

**DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT**  
(Cottages at Mission Trail)

BETWEEN

CITY OF LAKE ELSINORE,  
a municipal corporation

AND

MISSION COTTAGES LP,  
a California limited partnership

Dated as of March 28, 2019

## Table of Contents

ARTICLE 1. DEFINITIONS AND EXHIBITS .....	3
Section 1.1    Definitions.....	3
Section 1.2    Exhibits. ....	11
ARTICLE 2. CONDITIONS PRECEDENT TO CLOSING .....	12
Section 2.1    Conditions Precedent to Closing.....	12
Section 2.2    Applicable Land Use Approvals.....	12
Section 2.3    Environmental Compliance. ....	12
Section 2.4    Management Agreement.....	12
Section 2.5    Evidence of Supplemental Financing; Financing Plan. ....	12
Section 2.6    Construction Budget .....	14
Section 2.7    Construction Contract. ....	14
Section 2.8    Insurance. ....	15
ARTICLE 3. CLOSING AND DISBURSEMENT OF THE LMIHAF LOAN AND FUND 106 LOAN.....	15
Section 3.1    Provision of Loans. ....	15
Section 3.2    Transfer of Property; Disbursement of Loan Proceeds.....	15
Section 3.3    Condition of the Property; Environmental.....	15
Section 3.4    Opening Escrow.....	19
Section 3.5    Title Insurance. ....	20
Section 3.6    Closing Date; Closing Conditions. ....	20
Section 3.7    Condition of Title.....	22
Section 3.8    Disbursement of City Loan Proceeds. ....	23
Section 3.9    Retention. ....	25
Section 3.10   Final Loan Disbursement; Conditions Precedent to Conversion of LMIHAF Loan and Fund 106 Loan to Permanent Term Loans. ....	25
ARTICLE 4. CITY LOAN PROVISIONS.....	29
Section 4.1    LMIHAF Loan. ....	29
Section 4.2    Fund 106 Loan. ....	29
Section 4.3    Interest Rate. ....	29
Section 4.4    Non-Recourse. ....	29
Section 4.5    Repayment. ....	29
Section 4.6    Subordination of City Documents. ....	29
ARTICLE 5. DEVELOPMENT OF IMPROVEMENTS .....	30
Section 5.1    Development and Use. ....	30
Section 5.2    No Construction Prior to Closing. ....	30

Section 5.3	Building Permit .....	31
Section 5.4	Development Pursuant to Plans. ....	31
Section 5.5	Change in Development of Improvements. ....	31
Section 5.6	Commencement of Construction. ....	31
Section 5.7	Completion of the Improvements. ....	32
Section 5.8	Equal Opportunity.....	32
Section 5.9	Compliance with Applicable Laws.....	32
Section 5.10	Progress Reports. ....	34
Section 5.11	Construction Responsibilities. ....	34
Section 5.12	Mechanics Liens, Stop Notices, and Notices of Completion.....	34
Section 5.13	Inspections. ....	35
Section 5.14	Information. ....	35
Section 5.15	Records. ....	35
Section 5.16	Financial Accounting.....	35
ARTICLE 6. ONGOING DEVELOPER OBLIGATIONS.....		36
Section 6.1	Applicability. ....	36
Section 6.2	Use. ....	36
Section 6.3	Maintenance.....	36
Section 6.4	Taxes and Assessments.....	37
Section 6.5	Mandatory Language in All Deeds, Leases and Contracts. ....	37
Section 6.6	Hazardous Materials. ....	39
Section 6.7	Management Responsibilities. ....	39
Section 6.8	Management Agent.....	39
Section 6.9	Periodic Performance Review.....	39
Section 6.10	Approval of Management Plans and Policies. ....	39
Section 6.11	Insurance Requirements.....	40
Section 6.12	Developer Fee. ....	42
Section 6.13	City Monitoring Fee.....	42
Section 6.14	Deferred Mitigation Loan .....	43
Section 6.15	Operating Reserve.....	43
Section 6.16	Replacement Reserve.....	43
ARTICLE 7. ASSIGNMENT AND TRANSFERS.....		43
Section 7.1	Definitions.....	43
Section 7.2	Purpose of Restrictions on Transfer.....	44
Section 7.3	Prohibited Transfers.....	44
Section 7.4	Permitted Transfers. ....	44
Section 7.5	Other Transfers with City Consent. ....	45
Section 7.6	City Costs.....	46
ARTICLE 8. DEFAULT AND REMEDIES.....		46
Section 8.1	General Applicability.....	46
Section 8.2	No Fault of Parties. ....	46
Section 8.3	Fault of City. ....	47

Section 8.4	Fault of Developer. ....	47
Section 8.5	Right to Cure at Developer’s Expense. ....	49
Section 8.6	Construction Plans. ....	49
Section 8.7	Acceleration of City Notes. ....	49
Section 8.8	Remedies Cumulative. ....	50
Section 8.9	Waiver of Terms and Conditions. ....	50
Section 8.10	Attorneys’ Fees. ....	50
ARTICLE 9. SECURITY FINANCING AND RIGHTS OF HOLDERS .....		51
Section 9.1	No Encumbrances Except for Development Purposes. ....	51
Section 9.2	Holder Not Obligated to Construct. ....	51
Section 9.3	Notice of Default and Right to Cure. ....	51
Section 9.4	Failure of Holder to Complete Improvements. ....	52
Section 9.5	Right of City to Cure. ....	52
Section 9.6	Right of City to Satisfy Other Liens. ....	52
Section 9.7	Holder to be Notified. ....	52
ARTICLE 10. GENERAL PROVISIONS .....		52
Section 10.1	Notices, Demands and Communications. ....	52
Section 10.2	Non-Liability of City Officials, Employees and Agents. ....	53
Section 10.3	Forced Delay. ....	53
Section 10.4	Inspection of Books and Records. ....	54
Section 10.5	Provision Not Merged with City Grant Deed. ....	54
Section 10.6	Title of Parts and Sections. ....	54
Section 10.7	Indemnification. ....	54
Section 10.8	Applicable Law. ....	55
Section 10.9	No Brokers. ....	55
Section 10.10	Severability. ....	55
Section 10.11	Legal Actions. ....	55
Section 10.12	Binding Upon Successors. ....	56
Section 10.13	Parties Not Co-Venturers. ....	56
Section 10.14	Time of the Essence. ....	56
Section 10.15	Action by the City. ....	56
Section 10.16	Representations and Warranties of the Developer. ....	56
Section 10.17	Complete Understanding of the Parties. ....	58
Section 10.18	Operating Memoranda; Implementation Agreements. ....	58
Section 10.19	Amendments. ....	59
Section 10.20	Multiple Originals; Counterparts. ....	59

**DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT**  
(Cottages at Mission Trail)

This Disposition, Development and Loan Agreement (the “Agreement”) is entered into as of March 28, 2019 (the “Effective Date”), by and between the City of Lake Elsinore, a municipal corporation (the “City”), and Mission Cottages LP, a California limited partnership (the “Developer”), with reference to the following facts, understandings and intentions of the parties:

**RECITALS**

A. These Recitals refer to and utilize certain capitalized terms. Capitalized terms not defined in these Recitals are defined in Article 1 of this Agreement.

B. In accordance with California Health & Safety Code Section 34172, the Redevelopment Agency of the City of Lake Elsinore (“Former Agency”) was dissolved as of February 1, 2012. The City is the successor to the “housing assets” (as defined in California Health & Safety Section 34176) of the Former Agency, and as such holds funds in the Low and Moderate Income Housing Asset Fund (the “LMIHAF Fund”) pursuant to California Health & Safety Code Section 34176(d).

C. The City holds certain funds (“Fund 106 Funds”) which the City owns in its own right and not as the successor to the “housing assets” of the Former Agency.

D. Civic Partners-Elsinore, LLC (“Civic”) is a party to that certain Amended and Restated Disposition and Development Agreement (“DDA”) dated as of March 8, 2011, by and among the Redevelopment Agency of the City of Lake Elsinore (“RDA”), McMillin Summerly LLC, and Civic.

E. Sections 502 and 603 of the DDA permit Civic to submit an Affordable Housing Project Proposal (as defined in the DDA) and to receive Pledged Housing Funds (as defined in the DDA) in connection with an approved Affordable Housing Project Proposal. Pledged Housing Funds shall be provided in the amount of Reimbursable Affordable Housing Costs, as defined in and in accordance with the terms and conditions of the DDA. The City, in its capacity as the housing successor, holds Pledged Housing Funds in accordance with the DDA.

F. Civic has submitted an Affordable Housing Project Proposal to acquire property and construct an approximately one hundred forty three (143) unit apartment building (“Project”) restricted to occupancy by households earning up to 60% of area median income in accordance herewith. The Project will be constructed on an approximately 19.46 acre site located on Mission Trail in the City’s East Lake Specific Plan (as legally described in Exhibit A hereto, the “Property”). The Project constitutes an approved Affordable Housing Project Proposal under the DDA. In accordance with the DDA, the Developer is permitted to receive Pledged Housing Funds in an amount not to exceed Reimbursable Affordable Housing Costs. The City is permitted to assist the Project with other funds in excess of available Pledged Housing Funds in accordance with applicable law.

G. In connection with its approval of the Affordable Housing Project Proposal, the City has approved a loan commitment letter to provide construction and permanent loans in an

aggregate amount not to exceed Five Million Seven Hundred Twenty One Thousand Two Hundred Fifty Dollars (\$5,721,250) (“Loan”) to Developer, a limited partnership formed for the purpose of owning the Property and developing the Project in which Civic or its affiliate acts as the co-general partner, AOF/Pacific Affordable Corp. or its affiliate acts as co-general partner, and with such tax credit limited partners as may be reasonably approved by City to invest in the Project. Proceeds of the Loan are to be used to acquire the Property and construct the Project. Developer has now assembled additional financing for the Project and seeks to close the Loan.

H. The Loan shall be funded from (i) Pledged Housing Funds and (ii) other funds available to assist affordable housing in the City, in such amounts as deemed appropriate in the City’s discretion. City shall determine the order in which Loan funds shall be disbursed. Two Million Seventy Four Thousand Two Hundred Seventy Six Dollars (\$2,074,276) of the Loan will be funded from accrued Pledged Housing Funds in accordance with the DDA (“Accrued Funds Loan”). Three Million Dollars (\$3,000,000) shall be funded from the City’s “SARDA Housing Fund,” which consists of Low and Moderate Income Housing Asset Fund monies (“LMIHAF Funds Loan”). Six Hundred Forty Six Thousand Nine Hundred Seventy Four Dollars (\$646,974) of the Loan will be funded from the City’s “Fund 106” (“Fund 106 Loan”).

I. Civic assigned to City its right to purchase the Property pursuant to that certain Purchase and Sale Agreement and Joint Escrow Instructions, dated as of November 14, 2014, by and between ARI Lake Elsinore, LLC, a California limited liability company, and CP Mission, LLC, a California limited liability company, as amended by that certain Reinstatement and First Amendment made and entered into as of December 15, 2016, for the Property. Developer now desires to purchase the Property from City for use in connection with the development of the Project.

J. Prior to the closing of the Loan, Civic shall assign to Developer all rights and obligations under the City loan commitment for the Loan, and Developer shall assume the same. Additionally, prior to Closing, Developer shall demonstrate to City that it has obtained adequate financing to complete the construction of the Improvements, operate the Development, and perform the other Development activities contemplated herein.

K. In consideration of the Loan and the other obligations of City set forth herein, Developer has agreed that one hundred forty two (142) units in the Development shall be rented to Low and Very Low Income Households at an Allowable Rent. Developer is willing to accept the statutorily authorized occupancy restrictions and other conditions set forth herein.

L. The City has determined that the Developer has the necessary expertise, skill and ability to carry out the commitments set forth in this Agreement and that this Agreement is in the best interests of the City and the health, safety and welfare of its residents, and will materially contribute to the improvement of the City by improving the supply of affordable housing.

THEREFORE, the City and the Developer agree as follows:

ARTICLE 1.  
DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply throughout this Agreement.

“Additional Endorsements” has the meaning set forth in Section 3.5.

“Agreement” means this Disposition, Development and Loan Agreement, including the attached Exhibits and all subsequent operating memoranda, extensions and amendments to this Agreement.

“Allowable Rent” means the rent permitted pursuant to Section 2.2 of the LMIHAF Regulatory Agreement.

“Applicable Land Use Approvals” means the City and other governmental permits and approvals necessary for the construction and operation of the Development, including overall design and architectural review, Riverside County Flood Control approval and Lake Management Conditions, but excluding a building permit.

“Approved Financing” means the Bonds, the Construction Loan, the Permanent Loan, the Tax Credit Funds, the Deferred Mitigation Loan and cash from operations to be contributed by Developer.

“Assigned Development Documents” has the meaning set forth in Section 8.6.

“Assignment of Plans, Reports and Data” means an assignment substantially in the form attached hereto as Exhibit F.

“Bonds” means certain taxable and tax exempt bonds to be issued by CSCDA, the proceeds of which will be loaned to the Developer for construction and permanent financing of the Development, as follows: (a) Series A real estate tax-exempt bonds in the amount of \$21,100,100, a term of 40 years, subject to redemption prior to maturity (the “Series A Bonds”), and (b) Series B Bonds temporary construction tax-exempt bonds in the amount of \$3,641,139 a term of approximately 3 years (the “Series B Bonds”).

“City” means the City of Lake Elsinore, California, and its successors.

“City Council” means the City Council of the City of Lake Elsinore.

“City Documents” means, collectively, this Agreement, the Fund 106 Note, the Fund 106 Deed of Trust, the Financing Statement, the Notice of Affordability Restrictions, the LMIHAF Deed of Trust, the LMIHAF Note, the LMIHAF Regulatory Agreement, the Environmental Indemnity, the Assignment of Plans, Reports and Data, Memorandum of DDLA, Guaranty and all other documents required to be executed or assumed by the Developer in connection with the transactions contemplated by this Agreement, and any extensions, amendments or modifications thereto.

“City Event of Default” has the meaning set forth in Section 8.3

“City Indemnities” has the meaning set forth in Section 10.7.

“City Loans” means the Fund 106 Loan and the LMIHAF Loan.

“City Manager” means the City Manager of the City, or his or her designee.

“City Monitoring Fee” means a fee paid to City annually in the amount of Sixty Dollars (\$60) per Unit, as increased by up to 3.5% per annum.

“City Notes” means the Fund 106 Note and the LMIHAF Note.

“City Recordable Documents” means the Fund 106 Deed of Trust, the LMIHAF Deed of Trust, the LMIHAF Regulatory Agreement, the Notice of Affordability Covenants, the Memorandum of DDLA, and all other documents required to be recorded against the Property in the Official Records in connection with the City Loans.

“Closing” means the date mutually acceptable to the Parties within thirty (30) days following the date on which all conditions precedent set forth herein have been satisfied, but in no event later than the date set forth in the Schedule of Performance, or such other date that the Parties agree upon in writing, upon which the City Recordable Documents shall be recorded in the Official Records and all additional financing for the construction of the Development shall close.

“Code” means the Internal Revenue Code of 1986, as amended.

“Construction Budget” has the meaning set forth in Section 2.6.

