

**DISPOSITION AND DEVELOPMENT AGREEMENT**

**(Fontana Courtplace I Family Apartments)**

**Among**

**FONTANA HOUSING AUTHORITY,**

**CITY OF FONTANA**

**and**

**FONTANA COURTPLACE I HOUSING PARTNERS, L.P.**

(September \_\_\_\_, 2023)

# DISPOSITION AND DEVELOPMENT AGREEMENT

## (Fontana Courtplace I Family Apartments)

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

### RECITALS

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

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

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

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

## **TERMS AND CONDITIONS**

### **1. Definitions and Interpretation**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **2. Parties**

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

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

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

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

## **4. Land Use Entitlements**

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

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

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

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

## **5. DESIGN REVIEW PROCESS.**

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

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

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

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

## **6. Financing for the Project**

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

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

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

6.1.3 the Senior Loan from a reputable institutional lender; and

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

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

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

**6.2 Preliminary Project Budget.**

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

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

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

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

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

**6.5 Best Effort to Minimize Authority and City Cost.**

6.5.1 Reserved.

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

**6.6 Partnership Rights to Terminate**

6.6.1 Reserved.

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

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

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

## **7. Sale of Property**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **9. PHYSICAL CONDITION OF PROPERTY.**

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

### **9.2 Developer's Due Diligence.**

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

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

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

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

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

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

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

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

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

## **10. INTENTIONALLY OMITTED.**

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

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

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

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

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

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

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

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

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

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

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

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

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

**11.6 City Loan Note, and Deed of Trust.**

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

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

(A) Federal HOME (FY 2018-23 + PI) Funds: \$2,700,000; and

(B) Affordable Housing Trust Fund (Development Impact Fees):  
\$3,337,692.16.

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

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

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

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

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

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

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

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

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

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

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

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

### **13. CLOSE OF ESCROW; EXPENSES.**

#### **13.1 Documents to be Delivered.**

13.1.1 Upon receipt by the Escrow Holder of:

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

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

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

Escrow Holder shall deliver to Authority:

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

Escrow Holder shall deliver to City:

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

Escrow Holder shall deliver to Partnership:

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

**13.2 Expenses of Partnership.** Partnership shall pay:

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

13.2.2 the Escrow fee,

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

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

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

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

#### **14. OTHER ESCROW INSTRUCTIONS.**

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

#### **14.2 Failure to Close.**

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

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

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

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

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

## **15. DISBURSEMENT PROCEDURES.**

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

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

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

## **16. CERTIFICATE OF COMPLETION.**

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

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

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

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

## **17. GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS.**

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

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

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

## **18. INDEMNIFICATION AND INSURANCE.**

### **18.1 Nonliability of Authority.**

18.1.1 Partnership acknowledges and agrees that:

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

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

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

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

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

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

### **18.3 Prevailing Wages.**

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

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

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

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

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

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

---

Partnership’s Initials

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

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

**19. DEFAULTS AND REMEDIES.**

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

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

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

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

**19.2 No Waiver.** Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default, or of any such rights or remedies, or deprive any such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**19.3 Rights and Remedies are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by another party.

## **20. NOTICES.**

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

If to Partnership: Fontana Courtplace I Housing Partners, L.P.  
c/o The Related Companies of California, LLC  
18201 Von Karman Avenue, Suite 900  
Irvine, California 92612

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

If to City: City of Fontana  
8353 Sierra Avenue  
Fontana, California 92335  
Attn: City Manager

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

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

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

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

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

## **24. MISCELLANEOUS.**

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

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

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

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

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

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

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

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

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

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

**24.11 Force Majeure.**

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

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

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

*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK*

*SIGNATURE PAGE NEXT PAGE*

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

PARTNERSHIP:

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

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

By: \_\_\_\_\_  
Frank Cardone, President

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

By: \_\_\_\_\_  
Deborrah A. Willard, President

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

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

By: \_\_\_\_\_  
Josh LaBarge, President

*(signatures continue on following page)*

**[AUTHORITY SIGNATURE BLOCK]**

**[CITY SIGNATURE BLOCK]**

## LIST OF EXHIBITS

EXHIBIT A - LEGAL DESCRIPTION OF THE SITE

EXHIBIT B - SCHEDULE OF PERFORMANCE

EXHIBIT C - SCOPE OF DEVELOPMENT

EXHIBIT D - PRELIMINARY PROJECT BUDGET

EXHIBIT E - GRANT DEED

EXHIBIT F - AUTHORITY SUBORDINATE NOTE

EXHIBIT G - AUTHORITY SUBORDINATE DEED OF TRUST

EXHIBIT H - SUBORDINATE COMPLETION GUARANTY

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

EXHIBIT J - CITY SUBORDINATE NOTE

EXHIBIT K - CITY SUBORDINATE DEED OF TRUST

EXHIBIT L -REGULATORY AGREEMENT

EXHIBIT M - RESERVED

EXHIBIT N - RESERVED

EXHIBIT O - AUTHORITY PREDEVELOPMENT NOTE

EXHIBIT P - ASSIGNMENT OF WORK PRODUCT

**EXHIBIT A-1**

**LEGAL DESCRIPTION OF SITE**

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

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

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

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

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

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

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

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

EXHIBIT A-2

LEGAL DESCRIPTION OF THE PROPERTY

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

PARCEL A:

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

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

## EXHIBIT B

### SCHEDULE OF PERFORMANCE

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

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

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

## **EXHIBIT C**

### **SCOPE OF DEVELOPMENT**

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

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

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

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

**EXHIBIT D**

**PRELIMINARY PROJECT BUDGET**

[TBD]

**EXHIBIT E**

**GRANT DEED**

(Follows this page)

FREE RECORDING. GOV. §6103

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Fontana

\_\_\_\_\_  
Fontana, CA \_\_\_\_\_

Attention: \_\_\_\_\_

\_\_\_\_\_  
(Space Above For Recorder's Use)

A.P. Nos: \_\_\_\_\_

**GRANT DEED**

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

- ( ) Computed on the full consideration or value of property conveyed
- OR
- ( ) Computed on the full consideration or value less liens or encumbrances remaining at time of sale
- ( ) City of Fontana; and

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

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

**“GRANTOR”:**

CITY OF FONTANA

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**Exhibit “A” To Grant Deed**  
**Legal Description of Real Property**

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

Assessor’s Parcel Number: \_\_\_\_\_

**EXHIBIT F**

**AUTHORITY SUBORDINATE LOAN NOTE**

(Follows this page)

**AUTHORITY SUBORDINATE DEVELOPMENT LOAN NOTE**

**(Fontana Courtplace I Family Apartments)**

\$ \_\_\_\_\_ Fontana, California As of \_\_\_\_\_, 202\_

**RECITALS**

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

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

NOW, THEREFORE, FOR VALUE RECEIVED, Borrower promises to pay to the order of Lender, at 8353 Sierra Avenue, Fontana, California 92335, or at such other place as Lender may from time to time designate in writing, (a) the principal sum of \_\_\_\_\_ **Dollars (\$[TBD])**, with interest from the Recordation Date until paid at the simple rate of one quarter of one percent (0.25%) per annum, and (b) all fees, costs and expenses payable hereunder.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. **Intentionally Omitted.**

4. **[Intentionally Omitted].**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8353 Sierra Avenue  
Fontana, California 92335  
Attention: Executive Director

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

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

*[remainder of page intentionally left blank]*

*[signature page next page]*

**BORROWER:**

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: \_\_\_\_\_  
Deborah A. Willard, President

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

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

By: \_\_\_\_\_  
Josh LaBarge, President

**EXHIBIT G**

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

(Follows this page)

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

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[Free Recording Requested

Government Code § 6103]

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

**[FONTANA COURTPLACE I FAMILY APARTMENTS]**

**[AUTHORITY SUBORDINATE LOAN DEED OF TRUST]**

This DEED OF TRUST is made as of \_\_\_\_\_, 202\_\_, by and between **FONTANA COURTPLACE I HOUSING PARTNERS, L.P.**, a California limited partnership (“Trustor”), \_\_\_\_\_ **TITLE COMPANY**, a California corporation (“Trustee”), and **FONTANA HOUSING AUTHORITY**, a public body, corporate and politic (“Beneficiary”).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**IT IS MUTUALLY AGREED THAT:**

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

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

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

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

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

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

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

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

24. The trust created hereby is irrevocable by Trustor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34. The following shall be an Event of Default:

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

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

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

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

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

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

(c) Any failures or delays by the Beneficiary in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the Beneficiary in asserting any of its rights and remedies shall not deprive the Beneficiary of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

