

FORM G – DRAFT DDA -SALE

**DISPOSITION AND DEVELOPMENT AGREEMENT**  
(\_\_\_\_\_)

**by and between the**

**COUNTY OF SAN DIEGO,**  
**a California municipal corporation,**

**and**

\_\_\_\_\_

**COUNTY OF SAN DIEGO**

**DISPOSITION AND DEVELOPMENT AGREEMENT**

( \_\_\_\_\_ )

This Disposition And Development Agreement (“**Agreement**”) is dated as of \_\_\_\_\_, 2021, for reference purposes only, and is entered into by and between the County of San Diego, a political subdivision of the State of California (“**County**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Developer**”).

In consideration of the promises and covenants of County and Developer set forth in this agreement, County and Developer agree as follows:

**1. PURPOSES.**

The County is the owner of that certain real property located at \_\_\_\_\_ in San Diego County, California, as described more specifically in Section 103 (“**Property**”). The purpose of this Agreement is to provide for the sale and development of the Property as set forth in the Scope of Development (Attachment No. 3), which shall be constructed and operated as approximately \_\_\_\_\_ ( ) senior group housing units that are affordable to households of income levels specified in the County Regulatory Agreement (“**Project**”), \_\_\_\_\_, and \_\_\_\_\_, substantially consistent with the proposal submitted by the Developer in response to the Request for Proposals issued by the County with respect to development of the Property in accordance with California Government Code section 25515 et seq., and as more specifically described in this Agreement. The development and use of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the County of San Diego and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

**2. DEFINITIONS.** The following words, terms, and phrases are used in this Agreement with the following meanings:

2.1 **4% Tax Credits.** Tax Credits allocated by CTCAC at the Federal tax credit rate of approximately four percent (4%).

2.2 **9% Tax Credits.** Tax Credits allocated by CTCAC at the Federal tax credit rate of approximately four percent (9%).

2.3 **Actual Project Costs.** The actual aggregate cost amount in each of the categories of expenses for the Project set forth in the Project Budget and all other costs related to construction of the Project that are incurred by Developer as determined by a cost certification performed at Developer’s expense by a certified public accountant acceptable to County within three (3) months after issuance of a final Certificate of Occupancy for the entire Project. Actual Project Costs shall not include any costs related to any litigation that might arise with respect to the Project, or any costs that fall outside of the categories in the Project Budget.

2.4 **Additional Government Financing.** Any other financing obtained by Developer from a Government Lender to be applied towards Actual Project Costs.

2.5 **Affiliate.** Any other Person Controlling or Controlled by or under common Control with the specified Person.

2.6 **Agreement.** This Disposition and Development Agreement by and between County and Developer, including all of the attached exhibits, which are incorporated into this Agreement by reference.

2.7 **Application.** Any agreement, application, certificate, document or submission (or amendment of any of the foregoing): (a) necessary or appropriate for financing, development, use or operation of the Project, including any application for any building permit, Certificate of Occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision or such other instrument or entitlement necessary for the Project; or (b) to enable Developer to seek any Approval or to use or operate the Project in accordance with this Agreement or the Regulatory Agreement.

2.8 **Approval.** Any license, permit, approval, consent, certificate, ruling, variance, authorization, conditional use permit, or amendment to any of the foregoing, as shall be necessary or appropriate under any Law to commence, perform or complete the construction of the Project on the Property.

2.9 **Bankruptcy Law.** Title 11 of the United States Code or any other or successor State or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

2.10 **Bankruptcy Proceeding.** Any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

2.11 **Builder.** A California licensed general contractor with experience in construction projects similar to the Project.

2.12 **Business Day.** Any weekday on which County is open to conduct regular County functions with County personnel.

2.13 **CEQA.** The California Environmental Quality Act, Public Resources Code section 21000, et seq.

2.14 **CEQA Documents.** Any consistency evaluation, exemption determination, any Negative Declaration (mitigated or otherwise) or any Environmental Impact Report (including any addendum or amendment to, or subsequent or supplemental Environmental Impact Report) required or permitted by any Government, pursuant to CEQA, to issue any Approval or to approve this Agreement or the Project.

2.15 **Certificate of Occupancy.** A Certificate of Occupancy as defined in the Uniform Building Code, published by the International Conference of Building Officials, as adopted by the County from time to time.

2.16 **County.** The County of San Diego, a California municipal corporation, and any assignee of or successor to the rights, powers or responsibilities of the County of San Diego, a California municipal corporation.

2.17 **County Parties.** Collectively, County, the County Council, and all County elected or appointed officials, employees, agents, and attorneys.

2.18 **Claim.** Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and if an Indemnitor improperly fails to provide a defense for an Indemnitee or provides a defense under a reservation of rights, then Legal Costs of the Indemnitee) and any judgment.

2.19 **Close of Escrow.** The first date on which the Escrow Agent has filed all of the documents set forth in Section 8.6.1 with the County for recording in the official records of the County in accordance with Section 8.6.1.

2.20 **Commercial Rent.** *[Include as applicable]* The amount to be paid by Developer to the County consisting of \_\_\_\_\_ (\_\_\_%) of Net Rental Operating Income from the Commercial Space. "Net Rental Operating Income" means the total amount of rent and other income received by Developer from or in connection with the Commercial Space, minus ten percent (10%) of that total income amount as an agreed-upon percentage deduction for operating costs that will apply regardless of actual operating costs affecting the Commercial Space. This definition assumes that Developer will lease the Commercial Space to an independent third party at market rate rent. If Developer leases the Commercial Space to a related entity, or the rent or other income paid to Developer for or in connection with the Commercial Space is otherwise not at the market rate, the Net Rental Operating Income will be determined, subject to approval by the County, in accordance with an estimated market rate rent for the Commercial Space as determined by an analysis by a third party consultant selected by the County.

2.21 **[Commercial Space/Senior Center].** *[Include as applicable]* The portion of the Project to be leased by Developer and used exclusively for \_\_\_\_\_ uses, as described in the Project Scope attached to this Agreement as **Exhibit "H"**.

2.22 **Construction Contract.** A current agreement between Developer and Builder for construction of the entirety of the Project for a fixed or guaranteed maximum price expressly set forth in such contract and in accordance with all of the terms and conditions of this Agreement, conditioned only upon: (a) Developer's receipt of all Approvals; (b) closing of all financing sources for the Project described in Section 12; and (c) other commercially reasonable conditions.

2.23 **Construction Drawings.** The construction drawings, plans and specifications for the Predevelopment Work and the Project prepared by or for Developer.

2.24 **Control.** Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of Equity Interests, by contract or otherwise. "Controlling" and "Controlled" shall have correlating meanings.

- 2.25 **County.** The County of San Diego, California.
- 2.26 **CTCAC.** The California Tax Credit Allocation Committee or successor in function.
- 2.27 **Default.** An Escrow Default, a Monetary Default or a Non-Monetary Default.
- 2.28 **Default Interest.** Interest at an annual rate equal to the lesser of: (a) six percent (6%) per annum; or (b) the highest rate of interest, if any, that Law allows under the circumstances.
- 2.29 **Deferred Developer Fee.** [insert]
- 2.30 **Developer.** [insert], and its assignees and transferees permitted by this Agreement.
- 2.31 **Developer Fee.** [insert]
- 2.32 **Developer Official Action.** The official action of the directors, managers, partners or other Persons in Control of Developer in substantially the form attached to this Agreement as **Exhibit “G”** authorizing Developer to enter into and perform this Agreement.
- 2.33 **Developer Parties.** Collectively, Developer and the directors, officers, employees, agents, shareholders, members, managers, and partners of Developer.
- 2.34 **Developer Partnership Agreement.** The agreement of limited partnership organizing and establishing Developer as a legal entity.
- 2.35 **Developer Title Policy.** A[n] \_\_\_\_\_ owners’ policy of title insurance issued by the Title Company, with coverage in an amount reasonably determined by Developer, showing title to the Property vested in Developer consistent with the Title Report. If a survey is required to obtain the Developer Title Policy, such survey must be completed by Developer before the Escrow Closing Date and at Developer’s sole cost and expense.
- 2.36 **Due Diligence Completion Notice.** A written notice from Developer delivered to County, prior to the end of the Due Diligence Period, indicating Developer’s unconditional acceptance of the condition of the Property.
- 2.37 **Due Diligence Investigations.** Developer’s due diligence investigations of the Property to determine the suitability of the Property for development and the financial feasibility of the operation of the Project, including investigation of the environmental and geotechnical suitability of the Property, as deemed appropriate in the reasonable discretion of Developer, all at the sole cost and expense of Developer.
- 2.38 **Due Diligence Period.** The time period that commences on the Effective Date and expires at 5:00 p.m. Pacific Standard Time on the date that is sixty (60) calendar days after the Effective Date. The Due Diligence Period may be extended in the County’s discretion for up to an additional thirty (30) calendar days.

2.39 **Dwelling Unit.** Any one of the \_\_\_\_\_ ( ) residential apartment units in the Project.

2.40 **Effective Date.** Defined in Section 3.

2.41 **Environmental Claim.** Any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements or expenses, including Legal Costs and fees and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or Hazardous Substance Discharge relating in any manner to the Project or the Property.

2.42 **Environmental Documents.** The following documents regarding the environmental condition of the Property, which have been provided by to Developer: [insert].

2.43 **Environmental Law.** All Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Government, now in effect or enacted after the Effective Date, regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use or pertaining to occupational health or industrial hygiene or occupational or environmental conditions on, under or about the Property, as now or may at any later time be in effect.

2.44 **Escrow.** An escrow conducted by the Escrow Agent for the disposition of the Property to Developer pursuant to this Agreement.

2.45 **Escrow Agent.** [insert], or such other Person mutually agreed upon in writing by both County and Developer.

2.46 **Escrow Closing Date.** The date mutually agreed upon in writing between the Parties for the Close of Escrow, which shall be no later than December 31, 2020, subject to extensions in the County's discretion of up to an aggregate of one hundred and eight (180) calendar days.

2.47 **Escrow Closing Statement.** A statement prepared by the Escrow Agent showing, among other things, the Escrow Agent's estimate of all funds to be deposited or received by County or Developer, respectively, and all charges to be paid by County or Developer, respectively, through the Escrow.

2.48 **Escrow Default.** The unexcused failure to submit any document or funds to the Escrow Agent as reasonably necessary to close the Escrow pursuant to the terms and conditions of this Agreement, after all other conditions precedent to the Close of Escrow for the benefit of such Party are satisfied or waived by such Party.