“Construction Contract” has the meaning set forth in Section 2.7.

“Construction Lender” means [Red Stone Tax Exempt Funding II LLC].

“Construction Loan” means a loan from Construction Lender to Developer for the Development in the amount of approximately Twenty Four Million Seven Hundred Forty One Thousand One Hundred Thirty Nine Dollars (\$24,741,139).

“Construction Plans” means all construction documentation upon which the Developer, and the Developer’s general contractor and subcontractors, shall rely for constructing and/or rehabilitating each and every part of the Improvements identified in the scope of work specifications and a time schedule for construction.

“Control” shall mean direct or indirect management or control of: (i) the managing member or members in the case of a limited liability company; (ii) the managing general partner or general partners in the case of a partnership; and (iii) a majority of the directors in the case of a corporation.



“Conversion to Permanent Financing” means the date upon which the conditions set forth in Section 3.10 are satisfied.

“CSCDA” means the California Statewide Communities Development Authority, the issuer of the Bonds.

“DDA” is defined in Recital D.

“DDLA” means this Disposition, Development and Loan Agreement, including the attached Exhibits and all subsequent operating memoranda, extensions and amendments to this Agreement.

“Deferred Developer Fee” means the amount of Developer Fee to be paid after conversion to permanent financing in an amount not less than Two Million Ninety Five Thousand Five Hundred Forty Nine Dollars (\$2,095,549). No interest is to be paid on the Deferred Developer Fee. Any Deferred Developer Fee unpaid after the 20<sup>th</sup> year after the completion of construction shall be paid from the Developer’s portion of Residual Receipts.

“Deferred Mitigation Loan” means a loan to Developer from [Civic] in the amount of Three Hundred Sixty Five Thousand Two Hundred Sixty Dollars (\$375,260), the proceeds of which shall be used to mitigate Development Impacts as required in connection with the Lake Management conditions. Payments on the Deferred Mitigation Loan are to be made from the Developer’s share of Residual Receipts.

“Developer” means Mission Cottages LP, a California limited partnership, and its permitted successors and assigns as set forth herein.

“Developer Event of Default” has the meaning set forth in Section 8.4.

“Developer Fee” means fees paid to the Developer LLC for development services as set forth in the development services agreement between the Developer LLC and the Developer in an amount not to exceed Four Million One Hundred Ninety Four Thousand Six Hundred Nine Dollars (\$4,194,609).

“Developer LLC” means Cottages Development LLC, a California limited liability company.

“Development” means the Property and the Improvements.

“DIR” has the meaning set forth in Section 5.9.

“Draw Request” means a request for disbursement of City Loan funds in a form approved by City that complies with the terms and conditions set forth herein.

“Effective Date” has the meaning set forth in the first paragraph of this Agreement.

“Environmental Laws” means any and all present and future federal, state and local laws (whether under common law, statute, ordinance, rule, regulation or otherwise), court or administrative orders or decrees, requirements of permits issued with respect thereto, and other requirements of governmental authorities relating to the environment or to any Hazardous Materials (including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601, *et seq.*), as heretofore or hereafter amended from time to time (“CERCLA”), and the applicable provisions of the Health & Safety Code and the Water Code, and any and all successor statutes and regulations, orders, decrees, guidelines, or pronouncements promulgated thereunder).

“Escrow” means the escrow established with the Title Company for the purpose of conveying the Property from the City to the Developer.

“Escrow Costs” has the meaning set forth in Section 3.4.

“Evidence of Supplemental Financing” has the meaning set forth in Section 2.5.

“Final Loan Disbursement” means a disbursement from the LMIHAF Loan in the amount of Two Hundred Thousand Dollars (\$200,000) upon conversion of the Development financing to permanent financing and satisfaction of the conditions set forth in Section 3.10.

“Financing Plan” means the Developer’s financing plan for financing the acquisition of the Property and the development and operation of the Development, dated as of March 14, 2019, and attached as Exhibit N hereto, as may be amended from time to time in accordance with this Agreement.

“Financing Statement” means the UCC-1 Financing Statement granting the City a security interest in the personal property associated with the Improvements.

“Former Agency” means the Redevelopment Agency of the City of Lake Elsinore, which was dissolved pursuant to California Health & Safety Code Section 34172.

“Fund 106 Deed of Trust” means a deed of trust securing the Fund 106 Loan substantially in the form of Exhibit C.

“Fund 106 Funds” has the meaning set forth in Recital C.

“Fund 106 Loan” means a loan from Fund 106 Funds made by the City to the Developer pursuant hereto, in the aggregate amount of Six Hundred Forty Six Thousand Nine Hundred Seventy Four Dollars (\$646,974).

“Fund 106 Note” means a promissory note evidencing the Developer’s obligation to repay the Fund 106 Loan substantially in the form of Exhibit D.

“Fund 106 Predevelopment Note” means the promissory note evidencing the Developer’s obligation to repay the Fund 106 Predevelopment Loan substantially in the form attached to the Predevelopment Loan Agreement.

“General Contractor” has the meaning set forth in Section 2.7.

“General Partner” means any general partner of the Developer when it is in a partnership form.

“Governmental Regulations” means all local, state, and federal laws, ordinances, rules, requirements, resolutions, policy statements and regulations (including, without limitation, those relating to land use, subdivision, zoning, environmental, labor relations, prevailing wage, notification of sale to employees, Hazardous Materials, occupational health and safety, water, earthquake hazard reduction and building and fire codes (including all Environmental Laws) bearing on the demolition, alteration, replacement, repair, refurbishing, improvement, construction, maintenance, management, use, or operation of the Development.

“Guaranty” means a guaranty in the form of Exhibit P from \_\_\_\_\_ guaranteeing the [construction of the Development] [repayment of the Loan].

“Hazardous Materials” means any substance, material, or waste which is: (1) defined as a “hazardous waste”, “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “restricted hazardous waste,” “pollutant” or any other terms comparable to the foregoing terms under any provision of California law or federal law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) mold; (7) MTBE; or (8) determined by California, federal or local government authority to be capable of posing a risk of injury to health, safety or property. Without limiting the foregoing, Hazardous Materials means and includes any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by any Environmental Laws including any federal, state or local environmental statute, regulation or ordinance presently in effect that may be promulgated in the future, as such as statutes, regulations and ordinances may be amended from time to time.

The term “Hazardous Materials” shall not include: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of commercial properties, buildings and grounds, or typically used in office or residential activities, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health & Safety Code Section 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Improvements, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet and saccharine, so long as such materials and substances are stored, used and disposed of in compliance with all applicable Environmental Laws.

“Improvements” means and includes any improvement of whatsoever character constructed on, under or over the Property existing as of the date of Closing and any construction, demolition, remediation and grading done on the Property by Developer subsequent to Closing, as well as all buildings, structures, fixtures, foundations, excavation, parking, landscaping, underground installations, and other work, construction and improvement of whatsoever character undertaken or constructed on, under or over the Property by Developer, which shall at a minimum consist of: (i) approximately one hundred forty three (143) units of

affordable housing for income-eligible households, including one (1) managers' unit, to be developed on the Property in accordance with this Agreement, (ii) office space; (iii) community meeting room and social service center for use by the residents of the Property; (iv) passive and active open space areas; and (v) related parking and other improvements located or to be located on the Property, all as more particularly set forth in the Scope of Development attached as Exhibit J.

"Investor" means Riverside Mission Trails Partner, LP, a Delaware limited partnership, and Riverside Manager, LLC, a New Jersey limited liability company, and their respective successors and assigns.

"Lake Elsinore Back Basin" means \_\_\_\_\_.

"Lake Management Conditions" means all permits or similar requirements administered by, among others, the Western Riverside County Regional Conservation Authority, the California Department of Fish and Wildlife, the United States Department of Fish and Wildlife, the U.S. Army Corps of Engineers, and the Santa Ana Regional Water Quality Control Board, required to be satisfied prior to or concurrently with construction of the Development within the Lake Elsinore Back Basin.

"Law" has the meaning set forth in Section 6.2.

"Lender Policy" has the meaning set forth in Section 3.5.

"LMIHAF" has the meaning set forth in Recital B.

"LMIHAF Deed of Trust" means the deed of trust that will encumber the Developer's fee interest in the Property to secure repayment of the LMIHAF Loan, substantially in the form attached as Exhibit G.

"LMIHAF Loan" means the loan made by the City to the Developer from LMIHAF Loan Funds and Accrued Funds in the amount of Five Million Seventy Four Thousand Two Hundred Seventy Six Dollars (\$5,074,276) in accordance with the terms and conditions set forth herein.

"LMIHAF Note" means the promissory note evidencing the LMIHAF Loan substantially in the form attached as Exhibit E.

"Management Agent" shall mean the professional property management company retained by the Developer, as reasonably acceptable to the City, to perform the day-to-day property management of the Development.

"Management Plan" has the meaning set forth in Section 6.10.

"Memorandum of DDLA" means the Memorandum of Disposition, Development and Loan Agreement to be recorded against the Property at Closing. The form of Memorandum of DDLA is attached as Exhibit C.

“Notice of Affordability Restrictions” means the Notice of Affordability Restrictions on Transfer of Property, substantially in the form included in Exhibit L.

“Notice of Completion” means the certificate to be recorded on the Property by the Developer as provided under the California Civil Code upon completion of the Improvements.

“Official Records” means the official records of the County of Riverside.

“Parties” means the City and the Developer.

“Partnership Agreement” means the Amended and Restated Agreement of Limited Partnership of Mission Cottages, LP, as may be amended from time to time.

“Party” means either the City or the Developer.

“Permanent Lender” means [Red Stone Tax Exempt Funding II LLC].

“Permanent Loan” means a loan from Permanent Lender to Developer in the amount of not more than Twenty-One Million One Hundred Thousand Dollars (\$21,100,00) to be made upon the Development’s Conversion to Permanent Financing.

“Plans and Specifications” means any and all plans, drawings, studies, reports and related documents concerning the construction of the Development submitted by Developer to City, and approved by City as evidenced by issuance of the City’s Building and Safety Division of a ready to issue building permit letter on or prior to the Closing, including, without limitation, all architectural and engineering plans, and all approved amendments, modifications, supplements, general conditions and addenda thereto.

“Predevelopment Loan” means the loan made by the City to the Developer pursuant to the Predevelopment Loan Agreement, in the amount of Seven Hundred Seventy One Thousand Five Hundred Dollars (\$771,500) from Pledged Housing Funds.

“Predevelopment Loan Agreement” means that certain Predevelopment Loan Agreement dated August 31, 2017 between City and Civic documenting the Predevelopment Loan and includes all exhibits thereto and or all extensions, amendments or modifications thereof.

“Property” means the real property to be purchased and developed by the Developer pursuant to this Agreement, which real property is more particularly described in Exhibit A.

“Purchase Price” means the purchase price for the Property, payable by Developer from proceeds of the LMIHAF Loan, in the amount of Three Million Two Hundred Forty Three Thousand Nine Hundred Sixty Two Dollars (\$3,243,962).

“Regulatory Agreement” means the regulatory agreement and declaration of restrictive covenants, to be executed by the Parties and recorded against the Property at the Closing, substantially in the form attached as Exhibit K.

“Residual Receipts” means the effective gross rental income from the Development, less actual, reasonable and customary costs, fees and expenses of operation directly attributable to the Development, including, but not limited, to the following: maintenance; alterations; taxes; landscaping; common utilities; premiums for property damage and liability insurance; any annual license or certificate of occupancy fees required for operation of the Development; security services; advertising and marketing; debt service on subordinate loan(s) not payable out of Residual Receipts if approved by the City Manager; debt service on senior loans providing construction or permanent funding to the Development approved as part of the Approved Financing and loans refinancing such debt with no “cash out” to the Developer; a property management fee; a general partner management fee; an asset management fee, deposits into a replacement reserve; deposits into an operating reserve; resident service costs; payment of any Deferred Developer Fee, except as set forth herein; payment of principal or interest on any indebtedness of Developer to any affiliate of Developer or partner of Developer to repay completion and operating deficit loans relating to the Development (provided that such loans and repayment are permitted by the agreements and programs governing debt and equity invested in the Development); partner loans from the partners of the Developer (provided that such loans and repayment are permitted by the agreements and programs governing debt and equity invested in the Development); tax credit adjusters as set forth in the Developer’s partnership agreement; payments of deductibles in connection with casualty insurance claims not paid from reserves; the amount of uninsured losses actually replaced, repaired or restored, and not paid from reserves; and other ordinary and reasonable operating expenses not listed above. All fees and costs are to be substantially as outlined in the Developer Financing Plan. Any reasonable revisions thereto shall be reasonably approved by the City Manager as part of the Evidence of Supplemental Financing. Any general partner management fees shall not exceed \$35,000 per year, as may be increased by up to 3.5% per annum, [and shall not bear interest and shall not accrue for later payment in the event there are insufficient funds to pay the general partner management fee in any given year.] Limited Partner asset management fees shall not exceed \$7,500 in the first year of operation, as may be increased by up to 3.5% per annum, [and shall not bear interest and shall not accrue for later payment in the event there are insufficient funds to pay the general partner management fee in any given year.]

“SARDA Loan” is defined in Recital H.

“Schedule of Performance” means the summary schedule of actions to be taken by the Parties pursuant to this Agreement to achieve disposition of the Property to the Developer and the development of the Improvements. The Schedule of Performance is attached to this Agreement as Exhibit H.

“Scope of Development” means the Scope of Development attached as Exhibit J, as may be amended prior to Closing in accordance herewith.

“Security Financing Interest” has the meaning set forth in Section 9.1.

“Senior Lender” has the meaning set forth in Section 4.6.

“Senior Lien” has the meaning set forth in Section 4.6.

“Tax Credit Funds” means the proceeds from the sale of limited partnership interests in the Developer, when in partnership form, to the Investor in the anticipated amount set forth in the Financing Plan.

“Tax Credit Reservation” means a tax-exempt or preliminary reservation of federal 4% or 9% low income housing tax credits from TCAC.

“TCAC” means the California Tax Credit Allocation Committee.

“TCAC Reservation Cycle” means the application funding round, or cycle, for the reservation and allocation of low income housing tax credits established by TCAC in accordance with California Health & Safety Code Section 50199.14(a), and Section 10310(a) of Title 4, Division 17, Chapter 1 of the California Code of Regulations, as may be amended from time to time.

“Term” means the term of this Agreement, which shall commence on the Effective Date and shall continue until the fifty-fifth (55<sup>th</sup>) anniversary of the date of recording the Notice of Completion for the Development.

“TIF Bonds” means bonds issued by CSCDA in the original principal amount of Eight Million Nine Hundred Twenty Five Thousand Dollars (\$8,925,000) to be secured by an assignment of Civic’s right to receive tax increment for an affordable housing project pursuant to the DDA.

“Title Company” means Chicago Title Company.

“Title Policy” has the meaning set forth in Section 3.5.

“Title Report” means the preliminary title report for the Property dated as of \_\_\_\_\_, 2019, prepared by Title Company.

“Transfer” has the meaning set forth in Section 7.1.