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

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

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

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

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

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

*[remainder of page intentionally left blank]*

*[signature page next page]*

**TRUSTOR:**

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

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

By: \_\_\_\_\_  
Frank Cardone, President

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

By: \_\_\_\_\_  
Deborrah A. Willard, President

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

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

By: \_\_\_\_\_  
Josh LaBarge, President

**(SIGNATURES CONTINUE ON FOLLOWING PAGE)**

**[BENEFICIARY SIGNATURE BLOCK]**

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

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

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

**EXHIBIT H**

**SUBORDINATE COMPLETION GUARANTY**

(Follows this page)

## SUBORDINATE COMPLETION GUARANTY

### (Fontana Courtplace I Family Apartments)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK*

*SIGNATURE PAGE NEXT PAGE*

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

**AUTHORITY:**

**FONTANA HOUSING AUTHORITY,**

a public body, corporate and politic

By:

Name:

Title:

Address for notices sent to Authority:

Fontana Housing Authority

8353 Sierra Avenue

Fontana, California 92335

Attn: Executive Director

**GUARANTOR:**

**THE RELATED COMPANIES, L.P.,**

a New York limited partnership

By:

Name:

Title:

Address for notices sent to Guarantor:

The Related Companies, L.P.

30 Hudson Yards, 72<sup>nd</sup> Floor

New York, NY 10001

Attn: General Counsel

**APPROVED AS TO FORM:**

\_\_\_\_\_  
\_\_\_\_\_

CITY:

CITY OF FONTANA

**EXHIBIT I**

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

(Follows this page)

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

**(Fontana Courtplace I Family Apartments)**

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

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

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

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

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

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

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

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

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*SIGNATURE PAGE NEXT PAGE*

Executed by Partnership on \_\_\_\_\_, 202\_.

**PARTNERSHIP:**

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

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

By: \_\_\_\_\_  
Frank Cardone, President

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

By: \_\_\_\_\_  
Deborrah A. Willard, President

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

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

By: \_\_\_\_\_  
Josh LaBarge, President

**ARCHITECT’S/ENGINEER’S CONSENT**  
**(Fontana Courtplace I Family Apartments)**

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

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

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

Executed on \_\_\_\_\_, 202\_.

**ARCHITECT**

[Signature block TBD]

**Exhibit I-1**

PROPERTY DESCRIPTION

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

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

**EXHIBIT J**

**CITY SUBORDINATE LOAN NOTE**

(see attached)

**CITY SUBORDINATE DEVELOPMENT LOAN NOTE**

**(Fontana Courtplace I Family Apartments)**

\$ \_\_\_\_\_ Fontana, California As of \_\_\_\_\_, 202\_\_

**RECITALS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. **Intentionally Omitted.**

4. **[Intentionally Omitted].**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Irvine, CA 92612  
Attn: Frank Cardone, President

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

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

8353 Sierra Avenue  
Fontana, California 92335  
Attention: City Manager

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

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

*[remainder of page intentionally left blank]*

*[signature page next page]*

**BORROWER:**

FONTANA 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: \_\_\_\_\_  
Deborah A. Willard, President

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

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

By: \_\_\_\_\_  
Josh LaBarge, President

**EXHIBIT K**

**CITY SUBORDINATE DEED OF TRUST**

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

\_\_\_\_\_  
Fontana, California \_\_\_\_\_  
Attention: \_\_\_\_\_

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[Free Recording Requested  
Government Code § 6103]

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

**[FONTANA COURTPPLACE I FAMILY APARTMENTS]**

**[CITY SUBORDINATE LOAN DEED OF TRUST]**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**IT IS MUTUALLY AGREED THAT:**

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

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

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

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

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

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

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

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

24. The trust created hereby is irrevocable by Trustor;

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

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

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

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

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

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

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

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

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

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

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

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

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

32. For purposes of this Deed of Trust, “Hazardous Materials” mean and include any hazardous, toxic or dangerous waste, substance or material including, without limitation, flammable explosives, radioactive materials, asbestos, hazardous wastes, toxic substances and any materials or substances defined as hazardous materials, hazardous substances or toxic substances in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act of 1380 (“CERCLA”), as amended (42 U.S.C. §9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.) and those substances defined as hazardous wastes in §25117 of the California Health and Safety Code or as hazardous substances in §25316 of the California Health and Safety Code or in any regulations promulgated under either such law, any so-called “Superfund” or “Superlien” law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