2.49 **Escrow Opening Date.** The first date on which a copy of this Agreement signed by both County and Developer is deposited with the Escrow Agent and the Escrow is opened, as provided in Section 8.

2.50 **Equity Interest.** All or any part of any direct equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity nature) in any entity, at any tier of ownership, that directly owns or holds any ownership or equity interest in a Person.

2.51 **Event of Default.** The occurrence of any one or more of the following:

2.51.1 *Monetary Default.* A Monetary Default that continues for fifteen (15) calendar days after Notice to the Party in Default specifying in reasonable detail the amount of money not paid and the nature and calculation of each such amount or bond, surety or insurance not provided;

2.51.2 *Escrow Closing Default.* An Escrow Default that continues for seven (7) calendar days after Notice to the Party in Default specifying in reasonable detail the document or funds not submitted;

2.51.3 *Bankruptcy or Insolvency.* Developer admits in writing that Developer is unable to pay Developer's debts as they become due or Developer becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within ninety (90) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Developer's assets or Developer's interest in this Agreement, the Property or the Project (unless such appointment, attachment, execution, or other seizure was involuntary, and is contested with diligence and continuity and vacated and discharged within ninety (90) days);

2.51.4 *Transfer.* The occurrence of a Transfer, whether voluntarily or involuntarily or by operation of Law, in violation of the terms and conditions of this Agreement; or

2.51.5 *Non-Monetary Default.* Any Non-Monetary Default, other than those specifically addressed in Section 2.60.3 or Section 2.60.4, that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of such a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after a Notice of Default, the Party asserted to be in Default shall only be in Default if such Party does not do all of the following: (a) within thirty (30) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such thirty (30) day period; and (c) diligently prosecute such cure to completion within a reasonable time under the circumstances.

2.51.6 *Tax Credit Investor Cure Rights.* Following admission of the Tax Credit Investor as limited partner of Developer, a copy of any Notice of Default delivered to Developer shall also be delivered to the Tax Credit Investor at the address provided to the County by such Tax Credit Investor in writing. The Tax Credit Investor shall have the right, but not the obligation, to cure the Event of Default in the time periods provided to Developer.

2.52 **Federal.** Relating or pursuant to the authority of the federal government of the United States of America.

2.53 **Good Faith Deposit.** A deposit in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) to provide security for the performance of Developer's obligations under this Agreement, which has been provided to the County prior to execution of this Agreement.

2.54 **Government.** Any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever of any governmental unit (Federal, State, County, district, municipal, County or otherwise) whether now or later in existence.

2.55 **Hazardous Substance.** Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product or any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, any matter, waste or substance that is subject to any Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source or in the regulations adopted pursuant to Law; provided, however, Hazardous Substance shall not include any household chemical products in normal quantities used for operation and maintenance of the Project in compliance with Law.

2.56 **Hazardous Substance Discharge.** Any deposit, discharge, generation, release or spill of a Hazardous Substance that occurs at, on, under, into or from the Property, or during transportation of any Hazardous Substance to or from the Property, or that arises at any time from the construction, installation, use or operation of the Project or any activities conducted at, on, under or from the Property, whether or not caused by a Party.

2.57 **Indemnify.** Where this Agreement states that any Indemnitor shall "Indemnify" any Indemnitee from, against, or for a particular Claim, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise). "**Indemnified**" shall have the correlative meaning.

2.58 **Indemnitee.** Any Person entitled to be indemnified under the terms of this Agreement.

2.59 **Indemnitor.** A Party that agrees to Indemnify any other Person under the terms of this Agreement.

2.60 **Institutional Lender.** Any of the following: (a) a banking corporation (State or Federal), trust company (in its individual or trust capacity), insurance company, credit union, savings bank (State or Federal), pension, welfare or retirement fund or system, real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority owner), Federal or State agency regularly making or guaranteeing mortgage loans, investment bank, a Fortune 500 company, or a corporation established for the purpose of making



mortgage loans for affordable rental projects, or (b) any Person that is an Affiliate of or is a combination of any one or more of the Persons described in clause “(a)” of this Section.

2.61 **Insurance Documents.** Copies or originals of insurance policies and endorsements evidencing all insurance coverage required to be obtained or maintained by Developer pursuant to Section 10.

2.62 **Law.** Every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Government applicable to the Site, Property, Predevelopment Work, or the Project, in any way, including relating to any development, construction, use, maintenance, taxation, operation, occupancy of or environmental conditions affecting the Site, Property, Predevelopment Work, or the Project, or otherwise relating to this Agreement or any Party’s rights, obligations or remedies under this Agreement, or any Transfer of any of the foregoing, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, including any retroactively-applicable law, subject in all cases, however, to any applicable waiver, variance or exemption.

2.63 **Legal Costs.** In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys’ fees, court costs and expenses and consultant and expert witness fees and expenses.

2.64 **Lender.** The holder of any Security Instrument and such holder’s successors and assigns.

2.65 **Manager Units.** The \_\_\_ (\_\_) Dwelling Units designated for on-site residential managers or maintenance personnel, which shall remain unrestricted in terms of income or affordability levels.

2.66 **County.** The County of County or his or her designee or successor in function.

2.67 **Monetary Default.** Any failure by either Party to pay, deposit or deliver, when and as this Agreement requires, any amount of money, any bond or surety or evidence of any insurance coverage required to be provided under this Agreement, whether to or with a Party or a Third Person.

2.68 **Non-Monetary Default.** The occurrence of any of the following, except to the extent constituting a Monetary Default or an Escrow Default: (a) any failure of a Party to perform any of such Party’s obligations under this Agreement; (b) any failure of a Party to comply with any material restriction or prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Agreement by a Party.

2.69 **Notice.** Any consent, demand, designation, election, notice, or request relating to this Agreement, including any Notice of Default. All Notices must be in writing.

2.70 **Notice of Default.** Any Notice claiming or giving Notice of a Default.

- 2.71       **Notify.** To give a Notice.
- 2.72       **Parties.** Collectively, County and Developer.
- 2.73       **Party.** Individually, either County or Developer, as applicable.
- 2.74       **Performance Schedule.** The schedule for the performance of certain actions by County or Developer set forth in **Exhibit “I”** attached to this Agreement.
- 2.75       **Permanent Lender.** Any Lender that provides permanent financing to Developer following completion of construction of the Project.
- 2.76       **Permit Ready.** An Approval that is in a position to be issued to Developer by the applicable Government upon payment of applicable fees and assessments, and the posting of required bonds, the costs of which are included in the final Project Budget approved by County.
- 2.77       **Permitted Encumbrance.** Any lien or encumbrance affecting the Property shown on the Title Report, and all Laws applicable to the Property, the County Deed of Trust, any Permitted Security Instrument, utility, street or shared driveway easements directly related to the Project, any encumbrance or conveyance made to comply with an Approval for the Project and any other document required or expressly allowed to be recorded against the Property by the express terms of this Agreement or the Regulatory Agreement.
- 2.78       **Permitted Security Instrument.** Any Security Instrument: (a) that encumbers only the Property or any interest in the Property; (b) a copy of which (recorded or unrecorded) is delivered to County promptly after being signed, with a certification by the Lender that the copy is complete and accurate and stating the Lender’s name and notice address; (c) that is held by a Lender, subject to the jurisdiction of the courts of the State, not immune from suit and cannot elect to be immune from suit; and (d) only secures: (i) the repayment of money used to pay or reimburse the Total Project Costs; or (ii) any Refinancing permitted pursuant to the express terms and conditions of this Agreement.
- 2.79       **Person.** Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.
- 2.80       **Prevailing Wage Action.** Any of the following: (a) any determination by the State Department of Industrial Relations or the Federal Government that prevailing wage rates should have been paid, but were not; (b) any determination by the State Department of Industrial Relations or the Federal Government that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with any of California Labor Code sections 1720 through 1781, as amended from time to time, or any Federal law regarding prevailing wages, including maintaining certified payroll records pursuant to California Labor Code section 1776; or (d) any administrative or legal action or proceeding to recover wage amounts at law or in equity, including pursuant to California Labor Code section 1781 or applicable Federal Law.

2.81 **Prohibited Encumbrance.** Any lien, Security Instrument, mechanic's lien, easement, property interest or other encumbrance recorded or asserted against the Property or the Project that is not a Permitted Encumbrance.

2.82 **Project.** The \_\_\_\_\_ (\_\_\_\_\_) multi-family residential apartments with appropriate landscaping, retail and commercial space, site improvements, and parking (inclusive of \_\_\_\_ Manager Units) specifically described in the Project Scope attached to this Agreement as **Exhibit "H"**, subject to the terms and conditions of all Approvals.

2.83 **Project Budget.** The budget set forth in **Exhibit "N"** attached to this Agreement, as may be amended, subject to County approval, to be reflected as the final Project Budget approved by the County in accordance with Section 8.3.4, which is a condition precedent to the Close of Escrow.

2.84 **Project Commencement Date.** The date within forty-five (45) calendar days following the date of the Close of Escrow when construction of the Project commences.

2.85 **Project Completion Date.** The date that is \_\_\_\_\_ (\_\_) months following the date of the Close of Escrow.

2.86 **Project Deficit.** Defined in Section 12.8.

2.87 **Project Scope.** The scope of development for the Project, attached to this Agreement as **Exhibit "H"**.

2.88 **Project Surplus.** Defined in Section 12.9.

2.89 **Property.** That certain real property and improvements described in **Exhibit "A - 2"** attached to this Agreement. The Property generally consists of \_\_\_\_\_ as shown on the map included in **Exhibit "A-2"**.

2.90 **Punchlist Work.** Construction of an insubstantial nature that, if not completed, will not delay issuance of a final Certificate of Occupancy (or equivalent approval) for the Project by County or materially interfere with use or occupancy of the Project.

2.91 **Refinancing.** Any loan secured by a Permitted Security Instrument that Developer obtains from a lender for any of the following purposes: (1) to pay off all or a portion of an existing loan secured by a Permitted Security Instrument, where the Lender providing the new loan will disburse loan proceeds to or on behalf of Developer exceeding the amount of principal and interest under the existing loan being paid, plus the amount of any reasonable and customary fees and costs associated with obtaining such new loan that are actually paid by Developer and not rebated or refunded to Developer, the aggregate amount of such fees and costs not to exceed three percent (3%) of the original principal amount of the new loan; (2) disbursing funds to or on behalf of Developer without paying off all or any portion of any existing loan secured by a Permitted Security Instrument; or (3) any loan extension, modification, or equivalent regarding an existing loan to Developer secured by a Permitted Security Instrument that results in the Lender of the existing loan disbursing additional loan proceeds to or on behalf of Developer in excess of the original principal amount of the loan.