Section 1.2    Exhibits. The following exhibits are attached to and incorporated in the Agreement:

- Exhibit A:    Legal Description of the Property
- Exhibit B:    Form of LMIHAF Deed of Trust
- Exhibit C:    Form of Fund 106 Deed of Trust
- Exhibit D:    Form of Fund 106 Note
- Exhibit E:    Form of LMIHAF Note
- Exhibit F:    Form of Assignment of Plans, Reports and Data
- Exhibit G:    Form of Memorandum of DDLA
- Exhibit H:    Schedule of Performance

Exhibit I:	Environmental Indemnity
Exhibit J:	Scope of Development
Exhibit K:	Form of Regulatory Agreement
Exhibit L:	Notice of Affordability Restrictions
Exhibit M:	Construction Budget
Exhibit N:	Financing Plan
Exhibit O:	Subordination Agreement (Deferred Mitigation Loan)
Exhibit P:	Guaranty

## ARTICLE 2. CONDITIONS PRECEDENT TO CLOSING

Section 2.1 Conditions Precedent to Closing. The requirements set forth in this Article 2 and Section 3.6 are conditions precedent to the City's obligations to sell the Property to Developer and provide the LMIHAF Loan and Fund 106 Loan to Developer. The City's obligation to sell the Property to Developer and provide the LMIHAF Loan and Fund 106 Loan to Developer shall be subject to the satisfaction of all such conditions precedent prior to the date or dates set forth in the Schedule of Performance, unless otherwise waived in writing by the City.

Section 2.2 Applicable Land Use Approvals. Developer shall have obtained the Applicable Land Use Approvals for the Improvements.

Section 2.3 Environmental Compliance. Developer shall be responsible for satisfaction of all applicable California Environmental Quality Act ("CEQA") and National Environmental Policy Act of 1969, as amended ("NEPA"), requirements for the Development.

Section 2.5 Management Agreement. No later than the date set forth in the Schedule of Performance, the Developer shall submit to the City for approval the proposed management agreement with the proposed management agent pursuant to the requirements of Section 6.8.

The City shall approve or disapprove the Management Agreement in writing within ten (10) days following the City's receipt of the complete Management Agreement, which approval shall not be unreasonably denied. If the City fails to provide a written disapproval notice to the Developer within such ten (10) day period, then such Management Agreement shall be deemed approved by the City. If the Management Agreement is disapproved by the City, the City shall deliver a written notice to the Developer setting forth, in reasonable detail, the reasons for such disapproval. The Developer shall have ten (10) days following the receipt of such notice to submit a revised Management Agreement. The provisions of this Section relating to time periods for approval, disapproval, and resubmission of a Management Agreement shall continue to apply until the final Management Agreement have been approved by the City.

### Section 2.6 Evidence of Supplemental Financing; Financing Plan.

At least five (5) days prior to the anticipated date for Closing, Developer shall submit to City the evidence of Supplemental Financing and Developer's Financing Plan, updated to the date of submission. Developer shall submit satisfactory evidence that Developer has obtained, or will obtain on or prior to the Closing, sufficient construction financing to finance the development of the Development and equity capital or other financing for Permanent Financing



of the Development, all on commercially reasonable terms, such that the City is satisfied that the Development can be constructed and operated in a financially feasible manner in accordance with this Agreement. Developer shall provide such documents and other deliverables as requested by City (collectively, the “**Evidence of Supplemental Financing**”), which shall include, at a minimum:

(a) Construction loan or other construction financing documents in an amount sufficient to construct the Improvements in accordance herewith along with evidence reasonably satisfactory to the City Manager that the lender intends to execute the same and provide an initial funding on the Closing. Any subordination agreement subordinating the City Loan Documents to the construction financing shall provide for notice of default to City, and the right to cure. The Parties acknowledge that Developer has provided these documents to City.

(b) Evidence of such other loans, equity or grants as may be required to pay (i) the amount of the Construction Contract for the Improvements, plus (ii) an amount equal to all consultant and loan fees, “points,” commissions, bond issuance costs, charges, furnishings, fixtures, taxes, interest, startup costs, Developer’s overhead and administration, and other costs and expenses of developing, completing and operating the Development. Such other financing shall have been negotiated with the Developer, any construction lender, and the Investor, and shall be executed by all parties and ready to close concurrently with the Closing. The Parties acknowledge that Developer has provided these documents to City.

(c) A copy of the most recently prepared audited Annual Financial Statement for Civic Partners Elsinore LLC and each of the administrative and managing co-general partners of Developer.

(d) If Tax Credits are to be used to fund the Development, evidence satisfactory to City of the amount of tax credit equity to be received, and the associated terms and conditions for use. Developer shall provide City with a copy of its draft partnership agreement as soon as it becomes available. The agreement of limited partnership shall be executed by all parties on or prior to Closing, and an initial contribution shall become payable effective upon or concurrently with the Closing unless otherwise agreed by the City Manager.

(e) Evidence of such other financing or grants constituting the Permanent Financing, and such evidence as may be required to satisfy the City that Developer has obtained sufficient financing to operate the Development during the Term such that the Development is financially feasible, and able to meet its financial obligations as required hereby and by any other agreements binding upon the Development, and in accordance with the Financing Plan. The Parties acknowledge that Developer has provided these documents to City.

(f) The Construction Budget, Construction Contract, and Financing Plan. The Parties acknowledge that Developer has provided these documents to City.

City’s financial consultants shall review the Evidence of Supplemental Financing and determine that the Financing Plan is reasonable and that the Development is financially feasible. All documents received by City pursuant to this Section shall demonstrate that the Financing Plan is supported by adequate documentation and that the financial feasibility of the

Development reflected thereon is achievable based on the assumptions used to prepare the Financing Plan. Prior to execution of any final construction financing documents by Developer, Developer shall secure the City's approval of the terms and conditions of those construction financing documents, which approval shall be limited to and only for the purpose of assuring compliance of the construction financing documents with the requirements of this Agreement. Concurrent with any disapproval, City shall inform Developer in writing of the reasons for such disapproval.

Section 2.7 Construction Budget. At least fifteen (15) days prior to the anticipated date for Closing, Developer shall submit to and obtain City's approval of a budget, showing the projected costs of the Improvements ("**Construction Budget**") and costs of marketing the Units and a sources and uses statement showing that the projected funding sources will be available as needed to fund all such projected costs at the time incurred. The Parties acknowledge that Developer has satisfied this requirement. Once City approves the Construction Budget, Developer shall not amend the Construction Budget without the prior written approval of City.

Section 2.8 Construction Contract. At least fifteen (15) days prior to the anticipated date for Closing, Developer agrees to deliver to City, for its review and approval, a draft fixed price or guaranteed maximum cost construction contract(s) (the "**Construction Contract**") for all of the Improvements constituting the Development, which Construction Contract shall obligate a reputable and financially responsible general contractor(s) ("**General Contractor**"), licensed in California and with experience in completing the type of Improvements contemplated by this Agreement, to commence and complete the construction of those Improvements in accordance with this Agreement and at the price stated therein. The Parties acknowledge that Developer has satisfied this requirement. The City approves Premier Design + Build Group as an acceptable general contractor. The Construction Contract shall contain a schedule of values that is consistent with the City-approved Construction Budget. City shall not unreasonably withhold, delay or condition its approval of the Construction Contract provided that such contract conforms to the requirements of this Agreement.

The Developer shall, at the request of City, assign the Construction Contract to City effective upon Developer's default under the City Loans, with the right, but not the obligation, to cure defaults thereunder and to assume Developer's obligations and rights under the contract; provided, that such right to cure and assume that contract shall be subject to the right, if any, of Developer's construction lender with respect to such Construction Contract. In addition, all change orders must be submitted to City for approval; provided that if Developer shall not have received any approval or disapproval of the change order within ten (10) Business Days, the change order shall be deemed approved by City. Further, the Construction Contract shall set forth a reasonably detailed schedule for completion of each stage of construction.

City approval of the Construction Contract shall not constitute a waiver by City of any breach or violation of this Agreement that is a result of acts that are or purport to be in compliance with or in furtherance of said Construction Contract.

In the event of any disapproval, City shall, concurrently with delivery of the notice of such disapproval to Developer, inform Developer in writing of the reasons for disapproval and the required changes to the Construction Contract.

At least fifteen (15) days prior to Closing, Developer shall provide for City's review and approval forms of payment and performance bonds in an amount not less than the aggregate development cost of the Project naming the City as a beneficiary as well as a proposed form of Subordination Agreement between City and Construction Lender providing for appropriate City protections in the event of a default during construction. The Parties acknowledge that Developer has satisfied this requirement.

Section 2.9 Insurance. The Developer shall furnish to the City evidence of general liability and automobile liability insurance coverage meeting the requirements below, no later than fifteen (15) days prior to the date of Closing. The Parties acknowledge that Developer has satisfied this requirement.

### ARTICLE 3. CLOSING AND DISBURSEMENT OF THE LMIHAF LOAN AND FUND 106 LOAN

Section 3.1 Provision of Loans. Subject to the terms and conditions of this Agreement, upon the Closing, City agrees to convey the Property to Developer and provide the LMIHAF Loan and Fund 106 Loan in accordance herewith. After Closing, disbursements of the remaining balance of the Loan shall be made in accordance with this Article 3.

#### Section 3.2 Transfer of Property; Disbursement of Loan Proceeds

City purchased the Property as an accommodation to Developer. Developer was in escrow to purchase the Property and agrees that it has had sufficient time during the escrow period to perform due diligence on the Property. In consideration of payment of the Property Purchase Price and such other covenants and consideration as set forth in this Agreement, upon satisfaction of City's Conditions Precedent to Closing, City shall convey fee interest in the Property to Developer and Loan Proceeds to be used for payment of a portion of the Property Purchase Price shall be deemed disbursed at Closing.

#### Section 3.3 Condition of the Property; Environmental

##### (a) Disclosure

City hereby represents and warrants to Developer that City has not received any prior written notice or communication from any government agencies having jurisdiction over the Property, or any other third party, notifying City or any third party of, and to the best of City's knowledge, the presence of surface or subsurface zone Hazardous Materials in, on, adjacent to, or under the Property, or any portion thereof.

Developer hereby represents and warrants to City that Developer has not received any prior written notice or communication from any government agencies having jurisdiction over the Property, or any other third party, notifying Developer or any third party of, and to the best of Developer's knowledge, the presence of surface or subsurface zone Hazardous Materials in, on, adjacent to, or under the Property, or any portion thereof.

##### (b) Developer's Investigation of the Property

Developer shall have the right, to the extent Developer deems necessary, to seek out and obtain until one week prior to the Closing (the “Due Diligence Period”) such additional information and documentation as Developer deems necessary in order to evaluate the Property, to investigate and study the condition of the Property, and to contact, meet with and make submissions and applications to all applicable governmental authorities with respect to the Entitlements, as it relates only to the current status of the same but not to any modifications thereto. Developer may elect, in its sole and absolute discretion, to proceed with the Closing prior to the expiration of the Due Diligence Period. Developer represents that except for the representations, warranties and covenants of City contained in this Agreement, it has relied and shall rely solely upon (i) its own expertise and that of Developer’s consultants in purchasing the Property, and (ii) Developer’s own knowledge of the Property based on its investigations and inspections of the Property. Developer has conducted, or by the Closing will conduct, such inspections and investigations of the Property as Developer deemed or shall deem necessary, including, but not limited to, the physical and environmental conditions of the Property, and shall rely upon same. Except for the City’s representations, warranties and covenants and as may be expressly provided herein, upon Closing, Developer shall assume the risk that adverse matters, including, but not limited to, adverse physical and environmental conditions not known to City, may not have been revealed by Developer’s inspections and investigations. Developer acknowledges and agrees that except for the representations and warranties of City herein, upon Closing, City shall sell and convey to Developer and Developer shall accept the Property “as is, where is,” with all faults and defects (latent and apparent). Except for the representations and warranties of City contained herein and in any documents executed and delivered by City at Closing pursuant to this Agreement, Developer further acknowledges and agrees that there are no oral agreements, warranties or representations, collateral to or affecting the Property by City or any agent, employee or contractor of City or any third party. City is not liable or bound in any manner by any oral or written statements, representations, or information pertaining to the Property furnished by City, or any real estate broker, contractor, agent, employee, servant or other person, unless the same are specifically set forth in this agreement. Developer acknowledges that the Property Purchase Price reflects the “as is” nature of this sale and any faults, liabilities, defects or other adverse matters that may be associated with the Property. Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with its counsel and understands the significance and effect thereof.

During the Due Diligence Period, representatives of Developer shall have the right to access the Property during regular business hours and upon reasonable Notice to City for the purpose of examining, inspecting, obtaining data and conducting surveys and tests necessary to reasonably assess the suitability of the Property for the Project, or for any other purpose as determined by Developer. Any surveys and tests conducted on the Property by Developer’s representatives shall be done at the sole expense of Developer and only after (i) Developer has secured any necessary permits from the appropriate governmental agencies and (ii) Developer has delivered to City a copy of a Right of Entry and License Agreement (Due Diligence) in such form as is required by City, fully executed and acknowledged by Developer and satisfying the conditions precedent to Developer’s entry onto the Property set forth therein.

(c) Developer Approval or Disapproval of Condition of Property

(A) Physical Condition of Property. Developer shall approve or disapprove of the physical or any other condition or matter affecting the Property within the Due Diligence Period. Developer's approval of the physical or any other condition or matter affecting the Property shall be both a City's and a Developer's Condition Precedent to the Closing. If Developer disapproves of the physical condition of the Property, then Developer may, in Developer's sole discretion, terminate the Escrow and this Agreement by written Notice to City, in which event, any deposits or sums paid to City and/or deposited with Escrow, shall be immediately returned to Developer without any further instructions.

(B) Environmental Condition of Property. In addition, Developer shall approve or disapprove of the environmental or any other condition or matter affecting the Property within the Due Diligence Period. Developer's approval of the environmental condition of the Property shall be both an City's and a Developer's Condition Precedent to the Closing. If Developer disapproves of the environmental condition of the Property (or deemed disapproval thereof), then Developer may terminate the Escrow and this Agreement by written Notice to City

(C) Notice to Proceed or Terminate. Prior to the termination of the Due Diligence Period, Developer shall deliver to City and Escrow Agent either (i) Notice of Developer's intention to proceed with the acquisition of the Property ("**Developer's Notice to Proceed**"), or (ii) Notice of Developer's intention to terminate Escrow and this Agreement ("**Developer's Notice to Terminate**") whereupon any sums deposited by Developer into Escrow and all interest earned thereon shall be immediately returned to Developer without any further instructions by the parties, and without any right or need on City's part to approve or reject Escrow's required documents for the release of such amounts.

Developer shall be deemed to have accepted the environmental, physical and other conditions of the Property upon the Closing. In the event that Developer delivers Developer's Notice to Terminate, Escrow for the Property shall terminate and the parties shall have no further obligations hereunder, except those that expressly survive the termination of this Agreement.

(d) Required Disclosures After Closing

After the Closing, Developer shall notify City, and provide to City, a copy or copies, of all environmental permits, applications, or entitlements relating to the Property, including notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks.