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

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

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

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

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

34. The following shall be an Event of Default:

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

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

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

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

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

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

(c) Any failures or delays by the Beneficiary in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the Beneficiary in asserting any of its rights and remedies shall not deprive the Beneficiary of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

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

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

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

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

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

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

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

*[remainder of page intentionally left blank]*

*[signature page next page]*

**TRUSTOR:**

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: \_\_\_\_\_  
Deborah A. Willard, President

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

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

By: \_\_\_\_\_  
Josh LaBarge, President

*(signatures continue on following page)*

**[BENEFICIARY SIGNATURE BLOCK]**

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

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

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

**EXHIBIT L**

**REGULATORY AGREEMENT**

(attached)

**EXHIBIT M**

RESERVED

**EXHIBIT N**  
AUTHORITY PRE-DEVELOPMENT LOAN NOTE

(Follows this page)

## AUTHORITY PRE-DEVELOPMENT LOAN NOTE

### (Fontana Courtplace I Family Apartments)

[\$TBD] Fontana, California As of \_\_\_\_\_, 202\_

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

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

2. **Loan Disbursement.**

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

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

2.2.1 Borrower is not in default under that certain Disposition and Development Agreement by and among Lender, Borrower and the City of Fontana, dated as of \_\_\_\_\_(the “DDA”) or this Agreement;

2.2.2 Borrower has executed and delivered to Authority, the Predevelopment Note and the Assignment of Work Product;

2.2.3 Borrower has delivered to Authority a copy of Borrower’s organizational documents and a corporate authorizing resolution authorizing Borrower’s execution of this Agreement, the Predevelopment Note, and the Assignment of Work Product;

2.2.4 Borrower has furnished Authority with evidence of the insurance coverage meeting the requirements of Article 9 below; and

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

### 3. **Interest.**

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

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

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

### 4. **Term and Repayment Requirements.**

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

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

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

4.1.3 The termination of the DDA.

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

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

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

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

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

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

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

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

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

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

7. **Security.**

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

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

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

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

9. **Default.**

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

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

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

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

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

11. **Waiver.**

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

11.2 No extension of time for payment of this Predevelopment Note made by agreement by Lender with any Person now or hereafter liable for the payment of this Predevelopment Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Predevelopment Note, either in whole or in part.

11.3 The provisions of this Predevelopment Note and the obligations of Borrower under this Predevelopment Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Predevelopment Note for any reasons whatsoever.

12. **Notice.** Any notice required to be provided under this Predevelopment Note shall be given in the manner set forth in Section 25.1 of the DDA.

13. **Forbearance Not a Waiver.** If Lender delays in exercising or fails to exercise any of its rights under this Predevelopment Note, that delay or failure shall not constitute a waiver of any Lender right or of any breach, Default, or failure of condition under this Predevelopment Note. No waiver by Lender of any of its rights or of any such breach, Default, or failure of condition shall be effective, unless the waiver is expressly stated in a writing signed by Lender.

14. **Assignment.** This Predevelopment Note inures to and binds the heirs, legal representatives, successors, and assigns of Borrower and Lender; provided, however, that Borrower may not assign this Predevelopment Note nor any proceeds of it, nor assign or delegate any of its rights or obligations under this Predevelopment Note, except as otherwise permitted in the DDA, without Lender's prior written consent in each instance, which consent may be given, withheld, delayed or conditioned in Lender's sole and absolute discretion. Lender, in its sole and absolute discretion, may transfer this Predevelopment Note and may sell or assign participations or other interests in all or any part of this Predevelopment Note, all without notice to or the consent of Borrower.

15. **Dissolution of Organization.** In the event that Borrower, or its legally sanctioned and Lender-approved successor terminates or ceases to function within the term of this Predevelopment Note, then, in that event, the outstanding amount due under this Predevelopment Note (including principal or balance of principal and interest) shall be immediately due and payable.

16. **Governing Law.** This Predevelopment Note shall be construed and enforceable according to the laws of the State of California for all purposes, without application of conflicts or choice of laws principles or statutes.