2.92 **Regulatory Agreement.** That certain “Regulatory Agreement and Declaration of Covenants, Conditions and Restrictions Restricting Use of Property for Affordable Housing” to be entered into by and between County and Developer and recorded against the Property at the Close of Escrow, substantially in the form of **Exhibit “C”** attached to this Agreement. The Regulatory Agreement shall be Senior to all Security Instruments, except as explicitly provided in this Agreement.

2.93 **Release of Construction Covenants.** County’s written certification that the Project is complete in accordance with the terms and conditions of this Agreement, substantially in the form of **Exhibit “B”** attached to this Agreement.

2.94 **Security Instrument.** Any security instrument, deed of trust, security deed, contract for deed, deed to secure debt or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant real property (including leasehold) security for any obligation (including a purchase-money or other promissory note) encumbering the Property, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned or supplemented from time to time, unless and until paid, satisfied and discharged of record. If two or more such security instruments are consolidated or restated as a single lien or held by the same Lender (as applicable), then all such security instruments so consolidated or restated shall constitute a single Security Instrument. A participation interest in a security instrument (or partial assignment of the secured loan) does not itself constitute a Security Instrument.

2.95 **Senior.** Referring to multiple Security Instruments, the Security Instrument that is most senior in lien of the same type. Where Senior is used as a comparative term as against any specified Security Instrument, such term refers to any Security Instrument of the same type that is senior in lien to such specified Security Instrument. If only one Security Instrument of a particular type exists, then that Security Instrument shall be deemed the Senior Security Instrument of such type.

2.96 **Senior Institutional Lender.** The Institutional Lender making the Senior Project Loan.

2.97 **Senior Project Loan.** A loan that Developer shall obtain from a Senior Institutional Lender in an amount that is sufficient to pay and the proceeds of which are to be used and applied solely to pay: (a) the reasonable costs of obtaining such loan; and (b) the excess of the Total Project Costs over the sum of the amount of the proceeds of the other financing sources for construction of the Project described in Section 12, the proceeds of which will be disbursed to or on behalf of Developer during construction of the Project. Such loan shall provide for normal and customary disbursement controls for the payment of Total Project Costs as construction of the Project progresses and normal and customary fees and expenses for a loan of similar size and purpose. Such loan may also provide for all or a portion of the loan to convert to permanent loan status following completion of construction of the Project.

2.98 **Senior Project Loan Documents.** The various documents and instruments made by and between Developer and Senior Institutional Lender that evidence or perfect the Senior Project Loan or the security for repayment of the Senior Project Loan, including any associated

Security Instrument(s). The Regulatory Agreement shall be Senior to all Senior Project Loan Documents, and all related Security Instruments.

2.99 **Site.** That certain real property and improvements legally described in **Exhibit “A - 1”** attached to this Agreement.

2.100 **State.** The State of California.

2.101 **Tax Credit Equity.** The amount to be paid by the Tax Credit Investor to acquire the Equity Interests in Developer.

2.102 **Tax Credit Investor.** The Person that provides the Tax Credit Equity. In no event may the Tax Credit Investor be an Affiliate of Developer.

2.103 **Tax Credits.** An allocation from CTCAC of State or Federal low income housing tax credits in the amount specified in the Project Budget to finance a portion of the Total Project Costs, all in accordance with section 42 of the United States Internal Revenue Code of 1986, as amended, all associated United States Internal Revenue Service regulations, State law and all associated CTCAC regulations.

2.104 **Third Person.** Any Person that is not a Party, an Affiliate of a Party or an elected official, officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

2.105 **Title Report.** [insert]

2.106 **Title Company.** [insert], or such other Person mutually agreed upon in writing by both County and Developer.

2.107 **Total Project Costs.** The cumulative amount of all costs set forth in the Project Budget.

2.108 **Transfer.** Regarding any property, right or obligation, any of the following, whether by operation of law or otherwise, whether voluntary or involuntary and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale or other transfer, whether direct or indirect, of all or any part of such property, right, or obligation or of any legal, beneficial, or equitable interest or estate in such property, right, or obligation or any part of it (including the grant of any easement, lien, or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any Equity Interest(s) in the owner of such property, right, or obligation by the holder(s) of such Equity Interest(s); or (c) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses “(b)” or “(c)” of this Section 2.130, shall be deemed a Transfer by Developer, even though Developer is not technically the transferor. A “Transfer” shall not, however, include any of the following (provided that the other Party has received Notice of such occurrence) relating to the Property or any Equity Interest: (i) a mere change in form of ownership with no material change in beneficial ownership and which constitutes a tax-free transaction under Federal income tax law and the State real estate transfer tax law; (ii) a conveyance only to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; (iii) a

conveyance only to any Person that, as of the Effective Date, holds an Equity Interest in the Person whose Equity Interest is being transferred; (iv) making of a Permitted Security Instrument; (v) transfer(s) of the outstanding Equity Interests in Developer that, in the aggregate, result in transfer of less than forty percent (40%) of the outstanding Equity Interests in Developer; (vi) issuance of previously unissued or new Equity Interests in Developer that increases the amount of outstanding Equity Interests in Developer by less than ten percent (10%); (vii) the admission of a non-profit public benefit corporation as a managing general partner or manager or member of Developer in order for Developer to qualify for the welfare exemption from property taxation provided under California Revenue and Taxation Code section 214(g); (viii) the transfer by Affirmed Housing Group, Inc. of its general partnership interest in Developer to a limited liability company in which Affirmed Housing Group, Inc. owns one hundred percent of the membership interests; (ix) grants of easements required for construction of the Project; (ix) actions taken to comply with any Approvals for the Project; (x) a transfer of a limited partnership interest to a Tax Credit Investor and thereafter by the Tax Credit Investor of its limited partnership interest in Developer to a syndicated equity fund Controlled by the Tax Credit Investor for purposes of syndication of the Tax Credit Equity; (xi) the removal of the general partner of Developer by the Tax Credit Investor in accordance with the Developer Partnership Agreement and replacement of such general partner with a Person approved by the County, which approval shall not be unreasonably withheld; (xii) the grant and exercise of an option and/or right of first refusal from the Tax Credit Investor to the general partner of Developer in accordance with the Developer Partnership Agreement upon the anticipated exit of the Tax Credit Investor from the partnership on or around the expiration of the Tax Credit compliance period; (xiii) any other transfer approved by the County, which approval shall not be unreasonably withheld.

2.109 **Unavoidable Delay.** A delay in either Party performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond the Party's reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, litigation, Government action or inaction, regional natural disasters or inability to obtain required materials. Unavoidable Delay shall not include delay caused by a Party's financial condition or insolvency.

3. **EFFECTIVE DATE.** This Agreement shall not become effective until the first date on which all of the following events have occurred: ("**Effective Date**"): (a) County has received three (3) counterpart originals of this Agreement signed by the authorized representative(s) of Developer; (b) County has received the Developer Official Action signed by the authorized representative(s) of Developer; (c) this Agreement has been approved by the County Council; (d) this Agreement has been signed by the authorized representative(s) of County; and (e) this Agreement has been approved as to form by the County Attorney.

#### 4. **DEVELOPER DEPOSIT**

4.1 **Delivery.** Developer shall deliver the Good Faith Deposit prior to or concurrently with the execution of this Agreement.

4.2 **Interest.** County shall be under no obligation to pay or earn interest on the Good Faith Deposit, but, if interest shall accrue or be payable thereon, such interest, when received by the County, shall be the property of Developer and shall be promptly paid to Developer upon the

return of the Good Faith Deposit to Developer pursuant to this Agreement; to the extent County is entitled to retain the Good Faith Deposit pursuant to this Agreement, any interest earned on the Good Faith Deposit shall be retained by and belong to County as its sole property and may be disposed of by County as County sees fit.

4.3 **Return or Retention.** The Good Faith Deposit (with interest, if any) shall be returned to Developer within thirty (30) days in the event that Developer is not then in default under this Agreement and the Close of Escrow has occurred. If the County terminates this Agreement under Section 13.1, the Good Faith Deposit (with interest, if any) shall be retained by County as Liquidated Damages.

## 5. **DUE DILIGENCE.**

### 5.1 Due Diligence

5.1.1 **Time and Expense.** Developer shall complete all Due Diligence Investigations within the Due Diligence Period and shall conduct all Due Diligence Investigations at Developer's sole cost and expense.

5.1.2 **Right of Entry.** Developer may access the Property for Due Diligence Investigations under a Right of Entry Agreement in the form attached as Exhibit P.

### 5.1.3 **Review of Title.**

(a) Developer's Title Notice. Within ten (10) Business Days after the Effective Date, Developer shall deliver to County a written notice confirming Developer's unconditional acceptance of the condition of title to the Property or Developer's disapproval or conditional approval of specific matters in the Title Report. If Developer fails to timely deliver this title notice, Developer shall be deemed to disapprove the condition of title to the Property.

(b) County's Title Response. Within five (5) Business Days after receipt of Developer's title notice (unless such notice confirms Developer's unconditional acceptance), County shall deliver to Developer a written response in which County: (i) agrees to cause the removal from the Title Report of any matters disapproved or conditionally approved in Developer's title notice; (ii) agrees to obtain title insurance or other insurance or endorsement in a form reasonably satisfactory to Developer insuring against any matters disapproved or conditionally approved in Developer's title notice; or (iii) elects not to take either action described in clauses (i) or (ii) above. If County fails to timely deliver the title response (if necessary), County shall be deemed to elect not to take any action in reference to Developer's title notice. If County elects in the title response to take any action in reference to Developer's title notice, and if Developer then elects to proceed with the purchase of the Property, County shall complete such action before the Escrow Closing Date or as otherwise specified in County's title response.

(c) Developer's Rejection or Waiver. If County elects or is deemed to have elected not to address one or more matters set forth in Developer's title notice to Developer's reasonable satisfaction, then within five Business Days after the earlier of Developer's receipt of County's title response or the expiration of County's deadline to deliver its title response, Developer shall deliver to County a final written notice: (i) rejecting the condition of title to the Property; or (ii) waiving Developer's disapproval or conditional approval of all such matters set forth in Developer's initial title notice and unconditionally accepting the condition of title to the Property. If Developer fails to timely deliver the final title notice, Developer shall be deemed to continue its rejection of the condition of title to the Property.