Except for customary materials used and applied in accordance with all Governmental Regulations and in the ordinary course of completing, maintaining and operating the Improvements or customarily utilized by households for domestic purposes in accordance with all Governmental Regulations, in the event of a release of any Hazardous Materials into the environment, Developer shall, reasonably promptly after the release, furnish to City a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request, Developer shall furnish to City a copy or copies of any and

all other environmental entitlements or inquiries relating to or affecting the Property including, but not limited to, all permit applications, permits and reports.

(e) Duty to Prevent Hazardous Materials Contamination

The Developer hereby represents and warrants that, at all times from and after the Closing, the Developer shall not cause or permit the Property, or the Improvements thereon to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials. After the Closing, Developer shall take all reasonably customary and necessary precautions to prevent the release of any Hazardous Materials onto the Property or into the environment in connection with the use or development thereof in violation of applicable Governmental Regulations. Such precautions shall include complying with and causing all activities on the Property to comply with all Governmental Regulations with respect to Hazardous Materials. In addition, the Developer shall install and utilize such equipment and implement and adhere to all procedures, requirements and restrictions imposed by Governmental Regulations pertaining to the disclosure, storage, use, removal and disposal of Hazardous Materials. Developer further covenants that it shall not, except for customary materials used and applied in accordance with all Governmental Regulations and in the ordinary course of completing, maintaining and operating the Improvements or customarily utilized by households for domestic purposes in accordance with all Governmental Regulations, (i) deposit Hazardous Materials in, on or upon the Property, in violation of any applicable Governmental Regulations, nor (ii) permit the deposit of Hazardous Materials in, on or upon the Property in violation of any applicable Governmental Regulations.

Prior to and during construction of the Project, Developer shall not knowingly engage in any Hazardous Materials Activity, except in strict compliance with all Environmental Laws, and shall comply with all Environmental Laws in connection with any activity on or about the Property, including the construction and operation of the Project. Developer shall maintain the Property and any Improvements thereon in good condition free from graffiti and from any accumulation of debris or waste materials. Developer shall keep and maintain the Property in conformity with the Lake Elsinore Municipal Code.

(f) Environmental Inquiries

In the event that, after Closing, Developer discovers the presence of Hazardous Materials under or upon the Property in violation of applicable Governmental Regulations, or there is a release of Hazardous Materials on or from the Property, the Developer shall provide to City a copy of any environmental permits, disclosures, applications, entitlements or inquiries relating to such Hazardous Materials, including any notices of violation, notices to comply, citations, inquiries, clean up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Governmental Regulations relating to Hazardous Materials and underground tanks including, specifically, without limitation, the following:

- i. All required reports of releases of Hazardous Materials, including notices of any release of Hazardous Materials as required by any Governmental Regulations;
- ii. All notices of suspension of any environmental permits;

iii. All notices of violation from federal, state or local environmental authorities;

iv. All orders under the State Hazardous Waste Control Act and the State Hazardous Materials Account Act and corresponding federal statutes, concerning investigation, compliance schedules, clean up, or other remedial actions;

v. All orders under the Porter Cologne Act, including corrective action orders, cease and desist orders, and clean up and abatement orders;

vi. Any notices of violation from OSHA or Cal OSHA concerning employees' exposure to Hazardous Materials; and

vii. All complaints and other pleadings filed against the Developer relating to the Developer's storage, use, transportation, handling or disposal of Hazardous Materials on the Property.

In the event that a release of Hazardous Materials into the environment occurs on the Property following the Closing in violation of applicable Governmental Regulations, the Developer shall promptly and fully remediate such Hazardous Materials in accordance with all Governmental Regulations. Upon request of City, the Developer shall furnish to City a copy of any and all other environmental documents or inquiries relating to or affecting the Property from time to time during Developer's ownership or possession thereof.

Section 3.4 Opening Escrow. To accomplish the Closing of the transfer of the Property, the Loan and the Approved Financing, the Parties shall establish an escrow with the Escrow Holder and shall execute and deliver to the Escrow Holder written instructions that are consistent with this Agreement.

Developer shall pay, at Closing and funded from Approved Financing, the customary and usual Escrow and title fees, charges and costs which arise from the Escrow and sale of the Property (the "**Escrow Costs**"), and prepare and enter into such escrow instructions as are reasonably acceptable to Developer, City and Escrow Agent.

The Parties shall submit documents and funds into Escrow as set forth in this Section.

Section 3.4.1 Submittals by Developer. At least two (2) Business Days prior to Closing, Developer shall submit into Escrow the following:

- (A) The Grant Deed, duly executed by Developer and acknowledged.
- (B) The LMIHAF Deed of Trust, duly executed by Developer and acknowledged.
- (C) The Fund 106 Deed of Trust, duly executed by Developer and acknowledged.
- (D) The Regulatory Agreement, duly executed by Developer and acknowledged.

(E) The Notice of Affordability Restrictions, duly executed by Developer and acknowledged.

(F) Any other documents or other deliverables reasonably requested by City or the Escrow Agent.

Section 3.4.2 Submittals by City. At least two (2) Business Days prior to Closing, City shall submit into Escrow the following:

(A) The Grant Deed, duly executed by City and acknowledged.

(B) A non-foreign transferor affidavit in a form acceptable to Escrow Agent.

(C) The Regulatory Agreement, duly executed by City and acknowledged.

(D) The Notice of Affordability Restrictions, duly executed by City and acknowledged.

(E) Any other documents or other deliverables reasonably requested by Developer or the Escrow Agent.

### Section 3.5 Title Insurance.

Concurrently with the Closing, the Title Company shall issue and deliver to:

(a) Developer, at Developer's cost, a CLTA owner's policy of title insurance, together with the Approved Endorsements (the "**Title Policy**"), insuring that a fee interest to the Property is vested in Developer in the condition of title as set forth herein. The Title Policy shall be in such amount as is reasonably requested by Developer; provided, however, that the Title Company shall, if requested by Developer, provide an ALTA owner's policy of title insurance and any endorsements reasonably requested by Developer or the Investor (the "**Additional Endorsements**"). The differential between the premiums for the ALTA policy and the CLTA policy and the costs of Additional Endorsements shall be borne by Developer. City shall cooperate with and assist Developer in obtaining any Additional Endorsements, including required indemnities that are customary and reasonable, or special coverage reasonably requested by Developer and the Investor; and

(b) City, at Developer's cost, an ALTA lender's policy of title insurance in the amount of the City Loans, together with such endorsements as are reasonable requested by City (the "**City Lender Policy**"), insuring City's loan subject only to the liens of current real property taxes and assessments, the lien of the Developer's construction loan and any exception to title which may be approved by City.

Section 3.6 Closing Date; Closing Conditions. The Closing shall occur no later than the date set forth in the Schedule of Performance, and only in the event that all conditions precedent to Closing set forth in Articles 2 and 3 have been satisfied or waived by the City or the Developer, as applicable. Either party at its option may terminate this Agreement if any of the



conditions precedent set forth below are not satisfied or waived in writing by the appropriate party by April 2, 2019. The following conditions shall be satisfied prior to or concurrently with, and as conditions of, execution of the City Documents by City:

(a) The Developer shall provide the City with an authorizing resolution, approving the Approved Financing, this Agreement and the transactions, conditions and covenants set forth in this Agreement.

(b) The Developer shall have executed and delivered to the City the City Documents and any other documents and instruments required to be executed and delivered by Developer, and any revisions or amendments thereto, if reasonably required by City, all in a form and substance satisfactory to the City.

(c) The City Recordable Documents shall have been recorded against the Property as liens subject only to the exceptions authorized by the City.

(d) The Developer and parties to the Approved Financing shall have executed and delivered all documents required to be executed and delivered in connection therewith.

(e) Any documents required to be recorded in connection with the Approved Financing shall have been recorded against the Property and shall be in full force and effect.

(f) A title insurer reasonably acceptable to the City is unconditionally and irrevocably committed to issuing a 2006 ALTA Lender's Policy of insurance insuring the lien priority of the deeds of trust in the total amount of the principal of all the City Loans, subject only to such liens (if any) set forth in the Financing Plan as prior to the liens of the City and such exceptions and exclusions as may be reasonably acceptable to the City and containing such endorsements as the City may reasonably require.

(g) There shall exist no condition, event or act which would constitute a breach or default under this Agreement or the documents evidencing the Approved Financing.

(h) All representations and warranties of the Developer contained in any part of this Agreement shall be true and correct.

(i) Developer shall have deposited or caused to be deposited all funds necessary for the Closing or otherwise required pursuant to this Agreement.

(j) Developer shall have delivered to City certificates of good standing for California and any other state in which the Developer is required by law to be qualified, dated within thirty (30) days of Closing.

(k) Developer shall have obtained and delivered to City (i) payment and performance bonds from responsible sureties admitted in the State of California in the amount of 100% of the construction costs of the Project and naming City as co-obligee, and (ii) such other evidence satisfactory to City in such form as reasonably required by City insuring the lien free completion of the Project in accordance with and subject to the terms and conditions of this

Agreement. Developer shall have delivered the construction completion and payment bonds as required hereby.

(l) Developer, at its cost, shall have procured and be maintaining in full force and effect insurance consistent with the requirements hereof and in the amounts specified therein. Developer shall have submitted to City an insurance certificate or other acceptable written evidence demonstrating compliance with the foregoing requirement.

(m) Developer shall have obtained all Applicable Land Use Approvals necessary to develop the Property with the Improvements in the manner contemplated by this Agreement (which shall be final and not subject to further appeal), including a ready to issue building permits upon payment of fees letter for the Development. Developer, City and any other necessary third party shall have executed all documents required by City in connection with this Agreement, all of which shall be in a form reasonably acceptable to City, and any documents required to be recorded in connection therewith shall have been signed by all parties and deposited into Escrow.

(n) The Developer's construction financing documents shall have been executed by Developer and the Construction Lender and the Construction Loan shall close concurrently with the closing of the City Loans.

(o) The Deed of Trust securing the construction financing shall have been recorded against the Property as a lien.

(p) If Developer has submitted satisfactory Evidence of Supplemental Financing which includes Tax Credit Funds, the Agreement of Limited Partnership with the tax credit Investor shall have been executed by all parties thereto, a copy shall have been received by City, and no event of default shall have occurred thereunder and be continuing. The form and content of the Agreement of Limited Partnership shall have been approved by City, which approval shall be limited to confirming the Tax Credit Funds amounts and delivery dates are consistent with the approved Financing Plan. The TIF Bonds shall issue prior to or concurrently with the Closing, and the net proceeds of the TIF Bonds shall be available for financing of the Development upon Closing.

(q) No litigation shall be pending or threatened by any third parties which seeks to enjoin the transactions contemplated herein.

(r) The Planning Commission shall have determined that the Development is consistent with the City's General Plan.

(s) Any other documents or conditions reasonably required or imposed by City to implement this Agreement shall have been delivered or met.

Section 3.7 Condition of Title. Upon the Closing, the Developer shall have insurable fee interest to the Property which shall be free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except:

(a) applicable building and zoning laws and regulations;

- (b) the provisions of this Agreement and the Approved Financing;
- (c) the Regulatory Agreement and Notice of Affordability Restrictions;
- (d) the LMIHAF Deed of Trust and Fund 106 Deed of Trust;
- (e) any lien for current taxes and assessments or taxes and assessments accruing subsequent to closing;
- (f) the liens of any loan from the Approved Financing;
- (g) conditions, covenants, restrictions or easements currently of record or as otherwise approved by the Developer in its reasonable discretion; and
- (h) exceptions [\_\_\_\_\_ and \_\_\_\_\_ inclusive,] as shown on the Title Report.

Section 3.8 Disbursement of City Loan Proceeds. Upon the Closing, the Predevelopment Loan and Purchase Price shall be deemed paid with proceeds of the LMIHAF Loan, and a corresponding amount of funds from the LMIHAF Loan shall be deemed disbursed as follows: (i) One Million Three Hundred Two Thousand Seven Hundred Seventy Six Dollars (\$1,302,776) in Pledged Housing Funds shall be deemed disbursed upon Closing from the LMIHAF Loan for payment of a portion of the Purchase Price, (ii) One Million Nine Hundred Forty One Thousand One Hundred Eighty Six Dollars (\$1,941,186) shall be deemed disbursed from the LMIHAF Loan in payment of the Purchase Price, (iii) Seven Hundred Seventy One Thousand Five Hundred Dollars (\$771,500) in Pledged Housing Funds shall be deemed disbursed from the LMIHAF Loan in payment of the Predevelopment Loan. At Closing, additional funds from the LMIHAF Loan shall be disbursed for the payment of project cost in such amounts as set forth in the Financing Plan, subject to the approval of a Draw Request therefore by the City.

City shall disburse proceeds of the remaining LMIHAF Loan and the Fund 106 Loan funds (except for the Final Loan Disbursement) to or on behalf of Developer only upon satisfaction of the conditions precedent set forth in this Section 3.8 as reasonably determined by the City Manager. No disbursement of the loan proceeds shall be made for eligible project costs pursuant to any Draw Request until all of the following conditions precedent have been satisfied or waived, as determined by City:

(a) Compliance With Previous Conditions

The conditions precedent set forth in Section 3.6 shall have been met on the date of the Closing and shall continue to be met as of the disbursement date.

(b) Evidence of Expenditure

Developer has submitted to City a Draw Request including invoices, receipts or other written documentation reasonably satisfactory to the City Manager evidencing

Developer's incurrence of costs in accordance with the Construction Budget or Finance Plan, and City has approved such Draw Request.

(c) No Default

Subject to applicable notice and cure periods, there shall be no condition, event or act which would constitute an Event of Default by Developer under the City Documents, the Construction Loan, or any other contract applicable to the Development or which upon the giving of notice or the passage of time, or both, would constitute an Event of Default.

(d) Representations and Warranties

All representations and warranties of Developer herein contained shall be true and correct as if made on and as of the date of the disbursement.

(e) No Stop Notice

No stop notice (whether bonded or not) shall have been served upon or otherwise delivered to Developer, Construction Lender or City in connection with the construction of the Development or otherwise in connection with the City Loan, unless Developer shall have (or shall be with the proceeds of the requested disbursement) (a) paid and discharged the same, or (b) effected the release thereof by delivering to City a surety bond complying with the requirements of applicable Governmental Regulations for such release.

(f) No Liens

No claim of lien, notice and claim of mechanic's lien or other similar document or instrument shall have been recorded against the Property or any portion thereof, unless Developer shall have (or shall with the proceeds of the requested disbursement) (a) paid and discharged the same, (b) effected the release thereof by delivering to City a surety bond complying with the requirements of applicable Governmental Regulations for such release, or by insurance over the same, or (c) caused the Title Company to commit in writing to issue a policy of title insurance showing such lien not to be an exception to title.

(g) Satisfactory Progress

City shall be reasonably satisfied, based on its own inspections and/or other reliable information, that the Development is progressing satisfactorily and in conformance with this Agreement, all applicable Governmental Regulations and all other requirements, including, without limitation, applicable wage requirements.

(h) Governmental Regulations

There shall be no condition, event or act existing in connection with the Development which constitutes, or would, with the passage of time, constitute a violation of any applicable Governmental Regulation, including, without limitation, applicable wage requirements.