17. **Usury.** To the extent that the indebtedness evidenced by this Predevelopment Note is determined not to be exempt from the usury laws of the State of California, all agreements between Borrower and Lender are expressly limited, so that in no event or contingency, whether because of the advancement of the proceeds of this Predevelopment Note, acceleration of maturity of the unpaid principal balance, or otherwise, shall the amount paid or agreed to be paid to Lender for the use, forbearance, or retention of the money to be advanced under this Predevelopment Note exceed the highest lawful rate permissible under applicable usury laws. If, under any circumstances, fulfillment of any provision of this Predevelopment Note or any other agreement pertaining to this Predevelopment Note, after timely performance of such provision is due, shall involve exceeding the limit of validity prescribed by law that a court of competent jurisdiction deems applicable, then, ipso facto, the obligations to be fulfilled shall be reduced to the limit of such validity. If, under any circumstances, Lender shall ever receive as interest an amount that exceeds the highest lawful rate, the amount that would be excessive interest shall be applied to reduce the unpaid principal balance under this Predevelopment Note and not to pay interest, or, if such excessive interest exceeds the unpaid principal balance under this Predevelopment Note, such excess shall be refunded to Borrower. This provision shall control every other provision of all agreements between Borrower and Lender.

18. **Non-Revolving Credit.** This Predevelopment Note evidences a non-revolving loan from Lender to Borrower. The accrued and unpaid interest and principal balance owing on this Predevelopment Note at any time may be evidenced by an unpaid balance acknowledgment of

Lender on this Predevelopment Note or by the internal accounting records of Lender regarding this Predevelopment Note.

19. **Time Is of the Essence.** Time is of the essence with respect to all obligations of Borrower under this Predevelopment Note.

20. **Severability.** If any provision of this Predevelopment Note, or the application of it to any Person or circumstance, is held void, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Predevelopment Note, and the application of such provision to other Persons or circumstances, shall not be affected thereby, the provisions of this Predevelopment Note being severable in any such instance.

21. **Non-Recourse.** The Loan is nonrecourse, and the sole recourse of the Authority with respect to the principal of, and interest on, this Predevelopment Note and defaults by Borrower in the performance of its covenants under such note will be to the security described in Section 7 hereof.

22. **Amendment or Modification.** The terms of this Predevelopment Note may only be amended or modified by a written agreement executed by all of the parties hereto.

23. **Acknowledgment.** PRIOR TO SIGNING THIS NOTE, BORROWER HAS READ AND UNDERSTANDS ALL OF ITS PROVISIONS AND HAS CONSULTED WITH LEGAL COUNSEL OF BORROWER'S INDEPENDENT SELECTION REGARDING BORROWER'S OBLIGATIONS UNDER THIS NOTE. BORROWER UNDERSTANDS AND AGREES THAT THIS NOTE SHALL BE BINDING UPON BORROWER AND BORROWER'S HEIRS, LEGAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS. AGREES TO THE TERMS AND CONDITIONS OF THIS NOTE AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTE.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Predevelopment Note has been duly executed as of the date first set forth above by:

**BORROWER:**

FONTANA 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: \_\_\_\_\_  
Deborah A. Willard, President

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

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

By: \_\_\_\_\_  
Josh LaBarge, President

**EXHIBIT O**

**ASSIGNMENT OF WORK PRODUCT**

(Follows this page)

## ASSIGNMENT OF WORK PRODUCT

### (Fontana Courtplace I Family Apartments)

This Assignment of Work Product (the “Assignment”) is entered into as \_\_\_\_\_, 2023 (the “Effective Date”) , by and between the FONTANA HOUSING AUTHORITY, a public body, corporate and politic (the “Authority”), and FONTANA COURTPPLACE I HOUSING PARTNERS, L.P., A California limited partnership (the “Assignor”), (individually a “Party” and collectively, the “Parties”), with reference to the following facts:

#### RECITALS

A. Pursuant to the terms of that certain Disposition and Development Agreement (“DDA”) dated the same date as the Effective Date of this Assignment, by and between the Assignor and the Authority (the “Loan Agreement”), the Assignor desires to assign to the Authority, and the Authority desires to accept from the Assignor, the assignment of the Assignor's right, title, and interest in and under those agreements, contracts and other work product described below and incurred by the Assignor in connection with the Project, as defined in the DDA.

B. The consent to such assignments by various third parties may be required in the form of consent attached to this Assignment as Schedule 1, (the “Consent”).