(d) Termination of Agreement. If Developer's title review pursuant to this Section 5.2.2 results in Developer's ultimate disapproval or deemed disapproval of the condition of title to the Property, then either Party shall have the right, in such Party's sole and absolute discretion, to cancel the Escrow and terminate this Agreement by delivering written notice to the other Party and Escrow Agent before the Due Diligence Period expires. Upon delivery of the written notice of termination, the Parties and Escrow Agent shall proceed in accordance with Section 8.10. If either Party terminates this Agreement in accordance with this Section 5.2.2, such Party shall not incur any resulting liability to the other Party.

5.1.4 **Developer's Responsibility.** It shall be the sole responsibility of Developer, at Developer's sole cost and expense, to investigate and determine all conditions of the Property and its suitability for the use to which the Property is to be put in accordance with this Agreement. If the conditions of the Property are not in all respects entirely suitable for the use or uses to which the Property will be put under the terms of this Agreement, and Developer nevertheless determines to complete the acquisition of the Property, then it will be the sole responsibility and obligation of Developer to take such action as may be necessary to place the Property in all respects in a condition entirely suitable for its development and use in accordance with this Agreement.

5.1.5 **Due Diligence Completion Notice.** Developer shall deliver a Due Diligence Completion Notice to County prior to the end of the Due Diligence Period. If Developer does not unconditionally accept the condition of the Property by delivery of its Due Diligence Completion Notice indicating such acceptance, prior to the end of the Due Diligence Period, Developer shall be deemed to have rejected the condition of the Property and refused to accept conveyance of title to the Property. If the condition of the Property is rejected or deemed rejected by Developer, then either County or Developer shall have the right to terminate this Agreement, in their respective sole and absolute discretion, without liability to the other Party or any other Person, by delivery of a Notice of termination to the other Party and Escrow Agent, in which case the Parties and Escrow Agent shall proceed pursuant to Section 8.10.

6. **SUBMISSION OF DEVELOPMENT APPLICATIONS.** Developer shall prepare and submit all required Applications, documents, fees, charges or other items (including deposits, funds or sureties in the ordinary course) required for construction of the Project, pursuant to all applicable Laws and Approvals, to each Government for review and approval. Further, Developer shall exercise best efforts to obtain all Approvals for the construction of the Project on the Property from each Government in a Permit Ready status, at least five (5) days before the Escrow Closing



Date. Prior to commencement of any part of the construction of the Project, Developer shall obtain all Approvals from each Government required for the construction of the Project.

## 7. PURCHASE AND SALE OF PROPERTY.

7.1 Purchase and Sale. County shall sell the Property to Developer, and Developer shall purchase the Property from County, subject to the Permitted Encumbrances and the terms and conditions of this Agreement. Title to the Property shall be transferred by the Grant Deed attached to this Agreement as “**Exhibit O**”.

7.2 “AS-IS” Acquisition. The Close of Escrow shall evidence Developer’s unconditional and irrevocable acceptance of the Property in the Property’s AS IS, WHERE IS, SUBJECT TO ALL FAULTS CONDITION, AS OF THE CLOSE OF ESCROW, WITHOUT WARRANTY as to character, quality, performance, condition, title, physical condition, soil conditions, the presence or absence of fill, ocean or tidal impacts, shoring or bluff stability or support, subsurface support, zoning, land use restrictions, the availability or location of utilities or services, the location of any public infrastructure on or off of the Property (active, inactive or abandoned), the suitability of the Property for the Project or other use, the existence or absence of Hazardous Substances affecting the Property and with full knowledge of the physical condition of the Property, the nature of County’s interest in and use of the Property, all Laws applicable to the Property and any and all conditions, covenants, restrictions, encumbrances and all matters of record relating to the Property. Developer represents and warrants to County that: (a) Developer has had ample opportunity to inspect and evaluate the Property and the feasibility of the uses and activities Developer is entitled to conduct on the Property in accordance with this Agreement; (b) Developer is experienced in real estate development; (c) Developer is relying entirely on Developer’s experience, expertise and Developer’s own inspection of the Property in the Property’s current state in proceeding with acquisition of the Property; (d) Developer accepts the Property in the Property’s present condition; (e) to the extent that Developer’s own expertise with respect to any matter regarding the Property is insufficient to enable Developer to reach an informed conclusion regarding such matter, Developer has engaged the services of Persons qualified to advise Developer with respect to such matters; (f) Developer has received assurances acceptable to Developer by means independent of County or County’s agents of the truth of all facts material to Developer’s acquisition of the Property pursuant to this Agreement; and (g) the Property is being acquired by Developer as a result of Developer’s own knowledge, inspection and investigation of the Property and not as a result of any representation made by County or County’s agents relating to the condition of the Property, unless such statement or representation is expressly and specifically set forth in this Agreement. County expressly and specifically disclaims any express or implied warranties regarding the Property.

7.3 Investigation and Remediation. County has no obligation under this Agreement to investigate or remediate the existence of any violation of Environmental Laws or Hazardous Substance or any Hazardous Substance Discharge affecting the Property before or after the Close of Escrow. If Developer closes the purchase of the Property and encounters any violation of Environmental Laws or Hazardous Substance or any Hazardous Substance Discharge affecting the Property or the Project, Developer shall investigate and remediate such violation or condition in accordance with all applicable Law and Government requirements, all at Developer’s sole cost and

expense. Nothing in this 7.3 shall preclude Developer from recovering for any Claim from a Person other than a County Party.

7.3.1 Developer Acknowledgement of Receipt of Documents. Developer acknowledges receipt of the Environmental Documents, which to the best knowledge of the County, constitutes all environmental reports, studies, and other environmental documents relevant to the environmental condition of the Property within the County's possession or control. County does not warrant the accuracy of the Environmental Documents or that the Environmental Documents constitute all the documents that may exist regarding the conditions of the Property, and Developer is obligated to conduct its own inquiry to determine if more information is available.

7.3.2 Developer Assumption of Risk. Developer acquires the Property with knowledge that there may be environmental contamination on, in, under or about the Property and that some Hazardous Substances may remain at the Property after the completion of the Project. County shall have no liability for, and shall not defend or indemnify Developer with respect to any liability, loss or claim resulting from the existence of Hazardous Substances on, in, under or about the Property.

7.3.3 Release of County. Developer hereby waives, releases and discharges the County and its members, officers, employees, agents, contractors and consultants, from any and all present and future claims, demands, suits, legal and administrative proceedings, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys' fees) arising out of or in any way connected with the County's or Developer's use, maintenance, ownership or operation of the Property, any Hazardous Substances on the Property, or the existence of Hazardous Substances contamination in any state on the Property, however the Hazardous Substances came to be placed there, except with respect to any Environmental Claim arising from County's breach of its maintenance covenant under Section 7.5. Developer acknowledges that it is aware of and familiar with the provisions of section 1542 of the California Civil Code which provides as follows:

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

To the extent of the release set forth in this Section, Developer hereby waives and relinquishes all rights and benefits which it may have under section 1542 of the California Civil Code.

Initials of Authorized  
Developer Representative

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

7.4 Condemnation. If County receives notice that any portion of the Property or any interest in any portion of the Property becomes the subject of any eminent domain proceeding prior

to Close of Escrow, including the filing of any notice of intended condemnation or proceedings in the nature of eminent domain commenced by any Government, County shall immediately Notify Developer of such occurrence. If in the reasonable discretion of Developer, the subject condemnation activities will prohibit development of the Project on the Property, then this Agreement shall terminate on the date of the Notice from County to Developer of such condemnation activities and Developer shall be entitled to a refund of the Good Faith Deposit. If this Agreement does not terminate pursuant to the immediately preceding sentence, then this Agreement shall continue in full force and effect in accordance with its terms, and County shall only be obligated to convey that portion of the Property that was not subject to condemnation to Developer at the Close of Escrow and County shall be entitled to receive all of the condemnation award and other compensation regarding such condemnation of all or a portion of the Property.

7.5 Delivery of Property Free of Tenants. At the Close of Escrow, County will deliver possession of the Property to Developer free and clear of any contractual or other rights created by or with the consent of County for any Person (other than Developer) to use or occupy the Property.

7.6 County Not to Encumber. County agrees not to place any matters of record against the Property (other than Permitted Exceptions and any matters arising from County's issuance or exercise of any remedy related to any Approval for the Project), prior to the Close of Escrow, without the prior written consent of Developer.

7.7 Escrow. For the purposes of exchanging funds and documents to complete the sale of the Property from County to Developer and the purchase of the Property by Developer from County, pursuant to the terms and conditions of this Agreement.

8. **ESCROW.** The purchase and sale of the Property shall take place through the Escrow to be administered by Escrow Agent. The Parties shall cause the Escrow to be opened at a mutually agreed upon date selected by the Parties to allow timely Close of Escrow in accordance with the Performance Schedule. Escrow Agent shall promptly confirm the Escrow Opening Date in writing to each of the Parties. This Section 8 constitutes the joint instructions of the Parties to Escrow Agent for conduct of the Escrow for the purchase and sale of the property. Developer and County shall submit such further escrow instructions consistent with the provisions of this Agreement as may be reasonably required. In the event of any conflict between the provisions of this Agreement and any further escrow instructions, the provisions of this Agreement shall control.

8.1 Escrow Agent Authority. County and Developer authorize Escrow Agent to:

8.1.1 **Charges.** Pay and charge County and Developer for their respective shares of the applicable fees, taxes, charges, or costs payable by either County or Developer regarding the Escrow;

8.1.2 **Settlement/Closing Statements.** Release each Party's Escrow Closing Statement to the other Party;

8.1.3 **Document Recording.** File any documents delivered for recording through the Escrow with the office of the Recorder of the County for recordation in the official records of the County, pursuant to the joint instructions of the Parties; and

8.1.4 **Counterpart Documents.** Utilize documents signed by County or Developer in counterparts, including attaching separate signature pages to one version of the same document.

8.2 Developer's Conditions Precedent to Close of Escrow. Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by Developer, Developer's obligation to close the Escrow shall be conditioned upon the satisfaction or waiver (waivers must be in writing and signed by Developer) of each of the following conditions precedent on or before the Escrow Closing Date:

8.2.1 **Title Policy.** Title Company is prepared to issue the Developer Title Policy to Developer upon payment of the premium.