Section 3.9 Retention. As to each Draw Request made to City (except for the Draw Request for the Final Loan Disbursement or release of retention), disbursements of City Loan proceeds shall be made for each hard cost item in the amount of ninety percent (90%) of the costs for such item properly incurred and substantiated by Developer during the course of the Development. Notwithstanding the foregoing, there shall be no retention for general conditions, bond cost and insurance. Retention for site work and concrete foundations may be paid to contractor within thirty (30) days of completion. Upon satisfaction of the conditions set forth herein, City shall disburse City Loan proceeds in the amount of Ninety Percent (90%) of each Draw Request for Development costs or One Hundred Percent (100%) of other Draw Requests until all City Loan proceeds except the Final Loan Disbursement are disbursed or deemed disbursed.

Notwithstanding the foregoing, Developer agrees that with respect to requests for disbursements from the Construction Loan for Development costs, Developer shall cause the Construction Lender to disburse an amount equal to Ninety Percent (90%) of such Draw Request, with a ten percent (10%) retainage amount to be held by the Construction Lender. Notwithstanding the foregoing, there shall be no retention for general conditions, bond cost and insurance. All amounts retained by the Construction Lender, after disbursement of all Draw Requests made pursuant to the approved Construction Budget, shall be considered retention and shall not be disbursed to Developer until authorized to be disbursed by City upon satisfaction of all conditions to the release of retention.

Section 3.10 Final Loan Disbursement; Conditions Precedent to Conversion of LMIHAF Loan and Fund 106 Loan to Permanent Term Loans. City shall have no obligation to make the Final Loan Disbursement nor convert the LMIHAF Loan or Fund 106 Loan to a term loan for permanent financing of the Development until and upon satisfaction of the conditions precedent set forth in this Section 3.10 or waiver thereof by City in its sole discretion.

(a) Loan Documents

The City Loan Documents, documents evidencing the Approved Financing and any other agreements delivered to City in accordance herewith shall be in full force and effect.

(b) No Default

Subject to applicable notice and cure periods, there shall be no condition, event or act which would constitute an Event of Default by Developer under the City Documents, the Construction Contract, the Construction Loan, the TIF Bond documents, the Agreement of Limited Partnership, or any other agreement secured by an interest in the Property or providing financing for the Development, or which upon the giving of notice or the passage of time, or both, would constitute such an Event of Default.

(c) Representations and Warranties

All representations and warranties of Developer herein contained shall be true and correct in all material respects as and when made and as of the proposed date of conversion to a term loan.

(d) No Stop Notice

No stop notice (whether bonded or not) shall have been served upon or otherwise delivered to Developer, City or Construction Lender in connection with the development of the Development or otherwise in connection with the City Loan, unless Developer shall have (or shall be with the proceeds of the requested disbursement) (a) paid and discharged the same, or (b) effected the release thereof by delivering to City a surety bond complying with the requirements of applicable Governmental Regulations for such release.

(e) No Liens

No claim of lien, notice and claim of mechanic's lien or other similar document or instrument shall have been recorded against the Property or any portion thereof, unless Developer shall have (or shall with the proceeds of the requested disbursement) (a) paid and discharged the same, (b) effected the release thereof by delivering to City a surety bond complying with the requirements of applicable Governmental Regulations for such release, or by insurance over the same, or (c) caused the Title Company to commit in writing to issue a policy of title insurance showing such lien not to be an exception to title.

(f) Satisfactory Construction Completion

City shall be reasonably satisfied, based on its own inspections and/or other reliable information, that the construction of the Development is complete and in conformance with this Agreement, the Construction Contract, the Construction Loan, and all other agreements entered into in connection with or secured by an interest in the Property, and all applicable Governmental Regulations, including, without limitation, Section 3 requirements.

(i) The construction of the Development shall be complete. The construction of the Development shall be considered complete for purposes of this Agreement only when (a) the construction of the Improvements has been substantially completed in accordance with the Plans and Specifications and has been fully paid for and is lien free (subject only to punch list items), (b) all work requiring inspection or certification by any governmental agency has been completed and all requisite certificates, approvals and other necessary authorizations have been obtained, including a certificate of occupancy or similar authorization.

(ii) Any portion of the Development requiring inspection or certification by any governmental agency shall have been inspected and certified as complete by the City and all other necessary approvals, licenses, exemptions and other authorizations of governmental agencies shall have been duly obtained.

a. At least one of the following shall have occurred:

(i) 65 days shall have passed since the recording of a valid notice of completion for the construction of the Development and no mechanic's or materialman's lien shall be outstanding; or

(ii) 95 days shall have passed since actual completion of the construction of the Development and no mechanic's or materialman's lien shall be outstanding; or

(iii) City shall be satisfied that no mechanic's or materialman's lien will impair its interest in the Property. City hereby agrees to consider that a CLTA Form No. 101.1 Endorsement to the Title Policy, in form and substance reasonably satisfactory to City, may satisfy the requirement of this subparagraph (iii).

b. All labor compliance obligations with respect to the Development shall have been fully and completely satisfied, and City shall be reasonably satisfied that the Development was completed in accordance with all Governmental Regulations.

c. All requirements for release of retention set forth in this Agreement and the Construction Loan Agreement have been met.

d. Developer shall have submitted, and City shall have approved, a draft cost certificate.

(g) Governmental Regulations

There shall be no condition, event or act existing in connection with the Development which constitutes, or would, with the passage of time, constitute a violation of any applicable Governmental Regulation, including, without limitation, any applicable labor laws.

(h) Annual Reporting Forms

Developer shall have submitted all Annual Reporting Forms required to be submitted as of the date of the conversion.

(i) Evidence of Equity Contribution

Developer shall demonstrate to City's reasonable satisfaction that Developer has received capital contributions from the Investor in an amount not less than the amount required by the Agreement of Limited Partnership to be received prior to or concurrently with Conversion to Permanent Financing. Developer shall have demonstrated to City's reasonable satisfaction that such monies have been spent in substantial accordance with the Financing Plan or will be spent in accordance with the Financing Plan.

(j) Funding of Permanent Loan

Prior to or concurrently with City's funding of the Final Loan Disbursement, the Permanent Loan shall fund and all documents required thereby to be entered into and/or recorded in the Official Records shall be entered into and so recorded.

(k) Update of Attachments

Developer shall have submitted, and City shall have approved, the following for the Development, all prepared as of the completion of construction: (a) a revised Rent Schedule; (b) a permanent period Financing Plan; and (d) a revised Operating Budget. If the foregoing demonstrate to City, in its reasonable discretion, that amendment of any of the City Documents is necessary, then any documents required to be prepared and /or recorded in connection therewith shall be executed and recorded or deposited with the Escrow for recording.

(l) Insurance

Developer, at its cost, shall have procured and be maintaining in full force and effect insurance consistent with the requirements hereof and in the amounts specified therein.

(m) Construction Loan

The Construction Loan shall be paid in full with all available funds, which shall include equity contributions from the Investor and proceeds from the Permanent Loan. Any documents required to be recorded in connection therewith shall be executed and recorded in the Official Records.

(n) Reserves

Developer shall have deposited or shall be concurrently depositing any reserves required by this Agreement or the Supplemental Financing into one or more separate interest bearing accounts to be used solely for the Development.

(o) No Further Disbursements

Except as set forth herein, City shall have no obligation to disburse City Loan proceeds after conversion to a permanent term loan. If any City Loan proceeds remain undisbursed, the amount of the City Loan will be reduced.

(p) Failure to Satisfy Conditions

If Developer has not satisfied any of the conditions set forth herein prior to the Conversion to Permanent Financing date set forth in the Schedule of Performance, City, in its sole discretion, may (a) terminate the Loan Agreement and declare all outstanding City Loan amounts due and payable; (b) grant an extension for which City may impose other conditions in addition to those specified in this Agreement; or (c) waive the unsatisfied conditions. In the event the Improvements have not been completed, Developer agrees to complete the Improvements diligently using Developer's own funds. In its sole discretion, City may (but is not obligated to) make disbursements to pay mechanics' liens, respond to stop notices, or otherwise preserve its collateral, and all such disbursements will be deemed advances under the City Fund 106 Loan.



## ARTICLE 4. CITY LOAN PROVISIONS

Section 4.1 LMIHAF Loan. The LMIHAF Loan shall be governed by the terms and provisions of this Agreement, the LMIHAF Note, and the LMIHAF Deed of Trust. Certain principal amounts of the LMIHAF Loan shall be deemed to pay Purchase Price and repay the Predevelopment Loan at Closing. The balance of the LMIHAF Loan shall be disbursed in accordance with Section 3.8.

Section 4.2 Fund 106 Loan. The Fund 106 Loan shall be governed by the terms and provisions of this Agreement, the Fund 106 Note, and the Fund 106 Deed of Trust. The Fund 106 Loan shall be disbursed in accordance with Section 3.8.

Section 4.3 Interest Rate. Simple interest will accrue on all outstanding principal under the City Loans at the rate of three percent (3%) per annum.

Section 4.4 Non-Recourse. Upon completion of construction, the Developer shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the City Loans and the City Notes or the performance of the covenants of the Developer under this Agreement, the LMIHAF Deed of Trust, the Regulatory Agreement or the Notice of Affordability Restrictions. From and after completion of construction of the Development, the sole recourse of the City with respect to the principal of, or interest on, the City Loans and City Notes and defaults by Developer in the performance of its covenants under this Agreement, the Deeds of Trust, Regulatory Agreement or Notice of Affordability Restrictions shall be to the property described in the Deeds of Trust.

Section 4.5 Repayment. The Predevelopment Loan shall be deemed repaid at Closing with the funding of the proceeds of the LMIHAF Loan. The LMIHAF Loan and Fund 106 Loan shall be repayable from fifty percent (50%) of the Residual Receipts paid annually as further specified below after completion of the Development to the City and applied to the accrued interest and the outstanding principal. All Residual Receipts payments to the City shall be paid toward the Fund 106 Loan until the Fund 106 Loan is completely repaid. After the Fund 106 Loan is completely repaid, all Residual Receipt payments to the City shall be paid to the LMIHAF Loan. Payments on each City Loan shall be credited toward accrued interest first and then outstanding principal. The Residual Receipt payments to the City shall be made on or before June 30 of each calendar year for the preceding calendar year.

Section 4.6 Subordination of City Documents. The City Documents may be subordinated to the deed of trust securing the Developer's Construction Loan, and may be subordinated to other liens securing financing set forth in the Financing Plan, if any, (in each case, a "Senior Lien"), but only on condition that all of the following conditions are satisfied:

(a) All of the proceeds of the proposed Senior Lien, less any transaction costs, must be used to provide acquisition, construction and/or permanent financing for the Development.

(b) The Developer must demonstrate to the City Manager's reasonable satisfaction that subordination of the City Deed of Trust is necessary to secure adequate

acquisition, construction, and/or permanent financing to ensure the viability of the Development as required by the City Documents.

(c) The subordination agreement(s) must be structured to minimize the risk that the City Deed of Trust would be extinguished as a result of a foreclosure by the proposed lender (each, a “Senior Lender”) or other holder of the Senior Lien. To satisfy this requirement, the subordination agreement must provide the City with adequate rights to cure any defaults by the Developer, including: (i) providing the City or its successor with copies of any notices of default at the same time and in the same manner as provided to the Developer; and (ii) providing the City with a cure period to cure any default.

(d) The subordination(s) described in this Section may be effective only during the original term of the Senior Loan and any extension of its term approved in writing by the City Manager.

(e) No subordination agreement may limit (in whole or in part) the effect of the City Deed of Trust before a foreclosure, nor require consent of the holder of the Senior Loan to exercise of any remedies by the City under the City Documents, including, but not limited to, any right or remedy under the Regulatory Agreement.

(f) Upon a determination by the City Manager that the conditions in this Section have been satisfied, the City Manager or his/her designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval by the City Council.

## ARTICLE 5. DEVELOPMENT OF IMPROVEMENTS

Section 5.1 Development and Use. Developer covenants and agrees that the Development will be developed on the Property according to this Agreement, the Applicable Land Use Approvals, the Scope of Development and the Schedule of Performance. The size and specifications of the Affordable Units shall be as set forth in the Applicable Land Use Approvals and Scope of Development. Without limitation of the foregoing, Developer specifically acknowledges and agrees that the Developer shall satisfy all conditions necessary to ensure that the Development conforms to all applicable CEQA requirements and all Lake Management Conditions. The Developer shall comply with all of the duties and obligations set forth in this Article, and the Developer’s failure to comply with the duties and obligations set forth in this Article shall constitute a Developer Event of Default.

Section 5.2 No Construction Prior to Closing. The Closing of all Approved Financing, including, without limitation, the Tax Credit Funds and loans of Bond proceeds, necessary to develop the Development, as set forth in the most recent Financing Plan, shall occur by the date set forth in Schedule of Performance and prior to the commencement of construction of the Improvements. The Developer shall furnish to the City evidence of insurance coverage meeting the requirements of Section 6.11 below, no later than the dates set forth in the Schedule of Performance prior to the Closing.

Section 5.3 Building Permit. No later than the date set forth in the Schedule of Performance, the Developer shall apply for a building permit allowing for the construction of the Development in accordance with the Construction Plans. After submitting an application for a building permit, the Developer shall diligently pursue and obtain a building permit for the Development, and no later than the date set forth in the Schedule of Performance, the Developer shall deliver evidence to the City that the Developer is entitled to issuance of a building permit for the Development upon payment of applicable permit fees. The City shall render all reasonable assistance (at no additional cost or expense to the City) to the Developer to obtain the building permit.

The Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required permits, applications, or allocations, and in no way limits the discretion of the City in the permit application and approval process.

Section 5.4 Development Pursuant to Plans. The Improvements shall be developed substantially in accordance with the Construction Plans, and the terms and conditions of the land use permits and approvals and building permits, including any variances granted.

Section 5.5 Change in Development of Improvements. If the Developer desires to make any change in the Improvements which are not consistent with the Construction Plans, the Developer shall submit the proposed change to the City for its approval in writing in accordance with this Agreement. No change required for compliance with building codes or other government health and safety regulations needs to be submitted to the City for approval. If the Improvements, as modified by any such proposed change, will conform to the requirements of this Agreement, and the Construction Plans, the City shall reasonably approve the change by notifying the Developer in writing.

Unless a proposed change submitted in writing by Developer is rejected by the City within ten (10) business days, it shall be deemed approved. If rejected within such time period, the previously approved Construction Plans shall continue to remain in full force and effect. If the City rejects a proposed change, it shall provide the Developer with the specific reasons therefore.

The approval of changes in the Construction Plans by the City pursuant to this Section shall be in addition to any approvals required to be obtained from the City pursuant to building permit requirements. Approval of changes in the Construction Plans by the City pursuant to this section shall not constitute approval by the City for any other purpose and shall in no way limit the City's discretion in approving changes to the Construction Plans for any other purpose. Notwithstanding City's approval of any changes to the Construction Plans, Developer shall be financially responsible for all costs of the Development, including, without limitation, all costs of construction and any changes thereto.

Section 5.6 Commencement of Construction. The Developer shall commence construction of the Improvements no later than the date set forth in the Schedule of Performance.

