

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

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

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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, initialed 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 tortuous 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 Mortgage 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:

- | | |
|------------------------|---------------------|
| | _____
Signature |
| Caseload Number: _____ | Name (Print): _____ |
| Case Number: _____ | Case Worker: _____ |
1. Number of persons included in budget: _____
 2. Total monthly budget: \$ _____
 - a. Amount of grant: \$ _____ Date aid last began: _____
 - b. Other income and source: _____
 - c. Is other income included in total budget? _____ 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:

Case Worker's Signature

Telephone:

District Office

Your very early response will be appreciated.

Please return form to:

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 COURTPLACE 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.