8.2.2 **Approvals.** Developer has processed all Approvals required from each Government for construction of the Project on the Property, the terms and conditions of such Approvals are reasonably satisfactory to Developer, and all such Approvals are Permit Ready;

8.2.3 **CEQA Documents.** Adoption, approval, or certification of the CEQA Documents required by each Government;

8.2.4 **Senior Project Loan.** The closing and funding of the Senior Project Loan concurrent with the close of the Escrow;

8.2.5 **Additional Government Financing.** The closing and funding of any Additional Government Financing to be funded at the Close of Escrow in the amount specified in the Project Budget;

8.2.6 **Tax Credit Equity Funding.** The Tax Credit Equity to be funded at the Close of Escrow in the amount specified in the Project Budget, is deposited into the Escrow by the Tax Credit Investor;

8.2.7 **County Escrow Deposits.** County deposits all of the items into Escrow required by Section 8.5;

8.2.8 **Settlement/Closing Statement.** Developer reasonably approves Developer's Escrow Closing Statement; and

8.2.9 **County Pre-Closing Obligations.** County performs all of County's material obligations under this Agreement required to be performed by County prior to the Escrow Closing Date.

8.3 County's Conditions Precedent to the Close of Escrow. Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by County, County's obligation to close the Escrow shall be conditioned upon the satisfaction or waiver (waivers must be in writing and signed by County) of each of the following conditions precedent on or before the Escrow Closing Date:

8.3.1 **Senior Project Loan.** The closing and funding of the Senior Project Loan concurrent with the close of the Escrow;

8.3.2 **Additional Government Financing.** The closing and funding of any Additional Government Financing to be funded at the Close of Escrow in the amount specified in the Project Budget;

8.3.3 **Tax Credit Equity Funding.** The Tax Credit Equity to be funded at the Close of Escrow in the amount specified in the Project Budget, is deposited into the Escrow by the Tax Credit Investor.

8.3.4 **Approvals.** Developer has processed all Approvals required from each Government for construction of the Project on the Property, the terms and conditions of such Approvals are reasonably satisfactory to County, and all such Approvals are Permit Ready;

8.3.5 **Document Approval.** County has received from Developer and approved all of the documents listed below in this Section 8.3.4 in County's reasonable discretion. Developer shall deliver draft and final versions of each document listed in this Section 8 to County in accordance with the Performance Schedule. Further, Developer shall have all of the following described documents completed and signed by all of the Persons required to make such documents operative (if applicable) and shall have delivered true, accurate and legible copies or originals (as specified in this Agreement) of all such documents to County, at least one (1) Business Day before the Escrow Closing Date:

- (a) A copy of the Construction Contract;
- (b) All Insurance Documents;
- (c) A copy of the Developer Partnership Agreement;
- (d) Copies of the Senior Project Loan Documents;
- (e) The final Project Budget; and
- (f) The Construction Drawings.

8.3.6 **CEQA Documents.** Adoption, approval or certification of the CEQA Documents by each required Government;

8.3.7 **Developer Escrow Deposits.** Developer deposits all of the items into Escrow required by Section 8.4;

8.3.8 **Settlement/Closing Statement.** County reasonably approves County's Escrow Closing Statement; and

8.3.9 **Developer Pre-Closing Obligations.** Developer performs all of Developer's material obligations under this Agreement required to be performed by Developer prior to the Escrow Closing Date.

8.4 Developer's Escrow Deposits. Developer shall deposit the following items into Escrow and, concurrently, provide a copy of each document deposited into Escrow to County, at least one (1) Business Day prior to the Escrow Closing Date:

8.4.1 **Regulatory Agreement.** The Regulatory Agreement signed by the authorized representative(s) of Developer in recordable form;

8.4.2 **County Deed of Trust.** The County Deed of Trust signed by the authorized representative(s) of Developer in recordable form;

8.4.3 **Senior Project Loan Security Instruments.** The Permitted Security Interest securing repayment of the Senior Project Loan, signed by the authorized representative(s) of Developer;

8.4.4 **Other Senior Institutional Lender Agreements.** Any other agreements requested by the Senior Institutional Lender to be entered into by Developer, signed by the authorized representative(s) of Developer; and

8.4.5 **Other Reasonable Items.** Any other documents or funds required to be delivered by Developer under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company in order to close the Escrow that have not previously been delivered by Developer.

8.5 County's Escrow Deposits. County shall deposit the following items into Escrow and, concurrently, provide a copy of each document deposited into Escrow to Developer, at least one (1) Business Day prior to the Escrow Closing Date:

8.5.1 **Grant Deed.** The Grant Deed signed by the authorized representative(s) of County and Developer;

8.5.2 **Regulatory Agreement.** The Regulatory Agreement signed by the authorized representative(s) of County in recordable form;

8.5.3 **Notice of Affordability Restrictions.** The Notice of Affordability Restrictions signed by the authorized representative(s) of County in recordable form;

8.5.4 **Other Reasonable Items.** Any other documents or funds required to be delivered by County under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company in order to close the Escrow that have not been previously delivered by County.

8.6 Closing Procedure. Upon Escrow Agent's receipt of written confirmation from both Developer and County that each of their respective conditions precedent to the Close of Escrow are satisfied or waived, Escrow Agent shall close the Escrow by doing all of the following:

8.6.1 **Recordation and Distribution of Documents.** Filing with the Recorder of the County for recording in the official records of the County regarding the Property in the following order of priority at Close of Escrow: (a) the Regulatory Agreement; (b) the Notice of Affordability

Restrictions; (c) the Permitted Security Instrument securing the Senior Project Loan; (e) the County Deed of Trust; (f) the Permitted Security Instrument securing any Additional Government Financing; and (g) any other documents to be recorded regarding the Property through the Escrow in accordance with the joint instructions of the Parties. At Close of Escrow, Escrow Agent shall deliver conformed copies of all documents filed for recording in the official records of the County through the Escrow to County, Developer, and any other Person designated in the written instructions of the Parties to receive a conformed copy of each such document. Each conformed copy of a document filed for recording in the official records of the County shall show all recording information. The Parties intend and agree that this Section 8.6.1 shall establish the relative priorities of the documents and interests to be recorded in the official records of the County through the Escrow, by providing for recordation of Senior interests prior in time to junior interests, in the order provided in this Section 8.6.1.

The Regulatory Agreement shall be Senior to all Security Instruments. However, the County may, in his or her sole discretion, allow the Permitted Security Instrument securing any Additional Government Financing to be Senior to the Regulatory Agreement when explicitly required by applicable Law or the program regulations of the Additional Government Financing, consistent with California Health and Safety Code section 33334.14(a)(1). In addition, the County may, in his or her sole discretion, allow the Permitted Security Instrument securing any Additional Government Financing to be Senior to the County Deed of Trust when explicitly required by applicable Law or the program regulations of the Additional Government Financing.

**8.6.2 Distribution of Other Documents.** Delivering originals or copies of all documents to be delivered through the Escrow that are not filed for recording (if any) to the Parties and any other Person designated in the written joint escrow instructions of the Parties to receive an original or copy of each such document.

**8.6.3 Funds.** Distributing all funds held by Escrow Agent pursuant to the Escrow Closing Statements approved in writing by County and Developer, respectively.

**8.7 Close of Escrow.** The Close of Escrow shall occur on or before the Escrow Closing Date. The Parties may mutually agree to change the Escrow Closing Date by joint written instruction to Escrow Agent. The County is authorized to agree to one or more extensions of the Escrow Closing Date on behalf of County up to a maximum time period extension of one hundred and eighty (180) calendar days, in the aggregate, in the County's sole and absolute discretion. If for any reason (other than a Default or Event of Default by such Party) the Close of Escrow has not occurred on or before the Escrow Closing Date, then any Party not then in Default under this Agreement may cancel the Escrow and terminate this Agreement, without liability to the other Party or any other Person for such cancellation and termination, by delivering Notice of termination to both the other Party and Escrow Agent. Following any such Notice of termination of this Agreement and cancellation of the Escrow, the Parties and Escrow Agent shall proceed pursuant to Section 8.10. Without limiting the right of either Party to cancel the Escrow and terminate this Agreement, pursuant to this Section 8.7, if the Escrow does not close on or before the Escrow Closing Date and neither Party has exercised its contractual right to cancel the Escrow and terminate this Agreement under this Section 8.7 before the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and conditions of this Agreement, then the Escrow shall close as soon as reasonably possible following

the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and conditions of this Agreement.

8.8 Escrow Costs. Escrow Agent shall notify Developer and County of the costs to be borne by each of them at the Close of Escrow by delivering an Escrow Closing Statement to both County and Developer at least two (2) Business Days prior to the Escrow Closing Date. Developer shall pay the premium charged by the Title Company for the Developer Title Policy, including any endorsements or other supplements to the coverage of the Developer Title Policy that may be requested by Developer, and the premium charged by the Title Company for the County Title Policy, exclusive of any endorsements or other supplements to the coverage of the County Title Policy that may be requested by County that are not also requested by the Senior Institutional Lender for its lender's policy of title insurance regarding the Permitted Security Instrument securing repayment at the Senior Project Loan. Developer shall pay all of the fees and other costs as the Escrow Agent may charge for the conduct of the Escrow, all recording fees, documentary transfer taxes and any and all other charges, fees and all taxes levied by each and every Government relative to the conveyance of the Property through the Escrow.

8.9 Escrow Cancellation Charges. If the Escrow fails to close due to County's Default under this Agreement, County shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively. If the Escrow fails to close due to Developer's Default under this Agreement, Developer shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively. If the Escrow fails to close for any reason other than the Default of either Developer or County, Developer and County shall each pay one-half (1/2) of any ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively.

8.10 Escrow Cancellation. If this Agreement is terminated pursuant to a contractual right granted to a Party in this Agreement to terminate this Agreement (other than due to an Event of Default by the other Party), the Parties shall do all of the following:

8.10.1 **Cancellation Instructions.** The Parties shall, within three (3) Business Days following Escrow Agent's written request, sign any reasonable Escrow cancellation instructions requested by Escrow Agent;

8.10.2 **Return of Funds and Documents.** Within ten (10) Business Days following receipt by the Parties of a settlement statement of Escrow or title order cancellation charges from Escrow Agent (if any) or within twenty (20) days following Notice of termination, whichever is earlier: (a) Developer or Escrow Agent shall return to County all documents previously delivered by County to Developer or Escrow Agent regarding this Agreement or the Escrow; (b) County or Escrow Agent shall return to Developer all documents previously delivered by Developer to County or Escrow Agent regarding this Agreement or the Escrow; (c) County or Escrow Agent shall, unless otherwise provided in this Agreement, return to Developer the Good Faith Deposit and all funds deposited in Escrow by Developer, less Developer's share of customary and reasonable Escrow or title order cancellation charges (if any) in accordance with Section 8.9; and (d) Escrow Agent shall, unless otherwise provided in this Agreement, return to County all funds



deposited in Escrow by County, less County's share of customary and reasonable Escrow or title order cancellation charges (if any) in accordance with Section 8.9.