Section 5.7 Completion of the Improvements. The Developer shall diligently prosecute to completion of the Improvements no later than the date set forth in the Schedule of Performance.

Section 5.8 Equal Opportunity. During the construction of the Improvements there shall be no discrimination on the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the hiring, firing, promoting or demoting of any person engaged in the construction work.

Section 5.9 Compliance with Applicable Laws.

(a) Compliance with Laws during Construction. The Developer shall cause all construction work to be performed in compliance with (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction, including, without limitation, those with jurisdiction over the Lake Management conditions. The work shall proceed only after the payment of all applicable fees, procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible to the City for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the Property.

(b) Prevailing Wages. To the extent applicable, Developer shall carry out the construction of the Improvements on the Property in conformance with all applicable laws, including all applicable federal and state labor standards which such standards shall include, without limitation, if applicable to the Development: (a) the payment of not less than the wages prevailing in the locality as determined by the Secretary of Labor pursuant to the Davis Bacon Act (40 U.S.C. 276a to 276a-5), to all laborers and mechanics employed in the development of any part of the Development; (b) the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 332); and (c) Labor Code § 1720 et seq., including without limitation the payment of prevailing wage and maintenance of payroll records in accordance with Labor Code §§ 1776 and 1812, and employment of apprentices in accordance with Labor Code § 1777.5.

(c) Developer further agrees that all public work (as defined in Labor Code § 1720) performed pursuant to this Agreement (the “work”), if any, shall comply with the requirements of Labor Code § 1770 et seq. In all bid specifications, contracts and subcontracts for work that is subject to the prevailing wage requirements of Labor Code § 1720 et seq., Developer (or its general contractor, in the case of subcontracts) shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification or type of worker needed to perform the work, and shall include such rates in the bid specifications, contract or subcontract. To the extent applicable, such bid specifications, contract or subcontract must contain the following provision:

“It shall be mandatory for the contractor to pay not less than the said prevailing rate of wages to all workers employed by the contractor in the

execution of this contract. The contractor expressly agrees to comply with the penalty provisions of Labor Code § 1775 and the payroll record keeping requirements of Labor Code § 1776.”

(d) To the extent required by applicable law, the Developer shall, and shall cause the contractor and all subcontractors shall register with the Department of Industrial Relations (the “DIR”) in accordance with Labor Code Sections 1725.5 and 1771.1, the Developer shall and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Improvements as those wages are determined pursuant to Labor Code Sections 1720 et seq., and the implementing regulations of the DIR, and comply with the other applicable provisions of Labor Code Sections 1720 et seq., including but not limited to the hiring of apprentices as required by Labor Code Sections 1775 et seq., and the implementing regulations of the DIR. To the extent required by any applicable law, the Developer shall and shall cause the contractor and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq., that apprentices have been employed as required by Labor Code Section 1777.5 et seq., and otherwise comply with the other applicable provisions of Labor Code Sections, including without limitation, 1720 et seq., 1725.5, 1771, 1771.1, 1771.4, 1776, 1777.5 et seq., 1813, 1815 and implementing regulations of the DIR in connection with construction of the Development or any other work undertaken or in connection with the Property. Copies of the currently applicable per diem prevailing wages are available from the DIR. During the construction of the Improvements the Developer shall or shall cause the contractor to post at the Property the applicable prevailing rates of per diem wages.

(e) To the extent applicable, the provisions of Labor Code §§ 1775 and 1813 regarding penalties to be paid upon the failure to pay prevailing wage and for failure to comply with the hours laws respectively shall be enforced. To the extent it is applicable, Labor Code § 1810 provides eight (8) hours labor constitutes a legal day’s work. In accordance with the provisions of Labor Code § 3700, Developer is required to secure payment of compensation to its employees. Developer shall include in every contract for the development of the Development: (a) a statement that in accordance with the provisions of Labor Code § 3700, the contractor will be required to secure the payment of compensation to its employees; and (b) copies of Labor Code §§ 1771, 1775, 1776, 1777.5, 1813 and 1815. This paragraph shall only apply if the foregoing sections of the Labor Code apply to the Development.

To the extent required by applicable law, Developer shall provide to the City Manager payroll information related to the Development certified by an officer of Developer to be true and correct within ten (10) calendar days after the request of the City Manager. To the extent required by applicable law, Developer shall require its contractors and subcontractors to provide such certified payroll information within ten (10) calendar days of any request by the City Manager.

(f) The Developer shall indemnify, hold harmless and defend (with counsel reasonably selected by the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of or in connection with the failure or alleged failure of any person or entity (including Developer, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to hire apprentices in

accordance with Labor Code Sections 1777.5 et seq., and the implementing regulations of the DIR or comply with the other applicable provisions of Labor Code Sections 1720 et seq., and the implementing regulations of the DIR in connection with the construction of the Improvements or any other work undertaken or in connection with the Property.

Section 5.10 Progress Reports. The Developer will provide written monthly progress reports to the City regarding the status of the construction of the Development. The Developer shall provide the reports and information required under this Section until completion of the Improvements, as evidenced by the recordation of the Notice of Completion.

Section 5.11 Construction Responsibilities. As between the City and the Developer, it shall be the responsibility of the Developer to coordinate and schedule the work to be performed so that commencement and completion of the Improvements will take place in accordance with this Agreement. The Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the Development, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and the Management Agent. Any review or inspection undertaken by the City with reference to the Development is solely for the purpose of determining whether the Developer is properly discharging its obligations to the City, and should not be relied upon by the Developer or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Development.

Section 5.12 Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Property or the Improvements or a stop notice affecting the City Loans is served on the City or any other lender or other third party in connection with the Development, then the Developer shall, within thirty (30) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the City a surety bond from a surety, reasonably acceptable to the City, or such other evidence reasonably acceptable to the City that the lien or stop notice has been discharged acceptable to the City in sufficient form and amount, or provide the City with other assurance satisfactory to the City that the claim of lien or stop notice will be paid or discharged.

(b) If the Developer fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section or obtain a surety bond, then in addition to any other right or remedy, the City may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at the Developer's expense. Alternatively, the City may require the Developer to immediately deposit with the City the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against the Developer.

(c) The Developer shall file a valid notice of cessation or notice of completion upon cessation of construction of the Development for a continuous period of thirty (30) days or more, and take all other reasonable steps to forestall, limit, or prevent the assertion of claims of lien against the Property and/or Improvements. The Developer authorizes the City, but without

any obligation, to record any notices of completion or cessation of labor, or any other notice that the City deems necessary or desirable to protect its interest in the Development and Property.

Section 5.13 Inspections. The Developer shall permit and facilitate, and shall require its contractors, to permit and facilitate, observation and inspection at the Development by the City during reasonable business hours for the purposes of determining compliance with this Agreement. The costs of such observation or inspection performed pursuant to this Section, if any, shall be borne by the City. The Developer acknowledges that the City is under no obligation to: (a) supervise the construction, or the means, methods, or techniques utilized in connection with the construction of the Improvements, (b) inspect the Property, or (c) inform the Developer of information obtained by the City during any inspection. Any inspection by the City during the construction of the Improvements, pursuant to this Section, is entirely for determining whether the Developer is in compliance with this Agreement and is not for the purpose of determining or informing the Developer of the quality or suitability of construction. The Developer shall not rely upon the City for any supervision or inspection of the construction of the Development. The Developer shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers. The rights granted to the City pursuant to this Section are in addition to any rights of entry and inspection the City may have in exercising its municipal regulatory authority, including, but not limited to, any inspection rights related to the building permit for the Property.

Section 5.14 Information. The Developer shall promptly provide any information reasonably requested by the City in connection with the Development.

Section 5.15 Records.

(a) The Developer shall maintain complete, accurate, and current records pertaining to the Development for a period of five (5) years after the creation of such records, and shall permit any duly authorized representative of the City to inspect and copy records upon reasonable notice to the Developer. Such records shall include all invoices, receipts, and other documents related to expenditures from the City Loan funds. Records must be kept accurate and current.

(b) The City shall notify the Developer of any records it deems insufficient. The Developer shall have thirty (30) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than thirty (30) days is reasonably necessary to correct the deficiency, then the Developer shall begin to correct the deficiency within thirty (30) days and complete the correction of the deficiency as soon as reasonably possible.

Section 5.16 Financial Accounting.

(a) No later than one hundred eighty (180) days following completion of construction of the Development (as evidenced by the recordation of the Notice of Completion), the Developer shall submit the cost certification that the Developer provides to TCAC to the City showing the sources and uses of all funds utilized for the Development.

(b) The Developer shall make available for examination at reasonable intervals and during normal business hours to the City annually all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Agreement, and shall permit City to audit, examine, and make excerpts or transcripts from such records upon reasonable prior notice to the Developer. The City, in its reasonable discretion, may make audits of any records related to the development or operation of the Development or the Developer's compliance with the City Documents.

## ARTICLE 6. ONGOING DEVELOPER OBLIGATIONS

Section 6.1 Applicability. The conditions and obligations set forth in this Article shall apply throughout the Term, unless a different period of applicability is specified for a particular condition or obligation. The Developer's failure to comply with the duties and obligations set forth in this Article shall constitute a Developer Event of Default.

### Section 6.2 Use.

The Developer hereby agrees that, for the entire Term, the Development will be used and continuously operated only as affordable housing in accordance with all applicable requirements of the California Community Redevelopment Law (the "Law") and the Regulatory Agreement, including, but not limited to, the requirement that at least one hundred forty two (142) of the residential units in the Development be provided solely to households whose Adjusted Income (as defined in the Regulatory Agreement) does not exceed sixty percent (60%) of area median income, at rents not exceeding the amounts set forth in Section 50053(b)(2) of the Law, of which twenty (20) Units shall be restricted to occupancy by very low income households, as determined in accordance with Health and Safety Code Section 50105.

In addition, the Developer shall comply with all other applicable laws, statutes, and regulations governing the Development, including, but not limited to the applicable requirements of Section 42 of the Code, all conditions of the Approved Financing, and all TCAC regulations, for such time that the Development is subject to such regulations.

### Section 6.3 Maintenance.

(a) Improvements. The Developer hereby agrees that, prior to completion of the Improvements, the portions of the Property undergoing construction shall be maintained in a neat and orderly condition to the extent practicable and in accordance with industry health and safety standards, and that, once the Improvements are completed, the Development shall be well maintained by the Developer as to both external and internal appearance of the Improvements, the common areas, and the open spaces. The Developer shall maintain the Development in good repair and working order, and in a neat, clean and orderly condition, including the walkways, driveways, alleyways and landscaping, and from time to time make all necessary and proper repairs, renewals, and replacements.

(b) Developer Failure to Maintain. In the event that there arises at any time prior to the expiration of the Term a condition in contravention of the above maintenance



standard, then the City shall notify the Developer in writing of such condition, giving the Developer thirty (30) days from receipt of such notice to cure said condition. In the event the Developer fails to cure or commence to cure the condition within the time allowed (and thereafter fails to pursue such cure to completion no later than sixty (60) days following the Developer's receipt of the City's initial notice), the City shall have the right to enter the Property and perform all acts necessary to cure such a condition, or to take other recourse at law or equity the City may then have and to receive from the Developer, the City's cost in taking such action. The Developer hereby irrevocably grants the City, and the City's employees and agents, a right of entry for such purpose. The Parties hereto further mutually understand and agree that the rights conferred upon the City expressly include the right to enforce or establish a lien or other encumbrance against the Property, but such lien shall be subject to previously recorded liens and encumbrances. The foregoing provisions shall be a covenant running with the Property until the expiration of the Term, enforceable by the City, its successors and assigns.

Section 6.4 Taxes and Assessments. The Developer shall apply for and shall thereafter use good faith efforts to obtain an exemption from local property taxes pursuant to Section 214(g) of the California Revenue and Taxation Code. The Developer shall pay all unabated real property taxes on the Development, personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property or the Developer's fee interest in the Property; provided, however, that the Developer shall have the right to contest in good faith any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge against it, the Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

Section 6.5 Mandatory Language in All Deeds, Leases and Contracts. All deeds, leases or contracts made or entered into by Developer, its successors or assigns, as to any portion of the Property shall contain therein the following language:

(a) In Deeds:

“(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (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 sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (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 paragraph (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 paragraph (1).”

(b) In Leases:

“(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (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 premises herein leased nor shall the lessee or any person claiming under or through the lessee, 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 premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (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 paragraph (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 paragraph (1).”

(c) In Contracts:

“(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (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 sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (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 paragraph (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 paragraph (1).”

Section 6.6 Intentionally Deleted.

Section 6.7 Management Responsibilities. The Developer shall be responsible for all management functions with respect to the Development, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no direct, or indirect, responsibility over management of the Development; however, the Developer shall operate the Development in accordance with this Agreement and the Regulatory Agreement, in a manner acceptable to the City. At all times during the Term, the Developer shall retain the Management Agent approved by the City in its reasonable discretion to perform its management duties hereunder. A resident manager shall also be required in accordance with applicable law.

Section 6.8 Management Agent. The Development shall at all times be managed by an experienced management agent reasonably acceptable to the City, with demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing. The Developer shall submit for the City's approval the identity of any proposed management agent. The Developer shall also submit such additional information about the background, experience and financial condition of any proposed management agent as is reasonably necessary for the City to determine whether the proposed management agent meets the standard for a qualified management agent set forth above. If the proposed management agent meets the standard for a qualified management agent set forth above, the City shall approve the proposed management agent by notifying the Developer in writing. Unless the proposed management agent is disapproved by the City within ten (10) business days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. If the proposed management agent is disapproved by the City for failing to meet the standard for a qualified management agent set forth above, the Developer shall submit for the City's approval a new proposed management agent within thirty (30) days following the City's disapproval. The Developer shall continue to submit proposed management agents for City approval until the City approves a proposed management agent. The City hereby approves Aperto Property Management Inc. as the initial management agent for the Development.

Section 6.9 Periodic Performance Review. The City reserves the right to conduct an annual (or more frequently, if deemed reasonably necessary by the City) review of the management practices and financial status of the Development (including, but not limited to, a review of the Management Agent's performance). The purpose of each periodic review will be to enable the City to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. The Developer shall reasonably cooperate with the City in such reviews.

Section 6.10 Approval of Management Plans and Policies. Prior to the initial leasing of any of the units in the Development, and thereafter to the extent of any amendments thereto, the Developer shall submit its written management plan and policies with respect to the Development to the City for its review and approval (the "Management Plan"). If the Developer's proposed Management Plan sets forth the Developer's commitment and ability to operate the Development in accordance with this Agreement, the Regulatory Agreement and applicable laws, the City shall approve the proposed Management Plan by notifying the

Developer in writing. Unless the proposed Management Plan is disapproved by the City within fifteen (15) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. If the proposed Management Plan is disapproved by the City, the Developer shall submit for the City's approval a new proposed Management Plan, which addresses the inadequacies set forth in the City's notice, within thirty (30) days following the City's disapproval.

Section 6.11 Insurance Requirements.