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the Parties and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties mutually agree as follows:

#### TERMS

1. Assignment by Assignor. Assignor assigns and delegates to the Authority, and the Authority accepts from the Assignor, all of the Assignor's right, title, and interest in and obligations under the following:

(a) all architectural designs, construction, engineering and consulting contracts, including any and all amendments, modifications, supplements, addenda and general conditions (collectively, the “Project Agreements”) previously or later entered into by the Assignor and any Contractor (as defined below) pertaining to the development of the Project;

(b) all plans and specifications, shop drawings, working drawings, reports, studies, amendments, modifications, changes, supplements, general conditions, addenda and work product (collectively, the “Reports, Plans and Specifications”) previously or later prepared by the Assignor or any Contractor pertaining to the development of the Project;

(c) all land use approvals, conditional use permits, building permits and other governmental entitlements and approvals of any nature obtained for the Project (collectively, the “Government Approvals”); and

(d) all applications for financing or other approvals and all other tangible documents, except those of a proprietary or confidential nature pertaining to the development of the Project (“General Documents”).

For purposes of this Assignment, the term “Contractor” means any architect, contractor, engineer, consultant or other person or entity entering into Project Agreements with the Assignor (other than attorney agreements for the provision of legal services) and/or preparing Reports, Plans and Specifications or other documents for the Assignor with respect to the Project. Such Project Agreements, Reports, Plans and Specifications, Government Approvals, and General Documents, will be collectively referred to in this Assignment as the “Collateral Documents”. It is intended that all Collateral Documents, whenever produced, be assigned through this Assignment to the Authority as security for the Authority Subordinate Loan, and the applicable Consent executed. The Assignor will periodically provide the Authority a list of all Collateral Documents.

2. Consent. The Assignor agrees to obtain and deliver to the Authority, such consents to the assignment of Collateral Documents as may be required by the terms of the Collateral Documents or as otherwise requested by the Authority in the form attached as Schedule 1. This Assignment and any consents to this Assignment will not relieve the Assignor of the Assignor's obligations under the Collateral Documents.

3. Purpose. This Assignment is made to secure: (i) payment to the Authority of all sums owing under the Predevelopment Note, dated the same date as the Effective Date of this Assignment and made by the Assignor to the order of the Authority, and any and all additional advances, modifications, extensions, renewals, and amendments of the Predevelopment Note; and (ii) payment and performance by the Assignor of all the Assignor's obligations under the DDA.

4. No Assumption of Obligations. The Assignor agrees that the Authority does not assume any of the Assignor's obligations or duties under any Collateral Documents, including, but not limited to, the obligation to pay for the preparation of any Collateral Documents prepared prior to the time the Authority exercise the Authority's rights under this Assignment. The Authority will not be responsible for any default, liability or obligation of the Assignor under the Collateral Document occurring prior to the time the Authority exercises the Authority's rights under this Assignment. Notwithstanding the foregoing, if, following assignment of the Collateral Documents to the Authority, Authority requires or requests additional scope of work, studies or actions by the Contractors on the Collateral Documents, the costs of said additional scope of work shall be an Authority obligation.

5. Attorney-In-Fact. The Assignor irrevocably appoints the Authority as the Assignor's attorney-in-fact, which power is coupled with an interest, so that the Authority will have the right to demand, receive, and enforce any and all of the Assignor's rights with respect to the Collateral Documents, and to perform any and all acts in the name of the Assignor or in the name of the Authority with the same force and effect as if performed by the Assignor in the absence of this Assignment, upon the occurrence of: (i) an Event of Default under the DDA by the Assignor (after notice and opportunity to cure) or an event which, with notice or the passage

of time or both, would constitute an Event of Default under the DDA, or (ii) any termination of the DDA. Until such occurrences, the Assignor will be entitled to exercise all rights pertaining to the Collateral Documents.

6. Representations and Warranties. The Assignor represents and warrants to the Authority that: (i) no previous assignment(s) of the Assignor's right or interest in or to the Collateral Documents has or have been made; (ii) the Assignor has done no act nor omitted to do any act that might prevent the Authority from exercising any of the rights, powers and privileges conferred by the Collateral Documents; and (iii) the copy of each Collateral Document provided by the Assignor to the Authority is the complete and entire agreement between the parties to those Collateral Documents in all material respects.

7. Governing Law. This Assignment is governed by the laws of the State of California, except to the extent that federal law preempts the laws of the State of California. The Assignor consents to the jurisdiction of any federal or state court within the State of California having proper venue for the filing and maintenance of any action arising under this Assignment and agrees that the prevailing party in any such action will be entitled, in addition to any other recovery, to reasonable attorneys' fees and costs.