## 9. PROJECT DEVELOPMENT AND USE.

9.1 Developer's Covenant to Develop the Project. Developer covenants to and for the benefit of County that, after the Close of Escrow, Developer shall commence, pursue, and complete the development of the Project on the Property in accordance with the terms and conditions of this Agreement. Developer covenants and agrees, for itself, its successors and assigns, that the Property shall be improved and developed with the Project, in conformity with the terms and conditions of this Agreement and all applicable Laws and Approvals. The covenants of this Section 9.1 shall run with the land of the Property, until the earlier of: (a) the date of issuance of a Release of Construction Covenants for the Project; or (b) the twentieth (20th) anniversary of the date of the Close of Escrow.

### 9.2 Construction Start and Completion of Project.

9.2.1 **Commencement.** Developer shall commence construction of the Project within forty-five (45) days of the date of Close of Escrow. Thereafter, Developer shall diligently proceed to pursue and complete the construction of the Project, in a good and workmanlike manner, in accordance with the terms and conditions of this Agreement, all applicable Laws, and all Approvals.

9.2.2 **Completion.** On or before the Project Completion Date, Developer shall do all of the following:

(a) Record a Notice of Completion, in accordance with California Civil Code section 8182, for the entirety of the Project;

(b) Request each applicable Government to inspect the Project, as required by all applicable Approvals or Laws;

(c) Address any defects or deficiencies that may be disclosed by any inspection conducted pursuant to Section 9.2.2(b) to the satisfaction of the applicable Government; and

(d) Request each applicable Government to issue all final Certificates of Occupancy or other Approvals necessary for the occupancy and operation of the completed Project and take such other actions reasonably required to obtain all such Certificates of Occupancy or other Approvals.

9.3 Compliance with Laws. All work performed in connection with the construction of the Project shall comply with all applicable Laws and Approvals.

9.4 Prevailing Wage. The Parties agree that the Project is subject to prevailing wage rate requirements pursuant to San Diego Municipal Code section 22.3019 requiring compliance with California Labor Code sections 1720 through 1861. Developer shall pay prevailing wage rates pursuant to San Diego Municipal Code section 22.3019 requiring compliance with California Labor Code sections 1720 through 1861 for construction work performed pursuant to this Agreement cumulatively exceeding \$25,000 and for alteration, demolition, repair, and

maintenance work performed pursuant to this Agreement cumulatively exceeding \$15,000, all as further described in **Exhibit “L”** attached to this Agreement.

9.5 Developer Attendance at County Meetings. Developer agrees to have one or more of Developer’s employees or consultants who are knowledgeable regarding this Agreement and the construction of the Project, such that such Person(s) can meaningfully respond to County Council or County staff questions regarding the progress of the Project, attend meetings with County staff or meetings of the County Council, when requested to do so by County staff, with reasonable advance Notice to Developer.

9.6 County Right to Inspect Project and Property. Developer agrees that County shall have the right of reasonable access to the Property, without the payment of charges or fees, during normal construction hours, during the period of construction of the Project upon reasonable advance Notice. Any and all County representatives who enter the Property shall at all times be accompanied by a representative of Developer, while on the Property. Developer shall make a representative of Developer available for this purpose at all times during normal construction hours, upon reasonable advance Notice from County. If in County’s reasonable judgment it is necessary, Developer agrees that County shall have the further right, from time to time, to retain one or more consultants to inspect the Project and verify compliance by Developer with the provisions of this Agreement. Developer acknowledges and agrees that any such County inspections are for the sole purpose of protecting County’s rights under this Agreement, are made solely for County’s benefit, County’s inspections may be superficial and general in nature, are for the purposes of informing County of the progress of the Project and the conformity of the Project with the terms and conditions of this Agreement, and Developer shall not be entitled to rely on any such inspection(s) as constituting County’s approval, satisfaction or acceptance of any materials, workmanship, conformity of the Project with this Agreement or otherwise. Developer agrees to make its own regular inspections of the work of construction of the Project to determine that the progress and quality of the Project and all other requirements of the work of construction of the Project are being performed in a manner satisfactory to Developer.

9.7 Release of Construction Covenants. Developer may request that County inspect the completed Project and issue a Release of Construction Covenants for the Project following: (1) the issuance of a final Certificate of Occupancy for the Project by County; (2) recordation of a Notice of Completion by Developer or its contractor; (3) certification or equivalent by the project architect that construction of the Improvements (excluding any outstanding Punchlist Work) has been completed in a good and workmanlike manner and substantially in accordance with the approved plans and specifications; (4) payment, settlement or other extinguishment, discharge, release, waiver, bonding or insuring against any mechanic’s liens that have been recorded or stop notices that have been delivered; (5) evidence reasonably satisfactory to the County that the Property has been developed in accordance with this Agreement, the Scope of Development, and plans approved by the County pursuant to this Agreement; and (6) occurrence of the “Occupancy Date” under the Regulatory Agreement. Following County’s receipt of such a written request from Developer for a Release of Construction Covenants, County shall promptly inspect the Project to determine whether or not the Project has been completed in compliance with this Agreement. If County determines that the Project is complete (excluding any outstanding Punchlist Work) and in compliance with this Agreement, County shall issue a Release of Construction Covenants for the Project to Developer. If County determines that the Project is not complete or not in compliance

with this Agreement, County shall send Notice to Developer describing with specificity each non-conformity within thirty (30) calendar days following County's receipt of Developer's written request for a Release of Construction Covenants. The Notice shall also contain County's opinion of the action(s) Developer must take to obtain a Release of Construction Covenants from County. If the reason for Developer's failure to complete the Project is confined to the immediate unavailability of specific items or materials for construction or landscaping at a price reasonably acceptable to Developer or Punchlist Work, County may issue a Release of Construction Covenants upon the delivery by Developer to County of a bond, irrevocable standby letter of credit or other security reasonably acceptable to County in an amount representing the fair value of the work on the Project remaining to be completed, as reasonably determined by County.

9.8 Use of the Property. Developer covenants and agrees for itself, its successors, its assigns, and every successor interest to the Property or any part of the Property, that Developer, such successor, and such assigns shall use the Property only for the uses specified in the Approvals and this Agreement, including all Exhibits to this Agreement, specifically including (i) residential affordable rental units, consisting of the 113 Dwelling Units; (ii) the Commercial Space; (iii) parking; and (iv) all other uses identified in this Agreement and its Exhibits, and the Approvals.

9.9 Use of the Commercial Space. Use of the Commercial Space shall be in accordance with the terms of the Regulatory Agreement.

10. **INSURANCE.** Developer shall obtain and maintain, to protect the County Parties against all insurable Claims relating to this Agreement, the Property, and the Project, at the sole cost and expense of Developer, all of the insurance coverage described in **Exhibit "J"** attached to this Agreement (or its then reasonably available equivalent).

## 11. **EXCULPATION AND INDEMNIFICATION.**

11.1 Exculpation. To the fullest extent permitted by law, except as otherwise specifically provided in this Agreement, Developer, on its behalf and on behalf of all Developer Parties knowingly and voluntarily assumes the risk of, waives all Claims (in law, equity, or otherwise) against County Parties arising out of, and agrees that County Parties shall not be liable to Developer Parties for: (a) injury to or death of any person, or (b) loss of, injury or damage to, or destruction of any tangible or intangible property, including the resulting loss of use, economic losses, and consequential or resulting damage of any kind from any cause in connection with this Agreement, the Ground Lease, the Leasehold, or the Project; provided, however, that the County Parties shall not be exculpated from liabilities arising out of the gross negligence or willful misconduct of any County Party.

11.1.1 No County Party, other than the County, shall have any personal liability or responsibility for any of the responsibilities or liabilities of County under this Agreement.

11.1.2 Developer acknowledges that the exculpation provisions of this Agreement were negotiated with County, that the consideration for the exculpation provisions is fair and adequate, and that Developer had a fair opportunity to negotiate, accept, reject, modify, or alter the Exculpation Provisions of this Agreement.

11.1.3 The exculpation provisions of this Agreement may not be interpreted or construed as an attempt by County to be relieved of liability arising out of a non-delegable duty on the part of County.

11.1.4 Notwithstanding anything to the contrary here, the release and exculpation in favor of the County Parties hereunder shall not apply to Claims arising from or related to County Parties' gross negligence or willful misconduct.

11.1.5 **Waiver of Civil Code Section 1542.** With respect to the Exculpation Provisions of this Agreement, Developer waives the benefits of State of California Civil Code Section 1542, which provides:

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

To the extent of the release set forth in this Section, Developer hereby waives and relinquishes all rights and benefits which it may have under section 1542 of the California Civil Code.

Initials of Authorized  
Developer Representative

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11.2 Developer Indemnity Obligations. To the fullest extent permitted by law, with counsel reasonably acceptable to County, Developer shall Indemnify the County Parties against any Claim arising from or relating to: (a) any wrongful intentional act or negligence of the Developer Parties; (b) any Application made by or at Developer's request; (c) any agreements that Developer (or anyone claiming by or through Developer) makes with a Third Person regarding this Agreement, the Property or the Project; (d) any plans or designs for Improvements prepared by or on behalf of Developer Parties, including without limitation, errors or omissions with respect to such plans or designs; (e) any worker's compensation claim or determination relating to any employee of the Developer Parties or their contractors; (f) any Prevailing Wage Action. Activities of Developer Parties in connection with this Agreement; (g) any loss or damage to County resulting from any inaccuracy in or breach of any representation or warranty of Developer, or resulting from any breach or default by Developer under this Agreement; any accident, personal injury, or casualty on the Property resulting from acts or omissions of Developer Parties; and any Claim based on allegations this Agreement or the Ground Lease violates Article XXXIV of the California Constitution, or its implementing statues and regulations. In addition, notwithstanding any other provision of this Agreement to the contrary, including Sections 7.3.3 and 11.1, Developer shall Indemnify the County Parties against any Environmental Claim.