(a) Required Coverage. Prior to commencement of any work of improvement upon the Property and at all times during the term of this Agreement, without limiting the indemnity provisions set forth herein, Developer, at its sole cost, shall procure and maintain in full force and effect the following policies of insurance from a company or companies authorized to do business in the State of California or from a company or companies listed on the California list of Eligible Surplus Lines Insurers ([http://www.sla-cal.org/carrier\\_info/lesli/](http://www.sla-cal.org/carrier_info/lesli/) ) with a current rating from A.M. Best Company of A:VIII or better. Such insurance requirements may, at Developer's election, be satisfied through the issuance of an Owner Controlled Insurance Program (OCIP). The Developer shall maintain and keep in force, at the Developer's sole cost and expense, the following insurance applicable to the Development:

(i) To the extent required by law, Worker's Compensation insurance, including Employer's Liability coverage, with limits not less than the greater of \$1,000,000 per accident or occupational illness for bodily injury or disease, or the amount required by applicable law.

(ii) Comprehensive or Commercial General Liability insurance with limits not less than Five Million Dollars (\$5,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverage's for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

(iii) Comprehensive Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable; provided, however, such automobile insurance shall only be required to the extent the Developer owns automobiles.

(iv) Property insurance covering the Development covering all risks of loss, including earthquake (but only if required by the Investor or by another lender) and flood, if the Property is located in a flood zone, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the City, naming the City as a Loss Payee, as its interest may appear.

(b) Endorsements.

(i) The policy or policies of insurance required above, shall be endorsed as follows:

(1) The indemnified parties, while acting within the scope of their authority, shall be additional insureds, such insurance is to be primary and not contributing with any other insurance or self-insurance maintained by said additional insureds. For section 6.11(a)(ii), the additional insured endorsement shall be equivalent in coverage scope to ISO CG 20 10 11 85.

(2) In the event of one insured, whether named or additional, incurring liability to any other of the insured, whether named or additional, the policy shall cover the insured against whom claim is or may be made in the same manner as if separate policies had been issued to each insured, except that the limits of insurance shall not be increased thereby.

(3) The same shall not be canceled or the coverage reduced until a thirty (30)-day written notice of cancellation (or ten (10) days, for nonpayment of premium only) has been served upon the City Manager by registered or certified mail.

(4) Such insurance is primary and any other insurance, deductible, retention or self-insurance maintained by the indemnified parties shall not contribute with such primary insurance.

(5) Any failure by the named insured to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the insureds added by this endorsement.

(ii) The policy or policies of insurance required by Section 6.11(a)(iv), above, shall be endorsed as follows:

(1) The policies shall include a “lender’s loss payable endorsement” (Form 438BFU) in form and substance reasonably satisfactory to the City Attorney, showing City as an encumbrancer.

(2) A waiver of subrogation stating that the insurer waives indemnification from City. A waiver of subrogation shall also apply to Subsections (i) and (ii).

(c) Contractor’s Insurance. The Developer shall cause any general contractor or agent working on the Development under direct contract with the Developer (including, but not limited to, the Developer’s architect) to maintain insurance of the types and in at least the minimum amounts described in subsections (a)(i), (a)(ii), and (a)(iii) above, and shall require that such insurance shall meet all of the general requirements of subsection (d) below. Subcontractors working on the Development under indirect contract with the Developer shall be required to maintain the insurance described in subsections (a)(i), (a)(ii) and (a)(iii) above. Liability and Comprehensive Automobile Liability insurance to be maintained by such contractors and agents pursuant to this subsection shall name as additional insured’s the City, councilmembers, officers, agents, and employees.

(d) General Requirements. The required insurance shall be provided under an occurrence form, and the Developer shall maintain such coverage continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included

in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

(e) Certificates of Insurance. Upon the City's request at any time during the Term of this Agreement, the Developer shall provide certificates of insurance, in form and with insurers reasonable acceptable to the City, evidencing compliance with the requirements of this Section, and shall provide complete copies of such insurance policies, including a separate endorsement naming the City as additional insured, if requested by the City.

(f) Failure to Maintain Insurance. Should Developer fail to maintain policies with the coverages and limits specified above, in full force and effect at all times, City shall have the right to withhold any payment due Developer or to suspend Developer's operations until Developer has fully complied with these provisions and furnished the required evidence of insurance. In the event that Developer's operations are suspended for failure to maintain acceptable insurance coverage, Developer shall not be entitled to an extension of time for completion of the work.

#### Section 6.12 Developer Fee.

Developer shall not receive payments of Developer Fee in excess of the following amounts or ahead of the following schedule without the prior written approval of City, as this schedule may be revised from time to time with City-approved revisions to the Financing Plan and the Construction Budget:

Total Developer Fee	\$4,194,609
Amount Paid During Construction	\$629,718
Amount Paid at Construction Completion	\$419,812
Amount Paid at Conversion	\$524,765
Amount Paid at 8609 Issuance	\$524,765
Deferred Developer Fee	\$2,095,549

In the event that actual construction costs exceed the Construction Budget, Developer shall defer an additional amount of the Developer Fee necessary to cover the actual construction costs to the extent unfunded by financing sources set forth in the approved Financing Plan and such portion of the Developer Fee shall be considered Deferred Developer Fee for purposes of this Agreement.

#### Section 6.13 City Monitoring Fee.

Developer shall pay to City the City Monitoring Fee on each June 30 during the Term following completion of construction of the Project.

#### Section 6.14 Deferred Mitigation Loan

Developer covenants and agrees to utilize the proceeds of the Deferred Mitigation Loan to mitigate Development Impacts in accordance with and satisfaction of the Lake Management Conditions.

#### Section 6.15 Operating Reserve

Upon conversion to the permanent financing for the Development after completion of construction of the Development, Developer shall deposit, or shall cause the Management Agent to, deposit One Million Dollars (\$1,000,000) or such greater amount required by TCAC or any Senior Lender or Investor, into a separate interest-bearing trust account to be used solely for the Development. Funds in the reserve account shall be held and disbursed in accordance with the Regulatory Agreement.

#### Section 6.16 Replacement Reserve

In the first year or portion thereof following conversion and each year thereafter, Developer shall deposit, or shall cause the Management Agent to, annually deposited into the Replacement Reserve Forty Two Thousand Nine Hundred Dollars (\$42,900), which amount may be increased by up to three percent (3%) per annum but in any event, not greater than the rate reflected in the consumer pricing index. Funds in the reserve account shall be held and disbursed in accordance with the Regulatory Agreement.

### ARTICLE 7. ASSIGNMENT AND TRANSFERS

#### Section 7.1 Definitions. As used in this Article, the term “Transfer” means:

- (a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, including by operation of law, of or with respect to this Agreement or of the Development or any part thereof or any interest therein or any contract or agreement to do any of the same; or
- (b) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to any ownership interest in Developer or any contract or agreement to do any of the same; or
- (c) Any merger, consolidation, sale or lease of all or substantially all of the assets of Developer.
- (d) The leasing of individual units in accordance with the requirements of this Agreement and the Regulatory Agreement shall not be deemed a “Transfer” for purposes of this Article.

Section 7.2 Purpose of Restrictions on Transfer. This Agreement is entered into solely for the purpose of development and operation of the Development and its subsequent use in accordance with the terms hereof. The Developer recognizes that the qualifications and identity of the Developer are of particular concern to the City, in view of:

(a) The importance of the development of the Property to the general welfare of the community; and

(b) The land acquisition assistance and other public aids that have been made available by law and by the government for the purpose of making such development possible; and

(c) The reliance by the City upon the unique qualifications and ability of the Developer to serve as the catalyst for development of the Property and upon the continuing interest which the Developer will have in the Property to assure the quality of the use, operation and maintenance deemed critical by the City in the development of the Property; and

(d) The fact that a change in ownership or control of the owner of the Property, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of the Developer or the degree thereof is for practical purposes a transfer or disposition of the Property; and

(e) The fact that the Property is not to be acquired or used for speculation, but only for development and operation by the Developer in accordance with the Agreement; and

(f) The importance to the City and the community of the standards of use, operation, and maintenance of the Property; and

(g) The Developer further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 7.3 Prohibited Transfers. The limitations on Transfers set forth in this Section shall apply until expiration of the Term. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law without the prior written approval of the City.

Any Transfer made in contravention of this Section shall be void and shall be deemed to be a default under this Agreement whether or not the Developer knew of or participated in such Transfer.

Section 7.4 Permitted Transfers. Notwithstanding the provisions of Section 7.3, the following Transfers shall be permitted and are hereby approved by the City.

(a) Any Transfer creating a Security Financing Interest permitted pursuant to the most recent City-approved Financing Plan;



(b) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest or as otherwise permitted under Article 9.

(c) Any transfer of equity in the Developer that does not change management or operational control of the Development.

(d) The lease of residential units in the Development consistent with the Regulatory Agreement.

(e) The admission of the Investor as a limited partner of the Developer for the purposes of syndicating the tax credits provided under the Tax Credit Reservation to the Investor to obtain the Tax Credit Funds. The City hereby approves the sale of limited partnership interests in the Developer to the Investor, provided that: (i) the Partnership Agreement, as amended, is first approved by the City Manager; and (ii) all documents associated with the low income housing tax credit syndication and the admission of the Investor as a limited partner of the Developer are submitted to the City for approval prior to execution, which approval shall not be unreasonably withheld, conditioned or delayed.

(f) Any Transfer to an entity Controlled by either General Partner, provided that, (1) the Developer has submitted such entity's organizational documents to the City and the City has determined that such entity is Controlled by the General Partner, and (2) upon such Transfer, the transferee, by an instrument in writing prepared by the City and in form recordable in the Official Records, shall expressly assume the obligations of the Developer under this Agreement and the City Documents (including, but not limited to the repayment obligations of the City Notes) and agrees to be subject to the conditions and restrictions to which the Developer is subject arising during this Agreement and the City Documents.

(g) Future transfers of the limited partner interest of the Investor provided that: (i) such transfers do not affect the timing and amount of the limited partner capital contributions provided for in and subject to the terms of the Partnership Agreement approved by the City; and (ii) in subsequent transfers, an entity Controlled by the Investor retains a membership interest or general partner interest and serves as a managing member or managing general partner of the successor limited partner.

(h) In the event either General Partner is removed by the Investor for cause following default under the Partnership Agreement, the City hereby approves the transfer of the general partner interests to an affiliate of the Investor, a nonprofit corporation that is exempt from federal income taxation pursuant to Section 501(c)(3) of the Code, or a limited liability company, whose sole member is a nonprofit corporation exempt from federal income taxation pursuant to Section 501(c)(3) of the Code, selected by the Investor.

**Section 7.5 Other Transfers with City Consent.** The City may, in its sole discretion, approve in writing other Transfers as requested by the Developer. In connection with such request, there shall be submitted to the City for review all instruments and other legal documents proposed to affect any such Transfer. If a requested Transfer is approved by the City such approval shall be indicated to the Developer in writing. Such approval shall be granted or denied

by the City within thirty (30) days after receipt by the City of Developer's request for approval of a Transfer. Upon such approval, if granted, the transferee, by an instrument in writing prepared by the City and in form recordable among the Official Records, shall expressly assume the obligations of the Developer under this Agreement, and the City Documents, and agree to be subject to the conditions and restrictions to which the Developer is subject arising during this Agreement and the City Documents, to the fullest extent that such obligations are applicable to the particular portion of or interest in the Development conveyed in such Transfer. In the absence of specific written agreement by the City, no such Transfer, assignment or approval by the City shall be deemed to relieve the Developer or any other party from any obligations under this Agreement.

Section 7.6 City Costs. Developer shall promptly reimburse City all costs incurred in connection with any Transfer or approval thereof in connection with this Article, including all attorneys' fees and costs.

## ARTICLE 8. DEFAULT AND REMEDIES

Section 8.1 General Applicability. The provisions of this Article shall govern the Parties' remedies for breach or failure of this Agreement.

Section 8.2 No Fault of Parties. The following events constitute a basis for a party to terminate this Agreement without the fault of the other prior to Closing:

- (a) The Developer, despite good faith and diligent efforts, is unable to satisfy all of the conditions precedent to the Closing set forth in Articles 2, 3 and 4 by no later than the date set forth in the Schedule of Performance; or
- (b) The Developer, despite good faith and diligent efforts, is unable to obtain the CEQA approvals by no later than the date set for Closing in the Schedule of Performance; or
- (c) The City, despite good faith and diligent efforts, is unable to execute the City Grant Deed and convey the Property to the Developer and the Developer is otherwise entitled to the conveyance of the Property; or
- (d) The Developer, in good faith, disapproves of the condition of the Property at least fifteen (15) days prior to closing.

Upon the happening of any of the above-described events, and at the election of either party, this Agreement may be terminated by written notice to the other party. After termination, neither party shall have any rights against or liability to the other under this Agreement, except that the waiver, limitation on liability and indemnification provisions set forth herein shall survive such termination and remain in full force and effect and except in the event of a termination under subsection (d), the Developer shall not be required to repay any portion of the City Fund 106 Predevelopment Loan.

Section 8.3 Fault of City. Except as to events constituting a basis for termination under Section 8.2, the following events each constitute a City Event of Default and a basis for the Developer to take action against the City:

(a) The City fails to provide the LMIHAF Loan and Fund 106 Loan to the Developer upon satisfaction of the conditions precedent to Closing and within the time set forth in the Schedule of Performance and in the manner set forth in Article 3 and the Developer is otherwise entitled by this Agreement to such loans; or

(b) The City breaches any other material provision of this Agreement.

Upon the happening of any of the above-described events, the Developer shall first notify the City in writing of its purported breach or failure, giving the City forty-five (45) days from receipt of such notice to cure or, if cure cannot be accomplished within forty-five (45) days, to commence to cure such breach, failure, or act. In the event the City does not then so cure within said forty-five (45) days, or if the breach or failure is of such a nature that it cannot be cured within forty-five (45) days, the City fails to commence to cure within such forty-five (45) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than ninety (90) days, then the Developer shall be afforded all of its rights at law or in equity, by taking all or any of the following remedies: (1) terminating in writing this Agreement (provided, however, that the waiver and indemnification provisions set forth herein shall survive such termination); and (2) prosecuting an action for specific performance.

Section 8.4 Fault of Developer. Except as to events constituting a basis for termination under Section 8.2, the following events each constitute a Developer Event of Default and a basis for the City to take action against the Developer:

(a) The Developer fails to exercise good faith and diligent efforts to satisfy, within the time set forth in the Schedule of Performance, one or more of the conditions precedent to the Closing; or

(b) The Developer fails to comply with any obligation or requirement set forth in Article 4 (including, but not limited to the Developer's failure to repay the City Loans); or

(c) The Developer constructs or attempts to develop the Development or otherwise develop the Property in violation of Article 5; or

(d) The Developer has not satisfied all preconditions set forth in this Agreement to commencement of construction of the Improvements by the date set forth in the Schedule of Performance, or fails to commence or complete the construction of the Improvements within the times set forth in the Schedule of Performance, or abandons or suspends construction of the Improvements prior to completion of all construction for a period of thirty (30) days after written notice by the City of such abandonment or suspension; or

(e) The Developer fails to comply with, or fails to cause the Management Agent to comply with, any obligations or requirement set forth in Article 6; or

(f) A Transfer occurs, either voluntarily or involuntarily, in violation of Article 7; or

(g) Any representation or warranty contained in this Agreement or in any application, financial statement, Financing Plan, certificate or report submitted to the City in connection with this Agreement proves to have been incorrect in any material and adverse respect when made; or

(h) A Developer Event of Default or an event of default occurs under any of the City Documents or documents evidencing the Approved Financing; or

(i) A court having jurisdiction shall have made or entered any decree or order (1) adjudging the Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for the Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of their properties, or (4) directing the winding up or liquidation of the Developer, if any such decree or order described in clauses (1) to (4), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection (i) as well; or the Developer shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (1) to (4), inclusive; or

(j) The Developer shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection (j) as well) or prior to sooner sale pursuant to such sequestration, attachment, or execution. In the event that the Developer is diligently working to obtain a return or release of the property, as determined in the City's reasonable business judgment, and the City's interests under the Agreement are not immediately threatened, in the City's reasonable business judgment, the City shall not declare a default under this subsection; or

(k) The Developer shall have voluntarily suspended its business or, if the Developer is a partnership, the partnership shall have been dissolved or terminated; or

(l) The Developer breaches any other material provision of this Agreement.

