
a. Amount of grant: \$_____	b. Other income and source:	c. Is other income included in total budget?	Date aid last began: _____ _____ Yes _____ No
3. Please specify type of aid: _____ (AFDC, FR, Food Stamps, ANB, MediCal, etc.)			
4. If recipient is not receiving full grant, please indicate reason: Overpayment due to client's failure to report other income Computation error Other			
5. Date when full grant will resume: _____			

Dated:

Telephone:

Your very early response will be appreciated.

Please return form to:

Case Worker's Signature

District Office

INCOME VERIFICATION

(For Self-Employed Persons)

I hereby attach copies of my individual federal and state income tax returns for the immediately preceding calendar year and certify that the information shown in such income tax returns is true and complete to the best of my knowledge.

Dated:

Signature

Exhibit A-3

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

(Follows this page)

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

Fontana Courtplace I Family Apartments

With reference to that certain Regulatory Agreement by and between FONTANA COURTPACE I HOUSING PARTNERS, L.P. (“Developer”) and the FONTANA HOUSING AUTHORITY, dated as of _____, _____ (the “Regulatory Agreement”), Developer hereby certifies, as of the date of this Certificate, the following percentages of units at the Fontana Courtplace I Family Apartments, Fontana, California are occupied or being held vacant for low-income Developers:

1. Occupied by 30%, 40%, and 50% of Median Income Tenants:

____%; Unit Nos. _____

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGE NEXT PAGE

The undersigned hereby certifies that the information contained in this Certificate is true and complete and that Developer is not in default under the Ground Lease.

FONTANA COURTPPLACE I HOUSING PARTNERS, L.P.,
a California limited partnership

By: Related/Fontana Courtplace I Development Co., LLC,
a California limited liability company, its administrative general partner

By: _____
Frank Cardone, President

By: Foundation for Affordable Housing V, Inc.,
a California nonprofit public benefit corporation, its managing general partner

By: _____
Deborrah A. Willard, President

By: LBI Southridge Fontana LLC,
a California limited liability company, its co-general partner

By: LaBarge Industries, LLC,
a Delaware limited liability company, its sole member

By: _____
Josh LaBarge, President

Exhibit A-4

PLAN FOR SOCIAL SERVICES

The Social Services to be provided to the residents of Fontana Courtplace I Family Apartments shall consist of the following:

The Partnership may partner with one of the following social service providers: Project Access, Embrace, LifeSteps, The Boys and Girls Club of Fontana, and/or equivalent to provide onsite social services that are targeted to resident needs.