11.3 Independent of Insurance Obligations. Developer's indemnification obligations under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying Developer's insurance or other obligations under this Agreement. Developer's obligation to Indemnify the County Parties under this Agreement is independent of Developer's insurance and other obligations under this Agreement. Developer's compliance with Developer's insurance obligations and other obligations under this Agreement shall not in any way restrict, limit or modify Developer's obligations to Indemnify the County Parties under this Agreement and are independent of Developer's obligations to Indemnify the County Parties and other obligations under this Agreement.

11.4 Survival of Exculpation and Indemnification Obligations. The obligations of the Developer under this Agreement to exculpate and Indemnify County each other or other Persons shall survive the expiration or earlier termination of this Agreement, until any and all actual or prospective Claims regarding any matter subject to any such obligation under this Agreement to Indemnify each other or other Persons are fully, finally, absolutely and completely barred by applicable statutes of limitations.

11.5 Indemnification Procedures. Wherever this Agreement requires any Indemnitor to Indemnify any Indemnitee:

11.5.1 **Prompt Notice.** The Indemnitee shall Notify the Indemnitor of any Claim.

11.5.2 **Selection of Counsel.** The Indemnitor shall select counsel reasonably acceptable to the Indemnitee. Even though the Indemnitor shall defend the Claim, Indemnitee may, at Indemnitee's option and Indemnitee's own expense (except where Indemnitor provides a defense to Indemnitee under a reservation of rights, a conflict of interest between Indemnitor and Indemnitee or another Person exists that requires the Indemnitee to be represented by separate legal counsel from Indemnitor's legal counsel, or Indemnitor's legal counsel is reasonably determined by the Indemnitee to be incompetent regarding the representation, in each case, Indemnitor shall pay the Legal Costs of Indemnitee's separate legal counsel), engage separate counsel to advise Indemnitee regarding the Claim and Indemnitee's defense. The Indemnitee's separate counsel may attend all proceedings and meetings. The Indemnitor's counsel shall actively consult with the Indemnitee's separate counsel, subject to applicable conflict of interest and privileged communication limitations.

11.5.3 **Cooperation.** The Indemnitee shall reasonably cooperate with the Indemnitor's defense of the Indemnitee.

11.5.4 **Settlement.** The Indemnitor may only settle a Claim against an Indemnitee with the consent of the Indemnitee. Any settlement shall procure a complete release of the Indemnitee from the subject Claim, shall not require the Indemnitee to make any payment to the claimant and shall provide that neither the Indemnitee nor the Indemnitor on behalf of the Indemnitee admits any liability.

## 12. FINANCING.

12.1 No County Financial Assistance. County shall be under no obligation to contribute any financial assistance to the construction or operation of the Property or the Project, regardless of Actual Project Costs or the existence of any Project Deficit.

12.2 Senior Project Loan. The Developer shall obtain the Senior Project Loan such that when the amount of the available proceeds of the Senior Project Loan are combined with the amount of the proceeds of all other financing sources for the construction of the Project, Developer will have sufficient funds to pay all of the Total Project Costs.

12.3 Additional Government Financing. The Developer shall obtain the Additional Government Financing necessary such that when the amount of the available proceeds of the Additional Government Financing are combined with the amount of the proceeds of all other financing sources for the Project, Developer will have sufficient funds to pay all of the Total Project Costs.

12.4 Tax Credit Equity. After the Effective Date of this Agreement, Developer shall apply for 4% Tax Credits/9% Tax Credits \_\_\_\_\_ [insert description of application timing]. In order to implement the financing of the Project, the County, in his sole and absolute discretion, shall have the authority to make all necessary amendments and/or modifications to this Agreement, including its attachments, to reflect the 4% or 9% Tax Credit financing structure, so long as: (i) such amendments and/or modifications do not result in any increased financial risk to the County and do not materially impair the County's interests; (ii) such amendments and/or modifications are otherwise consistent with this Agreement; and (iii) \_\_\_\_\_. If Developer fails to apply for the required CTCAC application cycle for the Tax Credits in accordance with this Section 12.4, County shall have the right to terminate this Agreement upon fifteen (15) calendar days' Notice to Developer.

12.5 Additional Subordinate Financing. In the event that additional subordinate financing is obtained for this Project, notwithstanding any provision to the contrary in this Agreement or any attachments hereto, County and Developer may mutually agree in writing to include such additional funding sources and to make adjustments to the Project Budget as appropriate and reasonably necessary to reflect such additional subordinate financing.

12.6 Developer Responsibility for Project Costs. Developer acknowledges that the Actual Project Costs may exceed the Total Project Costs or the financing or other funding sources available to Developer for construction of the Project. Developer additionally acknowledges that the financing or other funding sources available to Developer for construction of the Project may be different in type or amount from those set forth in this Agreement. Accordingly, Developer acknowledges and agrees that Developer shall be responsible for paying all of the Actual Project Costs, whether or not the Actual Project Costs exceed Total Project Costs or the financing or other funding sources available to Developer for construction of the Project.

12.7 Minor Modifications. If the Senior Institutional Lender or the Tax Credit Investor requires any reasonable minor modification of this Agreement or other document to be provided under this Agreement in reference to making the Senior Project Loan or providing the Tax Credit

Equity, as applicable, then County, Developer and the applicable financing party shall negotiate in good faith regarding any such reasonable minor modification of this Agreement or other document to be provided under this Agreement requested by Senior Institutional Lender or the Tax Credit Investor. Notwithstanding the foregoing provisions of this Section 12.13, County shall not be obligated to negotiate regarding any modification that would modify any payment amount, any time period for development or construction of the Project, the duration of or affordability levels or number of affordable units specified in the Regulatory Agreement, or any bond, deposit or other security required under this Agreement or other document to be provided under this Agreement. If any modification of this Agreement is agreed to by County, pursuant to this Section 12.13, then County shall sign such modification and deposit such modification in Escrow. Escrow Agent shall only release such modification upon the closing of the Senior Project Loan. Any modification to this Agreement or other document to be provided under this Agreement requested by Senior Institutional Lender shall be expressly subject to a condition precedent that the Senior Project Loan closes.

12.8 County Authority. The authority provided to the County in Section 12.13, includes authority to: (a) make minor non-material modifications to this Agreement pursuant to Section 12.14; and (b) \_\_\_\_\_.

12.9 Only Permitted Encumbrances. Developer shall not record and shall not allow to be recorded against the Property any Security Instrument, lien or other encumbrance that is a Prohibited Encumbrance. Developer shall remove or cause to be removed any Prohibited Encumbrance made or recorded against the Property or shall assure the complete satisfaction of any such Prohibited Encumbrance to the satisfaction of the County, in the County's sole and absolute discretion; provided, however, Developer shall have the right to contest the validity of any tax, assessment, lien or charge in good faith. The covenants of Developer set forth in this Section 12.15 regarding the placement of encumbrances on the Property shall run with the land of the Property and bind successive owners of the Property, until recording of a Release of Construction Covenants for the Project. After completion of construction of the Project, the restrictions on encumbrance under the Regulatory Agreement shall apply.

12.10 County Right to Discharge Prohibited Encumbrances. After sixty (60) calendar days' Notice to Developer of a Prohibited Encumbrance and provided that Developer has not caused such Prohibited Encumbrance to be removed during such time period or is not diligently pursuing removal of such Prohibited Encumbrance, where removal reasonably requires more than sixty (60) calendar days, the County shall have the right, but not the obligation, to satisfy or remove any Prohibited Encumbrance against the Property and receive reimbursement from Developer for any amounts paid or incurred in satisfying or removing any such Prohibited Encumbrance, upon demand. Any amount expended by the County to discharge a Prohibited Encumbrance that is not reimbursed to the County by Developer within thirty (30) calendar days following Notice that such amount is due shall accrue Default Interest from the date of such Notice, until paid in full. Nothing in this Section 12.16, though, shall require Developer to pay or make provisions for the payment of any tax, assessment, lien or charge that Developer is in the process of contesting the validity or amount thereof, in good faith, and so long as such contest does not subject all or any portion of the Property to forfeiture or sale.

### 13. REMEDIES AND INDEMNITY

13.1 Legal Actions. Either Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this Agreement or recover damages, subject to the provisions of Section 13.1 and Section 13.2.

13.2 Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this Agreement are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by such Party, at the same or different times, of any other rights or remedies for the same Default or the same rights or remedies for any other Default by the other Party.

13.3 No-Fault Termination by County. The Close of Escrow is contingent on all Approvals, including but not limited to, approval of the subdivision maps and Site Development Permit which are necessary to allow sale of the Property to Developer and sale of the Market Rate Parcel to a Third Party. The Unavoidable Delay provisions and any other provisions of this Agreement notwithstanding, if despite Developer's diligent and good faith efforts, Developer fails to obtain the necessary Approvals within the time set forth in the Performance Schedule, the County may terminate this Agreement with fifteen (15) days Notice to Developer. If such failure to obtain the necessary approvals is despite Developer's diligent and good faith efforts, and not a result of any lack of diligence or good faith by Developer, such termination would be a no-fault termination so that termination on the above described basis alone would not trigger Liquidated Damages or retention of the Developer Deposit. Nothing in this paragraph shall be construed as limiting the County's right to retain the Developer Deposit and receive the Liquidated Damages Amount in response to any other uncured Developer Default.

### 14. GENERAL PROVISIONS

14.1 Compliance with County Standard Contract Provisions. Developer shall comply with the County's standard contract provisions set forth in **Exhibit "K"** attached to this Agreement.

14.2 Notices, Demands, and Communications between the Parties. Any and all Notices submitted by any Party to another Party or Escrow Agent or by Escrow Agent to a Party pursuant to or as required by this Agreement shall be proper, if in writing and dispatched by messenger for immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.) or by registered or certified mail through the United States Postal Service, postage prepaid, return receipt requested, to the address of the recipient Party, as designated below in this Section 14.2 or to the Escrow Agent, as designated in writing by the Escrow Agent. Notices may be sent in the same manner to such other addresses as either Party or Escrow Agent may from time to time designate by Notice in accordance with this Section 14.2. Notice shall be deemed received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that the Notice is dispatched by messenger for immediate personal delivery, one (1) Business Day after delivery to a nationally recognized overnight delivery service or two (2) calendar days after the Notice is deposited with the United States Postal Service in accordance with this Section 14.2. Any attorney representing a Party may give any Notice on behalf of such Party. Following



admission of a Tax Credit Investor as limited partner of Developer, a copy of any Notice delivered to Developer shall be sent to the Tax Credit Investor at the Tax Credit Investor's address provided to County in writing. The Notice addresses for the Parties, as of the Effective Date, are as follows:

To Developer: [insert]

With a Copy to: [insert]

To County: [insert]

14.3 Relationship of Parties. The Parties each intend and agree that County and Developer are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture or similar business arrangement, relationship or association between them.