8. Binding Upon Successors and Assigns. This Assignment is binding upon and will inure to the benefit of the heirs, legal representatives, successors-in-interest, and assigns of the Assignor and the Authority; provided, however, this Section 8 may not be construed and is not intended to waive the restrictions on assignment, sale, transfer, mortgage, pledge, hypothecation, or encumbrance by the Assignor contained in the DDA.

9. Remedies. In the event of the Assignor's default under this Assignment, the Authority may exercise all or any one or more of the Authority's rights and remedies available under this Assignment, at law or in equity. Such rights and remedies will be cumulative and concurrent, and may be enforced separately, successively or together, and the exercise of any particular right or remedy will not in any way prevent the Authority from exercising any other right or remedy available to the Authority.

10. Capitalized Terms. Capitalized terms used but not defined in this Assignment have the meanings set forth in the DDA.

11. Headings. Section headings contained in this Assignment are inserted as a matter of convenience and for ease of reference only and will be disregarded for all other purposes, including the construction or enforcement of this Assignment or any of the provisions of this Assignment.

12. No Agency or Partnership. Nothing contained in this Assignment will constitute the Authority as a joint venturer, partner or agent of the Assignor, or render the Authority liable for any debts, obligations, acts, omissions, representations or contracts of the Assignor.

13. Further Assurances. The Assignor will at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action that may be reasonably necessary or desirable, or that the Authority may reasonably request, in

order to protect any right or interest granted by this Assignment or to enable the Authority to exercise and enforce the Authority's rights and remedies under this Assignment.

14. Termination. This Assignment will terminate, and the security of the Authority under this Assignment will be released upon the earlier of (i) the Assignor's repayment in full of the Authority Subordinate Loan, or (ii) after termination of the DDA, or (iii) completion of construction of the Project.

15. Counterparts. This Assignment may be executed in counterparts by the Parties, each of which will be deemed to be an original, and all such counterparts will constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have duly executed this Assignment by their duly authorized signatories effective as of the Effective Date.

**APPROVED AS TO FORM:**

\_\_\_\_\_

**AUTHORITY:**

FONTANA HOUSING AUTHORITY, a public body,  
corporate and politic

By: \_\_\_\_\_  
\_\_\_\_\_

**DEVELOPER**

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

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

By: \_\_\_\_\_  
Frank Cardone, President

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

By: \_\_\_\_\_  
Deborrah A. Willard, President

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

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

By: \_\_\_\_\_  
Josh LaBarge, President

SCHEDULE 1

CONSENT

\_\_\_\_\_, a \_\_\_\_\_ (the "Contractor") consents to the foregoing Assignment, of which this Consent is a part, and acknowledges that at present there exist no unpaid claims presently due to the Contractor, except as disclosed to the Authority, arising out of the preparation and delivery to the Assignor of the Collateral Documents for which the Contractor is responsible and/or the performance of the Contractor's obligations under any Project Agreement.

The Contractor agrees that if, at any time, the Authority, pursuant to the Authority's rights under the DDA, elects to undertake or cause the completion of any of the Predevelopment Component activities for the Project, and gives the Contractor written notice of such election; then, so long as the Contractor has received, receives, or continues to receive the compensation called for under the applicable Project Agreement, the Authority may, at the Authority's option, use and rely on the Collateral Documents for the purposes for which the Collateral Documents were prepared, and the Contractor will continue to perform the Contractor's obligations under the applicable Project Agreement for the benefit and account of the Authority in the same manner as if performed for the benefit or account of the Assignor in the absence of this Assignment.

The Contractor further agrees that, in the event of a breach by the Assignor of the applicable Project Agreement, or any agreement entered into with the Contractor in connection with the Collateral Documents, so long as the Assignor's interest in the applicable Project Agreement and Collateral Documents is assigned to the Authority, the Contractor will give written notice to the Authority. The Authority will have thirty (30) days from the receipt of such written notice of default to remedy or cure said default; provided, however, nothing in this Consent will require the Authority to cure said default or to undertake completion of the Predevelopment Activities.

The Contractor warrants and represents that the Contractor has no knowledge of any prior assignment(s) of any interest in either the applicable Project Agreement or the Collateral Documents. Except as otherwise defined in this Consent, the terms used in this Consent will have the meanings given them in the foregoing Assignment or the Loan Agreement, as applicable.

Execution date: \_\_\_\_\_, 202\_

Title of Contract:  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Date of Contract: \_\_\_\_\_