14.4 Warranty against Payment of Consideration for Agreement. Developer represents and warrants to County that: (a) Developer has not employed or retained any Person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees of Developer and Third Persons to whom fees are paid for professional services related to planning, design or construction of the Project or documentation of this Agreement; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Developer or any of Developer's agents, employees or representatives to any elected or appointed official or employee of County in an attempt to secure this Agreement or favorable terms or conditions for this Agreement. Breach of the representations or warranties of this Section 14.4 shall entitle County to terminate this Agreement immediately without liability, and cancel the Escrow (if open) upon seven (7) days' Notice to Developer and, if the Escrow is open, to Escrow Agent. Upon any such termination of this Agreement, Developer shall immediately refund any payments made to or on behalf of Developer by County pursuant to this Agreement prior to the date of such termination.

14.5 No Discrimination or Segregation. Developer covenants by and for itself and all Persons claiming under or through Developer that this Agreement is made and accepted upon and subject to the following conditions:

14.5.1 **Standards.** There shall be no discrimination against or segregation of any Person or group of Persons on account of any basis listed in subdivision (a) or (d) of section 12955 of the Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Property or the Project, nor shall Developer or any Person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection,

location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Property or the Project.

**14.5.2 Interpretation.** With respect to familial status, Section 14.5.1 shall not be construed to apply to housing for older persons, as defined in section 12955.9 of the Government Code. With respect to familial status, nothing in Section 14.5.1 shall be construed to affect sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of section 51 and section 1360 of the Civil Code and subdivisions (n), (o), and (p) of section 12955 of the Government Code shall apply to Section 14.5.1.

14.6 Non-liability of County Officials and Employees. No elected official or employee of County shall be personally liable to Developer, or any successor in interest to Developer, in the event of any Default by County under this Agreement or for any amount that may become due to Developer or to Developer's successor on any obligations under the terms of this Agreement, except to the extent resulting from the negligence or willful misconduct of such elected official or employee.

14.7 Inspection of Books and Records. Subject to other rights of the County under this Agreement or Law to obtain or receive information from Developer, County shall have the right at all reasonable times, at County's cost and expense, to inspect the books and records of Developer pertaining to the Property or the Project. County shall not disclose proprietary information of Developer to Third Persons, unless required by law or otherwise resulting from or related to the pursuit of any remedies or the assertion of any rights of County under this Agreement.

14.8 Calculation of Time Periods. Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to Business Days in this Agreement shall mean consecutive Business Days.

14.9 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Agreement shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this Agreement, refers to such document, as modified from time to time (excepting any modification that violates this Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this Agreement includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

14.10 Governing Law. The procedural and substantive laws of the State shall govern the interpretation and enforcement of this Agreement, without application of conflicts of laws principles or statutes. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in and relates to real property located in the County. All legal actions arising from this Agreement shall be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

14.11 Unavoidable Delay; Extension of Time for Performance.

14.11.1 **Notice.** Subject to any specific provisions of this Agreement stating that they are not subject to Unavoidable Delay or otherwise limiting or restricting the effects of an Unavoidable Delay (if any), performance by either Party under this Agreement shall not be deemed or considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of any such Unavoidable Delay; and (b) within twenty (20) days after such Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise commercially reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

14.11.2 **Assumption of Economic Risks.** DEVELOPER EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF DEVELOPER SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF DEVELOPER THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS AGREEMENT SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EACH AND EVERY ONE OF DEVELOPER'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS AGREEMENT. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, DEVELOPER EXPRESSLY ASSUMES THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND OR CONDITIONS AND WAIVES, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE OR SIMILAR THEORIES. DEVELOPER AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF DEVELOPER SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS AGREEMENT. DEVELOPER EXPRESSLY ASSUMES THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.

Initials of Authorized  
Developer Representative(s)

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14.12 Tax Consequences. Developer acknowledges and agrees that Developer shall bear any and all responsibility, liability, costs or expenses connected in any way with any tax consequences experienced by Developer related to this Agreement.

14.13 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

14.14 Developer Assumption of Risks of Legal Challenges. Developer assumes the risk of delays or damages that may result to Developer from each and every Third Person legal action related to: (a) County's approval of this Agreement, even in the event that an error, omission or abuse of discretion by County is determined to have occurred; or (b) any associated Approvals. If a Third Person files a legal action for which Developer assumes the risk under this Section 14.14, Developer shall have the option to either: (1) prior to the Close of Escrow, cancel the Escrow and terminate this Agreement, in which case the Parties and the Escrow Agent shall proceed in accordance with Section 8.10; or (2) at any time, Indemnify County against such Third Person legal action, including all Legal Costs, monetary awards, sanctions and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action. Should Developer fail to Notify County of Developer's election pursuant to this Section 14.14 at least fifteen (15) days before response to the legal action is required by County, Developer shall be deemed to have elected to cancel the Escrow and terminate this Agreement pursuant to option "(1)" or "(2)," as applicable, under this Section 14.14, without further Notice to or action by either Party. County shall reasonably cooperate with Developer in defense of County in any legal action subject to this Section 14.14, subject to Developer completely performing Developer's indemnity obligations for such legal action. Should Developer elect or otherwise be required to Indemnify County regarding a legal action subject to this Section 14.14, but fail to or stop providing such indemnification of County, then County shall have the right to immediately terminate this Agreement or cancel the Escrow (or both) by Notice to Developer and Escrow Agent (in the latter case, if the Escrow is open). Nothing contained in this Section 14.14 is intended to be nor shall be deemed or construed to be an express or implied admission that County may be liable to Developer or any other Person for damages or other relief regarding any alleged or established failure of County to comply with any law. Any legal action that is subject to this Section 14.14 (including any appeal periods and the pendency of any appeals) shall constitute an Unavoidable Delay and the time periods for performance by either Party under this Agreement may be extended pursuant to the provisions of this Agreement regarding Unavoidable Delay.

14.15 Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

14.16 Time Declared to be of the Essence. As to the performance of any obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence.

14.17 Entire Agreement. This Agreement (including the exhibits attached to this Agreement) integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter of this Agreement.

14.18 Waivers and Amendments. All waivers of the provisions of this Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver. All amendments to this Agreement must be in writing and signed by the authorized representative(s) of both County and Developer.

14.19 Prohibition against Transfers, Changes in Ownership, Management or Control of Developer, or Assignment. Developer acknowledges and agrees that the qualifications and identity of Developer are of particular importance and concern to County. Developer further acknowledges and agrees that County has relied and is relying on the specific qualifications and identity of Developer in entering into this Agreement and County would not have entered into this Agreement, but for the specific qualifications and identity of Developer. As a consequence, before the recordation of a Release of Construction Covenants for the Project, Transfers by Developer are only permitted with the prior written consent of County, in County's sole and absolute discretion. Developer represents and warrants to County that Developer has not made and agrees that Developer will not create or permit to be made or created any Transfer, except in accordance with this Section 14.19, whether made or created voluntarily, involuntarily or by operation of law. Any Transfer made in contravention of this Section 14.19 shall be voidable at the election of County, in County's sole and absolute discretion. Developer acknowledges and agrees that the restrictions on Transfers set forth in this Section 14.19 are reasonable. Developer agrees to reimburse County for all costs and expenses incurred by County in connection with County's review of each proposed Transfer, including all Legal Costs and other Third Person consultant fees and expenses, up to a maximum amount of \$5,000.

14.20 Exhibit List. All of the exhibits attached to this Agreement are as follows:

Exhibit A	Site and Property Descriptions
Exhibit B	Release of Construction Covenants
Exhibit C	Regulatory Agreement
Exhibit D	<i>Reserved</i>
Exhibit E	<i>Reserved</i>
Exhibit F	<i>Reserved</i>
Exhibit G	Developer Official Action
Exhibit H	Project Scope
Exhibit I	Performance Schedule
Exhibit J	Insurance Requirements
Exhibit K	County Contract Provisions
Exhibit L	Prevailing Wage Requirements
Exhibit M	<i>Reserved</i>
Exhibit N	Project Budget
Exhibit O	Grant Deed
Exhibit P	Right of Entry

14.21 No Implied Waiver. Failure to insist on any one occasion upon strict compliance with any term, covenant, condition, restriction or agreement contained in this Agreement shall not be deemed a waiver of such term, covenant, condition, restriction or agreement, nor shall any waiver or relinquishment of any rights or powers under this Agreement, at any one time or more times, be deemed a waiver or relinquishment of such right or power at any other time or times.

14.22 Reserved.

14.23 Survival of Agreement. All of the provisions of this Agreement shall be applicable to any dispute between the Parties arising from this Agreement, whether prior to or following expiration or termination of this Agreement, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods and all terms and conditions of this Agreement relating to dispute resolution, indemnity or limitations on damages or remedies shall survive any expiration or termination of this Agreement.

14.24 Counterparts. This Agreement shall be signed in three (3) triplicate originals, each of which is deemed to be an original. This Agreement includes thirty-eight (48) pages and fourteen (22) exhibits (each exhibit is incorporated into this Agreement by reference) that constitute the entire understanding and Agreement of the Parties regarding the subject matter of this Agreement.

14.25 Facsimile or Electronic Signatures. Signatures delivered by facsimile or electronic means shall be binding as originals upon the Party so signing and delivering; provided, however, that original signature(s) of the authorized representative(s) of each Party shall be required for each document to be recorded.

14.26 Attorney's Fees. If either Party initiates any litigation or other legal proceeding to interpret or enforce any provision of this Agreement, then the prevailing Party in such litigation or proceeding shall be entitled to recover its reasonable attorneys' fees and other legal expenses from the non-prevailing Party, in addition to any other damages or remedies to which the prevailing Party is entitled.

**[Remainder of page intentionally blank. Signatures appear on following page.]**

**SIGNATURE PAGE  
TO  
DISPOSITION AND DEVELOPMENT AGREEMENT**

**COUNTY:**

COUNTY OF SAN DIEGO,  
a political subdivision of the State of  
California

**DEVELOPER:**

[insert]  
By: \_\_\_\_\_

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

Approved as to form and legality:

By: \_\_\_\_\_  
Nate Slegers  
Senior Deputy County Counsel

Dated: \_\_\_\_\_