Upon the happening of any of the above-described events, the City shall first notify the Developer in writing of its purported breach, failure or act above described, giving the Developer in writing forty-five (45) days from receipt of such notice to cure, or, if cure cannot be accomplished within said forty-five (45) days, to commence to cure such breach, failure, or act. In the event the Developer fails to cure within said forty-five (45) days, or if such breach is of a nature that it cannot be cured within forty-five (45) days, Developer fails to commence to cure,

and diligently complete such cure within a reasonable time thereafter but in no event later than ninety (90) days, then the City shall be afforded all of its rights at law or in equity by taking any or all of the following remedies:

(i) Termination of this Agreement by written notice to the Developer; provided, however, that the City's remedies pursuant to this Article or any other City Document and the waiver, limitation of liability and indemnification provisions of this Agreement shall survive such termination;

(ii) Any of the remedies specified in Article 8; and/or

(iii) Acceleration of all the City Loans.

The City shall accept a cure made by the Investor, or any other partner of the Developer, of a Developer Event of Default under any of the City Documents in accordance with such document(s) as if such cure was made directly by the Developer.

**Section 8.5 Right to Cure at Developer's Expense.** The City shall have the right to cure any monetary default by the Developer under a loan made in connection with the Development. The Developer agrees to reimburse the City for any funds advanced by the City to cure a monetary default by the Developer upon demand therefor, together with interest thereon at the lesser of the rate of ten percent (10%) per annum or the maximum rate permitted by law from the date of expenditure until the date of reimbursement.

**Section 8.6 Construction Plans.** If this Agreement is terminated pursuant to Section 8.2 or Section 8.4, then the Developer shall promptly deliver to the City, within ten (10) days of such termination, copies of all plans and specifications for the Development, all permits and approvals obtained in connection with the Development, and all applications for permits and approvals not yet obtained but needed in connection with the Development (collectively, the "Assigned Development Documents"). The delivery of the Assigned Development Documents shall be accompanied by an assignment, in form reasonably satisfactory to the City, of the Developer's right, title and interest in the Assigned Development Documents; provided however, that any use of the Assigned Development Documents by the City or any other person shall be without liability of any kind to the Developer and without any representation or warranty of the Developer or its employees, as to the quality, validity, or usability of the Assigned Development Documents.

**Section 8.7 Acceleration of City Notes.** Following a Developer Event of Default, the City shall have the right to cause all indebtedness of the Developer to the City under this Agreement, and all the City Notes together with any accrued interest thereon, to become immediately due and payable. The Developer waives all right to presentment, demand, protest or notice of protest or dishonor. The City may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the City as a creditor and secured party under the law, including the Uniform Commercial Code, including foreclosure under the City Deed of Trust. The Developer shall be liable to pay the City on demand all expenses, costs and fees (including, without limitation, reasonable attorneys' fees and expenses and other professional service fees and expenses) paid or incurred by the City in connection with the collection of the

City Loans and the amounts due under the City Notes, and the preservation, maintenance, protection, sale, or other disposition of the security given for the City Loans and the amounts due under the City Notes.

Section 8.8 Remedies Cumulative. No right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise. Neither the failure nor any delay to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 8.9 Waiver of Terms and Conditions. No waiver of any default or breach by the Developer hereunder shall be implied from any omission by the City to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by the City to or of any act by the Developer requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Agreement or the other City Documents, nor shall it invalidate any act done pursuant to notice of default, or prejudice the City in the exercise of any right, power, or remedy hereunder or under this Agreement, unless in the exercise of any such right, power, or remedy all obligations of the Developer to the City are paid and discharged in full.

Notwithstanding the foregoing, neither Developer or City shall in any event be entitled to, and hereby waives, any right to seek special or consequential damages of any kind or nature from the other arising out of or in connection with this Agreement, and in connection with such waiver each of City and Developer is familiar with and each hereby waives the provision 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.”

Section 8.10 Attorneys' Fees. In any action between the Parties to interpret, enforce, reform, modify, rescind or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing Party in the action or other proceeding shall be entitled, in addition to damages, injunctive relief or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs, expert witness fees and reasonable attorneys' fees.

As used herein, the terms “attorneys' fees” or “attorneys' fees and costs” means the reasonable fees and expenses of counsel to the parties hereto (including, without limitation, in-

house or other counsel employed by City or Developer) which may include printing, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and others not admitted to the bar but performing services under the supervision of an attorney. The terms “attorneys’ fees” or “attorneys’ fees and costs” shall also include, without limitation, all such reasonable fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred.

## ARTICLE 9. SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 9.1 No Encumbrances Except for Development Purposes. Notwithstanding any other provision of this Agreement, mortgages and deeds of trust, or any other reasonable method of security are permitted to be placed upon the Developer’s fee interest in the Property for the purpose of securing loans set forth in the most recent Financing Plan. Mortgages, deeds of trust, or other reasonable security instruments securing loans set forth in the most recent Financing Plan are each referred to as a “Security Financing Interest.” The words “mortgage” and “deed of trust” as used in this Agreement include all other appropriate modes of financing real estate acquisition, construction, and land development.

Section 9.2 Holder Not Obligated to Construct. The holder of any Security Financing Interest authorized by this Agreement is not obligated to construct or complete any improvements or to guarantee such construction or completion. However, nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses of improvements provided for or authorized by this Agreement.

Section 9.3 Notice of Default and Right to Cure. Whenever the City pursuant to its rights set forth in Article 8 of this Agreement delivers any notice or demand to the Developer with respect to the commencement, completion, or cessation of the construction of the Improvements, the City shall at the same time deliver to each holder of record of any Security Financing Interest creating a lien upon the Developer’s fee interest in the Property or any portion thereof a copy of such notice or demand. Each such holder shall (insofar as the rights of the City are concerned) have the right, but not the obligation, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the Property which is subject to the lien of the Security Financing Interest held by such holder and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer’s obligations to the City relating to such Improvements under this Agreement pursuant to an assignment and assumption agreement prepared by the City. The holder in that event must agree to complete, in the manner provided in this Agreement, the Improvements to which the lien or title of such holder relates. Any such holder properly completing such Improvements pursuant to this paragraph shall assume all rights and obligations of Developer under this Agreement.

Section 9.4 Failure of Holder to Complete Improvements. In any case where six (6) months after default by the Developer in completion of construction of the Improvements under this Agreement, the holder of record of any Security Financing Interest, having first exercised its option to construct (pursuant to the assignment and assumption agreement more particularly described in Section 9.3), has not proceeded diligently with construction, the City shall be afforded those rights against such holder it would otherwise have against Developer under this Agreement, including, but not limited to declaring a default in accordance with Article 8.

Section 9.5 Right of City to Cure. In the event of a default or breach by the Developer of a Security Financing Interest prior to the completion of development, and the holder has not exercised its option to complete the Development, the City may cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Developer's fee interest in the Property or any portion thereof to the extent of such costs and disbursements. The City agrees that such lien shall be subordinate to any Security Financing Interest, and the City shall execute from time to time any and all documentation reasonably requested by Developer to effect such subordination.

Section 9.6 Right of City to Satisfy Other Liens. Following the Closing, and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the fee interest in the Property or any portion thereof (including, but not limited to, any breach or default under a Security Financing Interest) the City shall have the right to satisfy any such lien or encumbrances; provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount therein and so long as such delay in payment shall not subject the Property or any portion thereof to forfeiture or sale.

Section 9.7 Holder to be Notified. The provisions of this Article shall be incorporated into the relevant deed of trust or mortgage evidencing each Security Financing Interest to the extent deemed necessary by, and in form and substance reasonably satisfactorily to the City, or shall be acknowledged by the holder of a Security Financing Interest prior to its coming into any security right or interest in the Property.

## ARTICLE 10. GENERAL PROVISIONS

Section 10.1 Notices, Demands and Communications. Formal notices, demands, and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by registered or certified mail, postage prepaid, return receipt requested, by reputable overnight delivery service, or delivered personally, to the principal office of the City and the Developer as follows:



City: City of Lake Elsinore  
130 South Main Street  
Lake Elsinore, CA 92530  
Attn: City Manager

Developer: Mission Cottages LP  
c/o Cottages Management LLC  
7777 Center Drive, Ste 300  
Huntington Beach, CA 92647  
Attn: Steve Semingson

With a copy to: Friedman Stroffe & Gerard PC  
19800 MacArthur Blvd., Ste 1100  
Irvine, CA 92612  
Attn: James D. Stroffe, Esq.

With a copy to: Riverside Capital, LLC  
3 E. Stow Road, P.O. Box 994  
Marlton, NJ 08053-0994  
Attention: Managing Director & General Counsel

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section.

Section 10.2 Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

Section 10.3 Forced Delay. In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement); weather (provided that such claim is documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had a material adverse impact on the Party's ability to satisfy its obligation hereunder); inability to secure necessary labor, materials or tools; acts of the other Party; acts or failure to act of any public or governmental agency or entity; or any other causes (other than Developer's inability to obtain financing for the Development) beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within thirty (30) days from the date the Party seeking the extension first

discovered the cause and such extension of time is not rejected in writing by the other Party within ten (10) days after receipt of the notice. Times of performance under this Agreement may also be extended in writing by the City and the Developer. In no event shall the cumulative delays exceed one hundred eighty (180) days, unless otherwise agree to by the Parties in writing.

The lack of funding to complete the development of the Property (other the failure of the City to fund the LMIHAF Loan or the Fund 106 Loan in accordance herewith) shall not constitute grounds of forced delay pursuant to this Section. Developer expressly assumes the risk of real estate market conditions, construction costs, interest rates, funding availability (other than the commitment of City funding) and other similar general economic circumstances that may make funding and/or construction of the Development difficult, more expensive, or infeasible, whether or not such events or causes are foreseeable as of the date of this Agreement. Developer acknowledges and agrees that the provisions of this Section shall not operate to excuse Developer from prompt payment of loans or other monies when due.

Section 10.4 Inspection of Books and Records. Upon request, the Developer shall permit the City to inspect at reasonable times and on a confidential basis those books, records and all other documents of the Developer necessary to determine Developer's compliance with the terms of this Agreement.

Section 10.5 Provision Not Merged with City Grant Deed. None of the provisions of this Agreement are intended to or shall be merged by the City Grant Deed transferring title to any real property which is the subject of this Agreement from City to Developer or any successor in interest, and any such grant deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 10.6 Title of Parts and Sections. Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

Section 10.7 Indemnification.

(a) General. The Developer agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, its council members, agents, officers and employees (collectively, the "City Indemnitees"), from all suits, actions, claims, causes of action, costs, demands, judgments and liens (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or cost of any kind, whether actual, alleged or threatened, including without limitation reasonable attorneys' fees and costs, court costs, interest or defense costs, and expert witness fees) suffered or incurred as a result of a third party claim against the City Indemnitees, arising out of or in connection with: (i) the Developer's performance or non-performance under this Agreement, or any other agreement executed pursuant to this Agreement, (ii) acts or omissions of Developer or any of Developer's contractors, subcontractors, or consultants involved by, for or on behalf of Developer or persons claiming under any of the aforesaid, (iii) the Developer's ownership, construction, use and operation of the Development (including, but not limited to, any claim made against the City in connection with the approval of this Agreement or the use or operation of the Improvements, including, but not limited to, any claim regarding tenant

selection) except as directly caused by the City's willful misconduct or gross negligence, (iv) the Developer's breach of this Agreement, (v) Developer's compliance with or failure to comply with all applicable laws, including all applicable federal and state labor standards, including, without limitation, Davis Bacon and the requirements of Labor Code § 1720 to the extent applicable; (vi) defects in the design of the Development, including (without limitation) the violation of any laws, and for defects in any work done according to the City approved plans, or (vii) any other performance or act or failure to perform or act pursuant to this Agreement by Developer, or by any individual or entity that Developer shall bear the legal liability thereof, including but not limited to officers, agents, employees or contractors of Developer.

(b) Bodily Injury and Property Damage Indemnification. Developer agrees to and shall defend, indemnify and hold the City Indemnitees harmless from and against all liability, loss, damage, costs, or expenses (including without limitation attorneys' fees and costs) suffered or incurred as a result of a third party claim against the City Indemnitees, arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person resulting from the acts or omissions of Developer, its officers, agents or employees.

(c) Survival. The provisions of this Section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 10.8 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 10.9 No Brokers. Each Party represents to the other that, except with respect to Catalyst Capital Partners who is acting as a broker for Developer in this transaction, it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the Party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified Party's choice, and hold the indemnified Party harmless from all expense, loss, damage and claims, including the indemnified Party's attorneys' fees, if necessary, arising out of the broker's or finder's claim. The provisions of this section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 10.10 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 10.11 Legal Actions. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the venue for such action shall be the Superior Court of the County of Riverside.

Section 10.12 Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto except that there shall be no Transfer of any interest by any of the parties hereto except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

The covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property. However, on the termination of this Agreement, such covenants and restrictions shall expire. Each and every contract, deed, or other instrument hereafter executed covering or conveying the Property shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed, or other instrument, unless the City expressly releases the Property from the requirements of this Agreement.

Section 10.13 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 10.14 Time of the Essence. In all matters under this Agreement, the Parties agree that time is of the essence.

Section 10.15 Action by the City. Except as may be otherwise specifically provided in this Agreement or another City Document, whenever any approval, notice, direction, finding, consent, request, waiver, or other action by the City is required or permitted under this Agreement or another City Document, such action may be given, made, or taken by the City Manager, or by any person who shall have been designated in writing to the Developer by the City, without further approval by the City Council. Any such action shall be in writing. The Developer acknowledges that nothing in this Agreement (including any approval by the City Manager in accordance with this Agreement) shall limit, waive, or otherwise impair the authority and discretion of: (i) the City's Planning Department, in connection with the review and approval of the proposed construction plans for the Development (or any change to such plans), or any use, or proposed use, of the Property, (ii) the City's issuance of a building permit, or (iii) any other office or department of the City acting in its capacity as a governmental regulatory authority with jurisdiction over the development, use, or operation of the Development.

Section 10.16 Representations and Warranties of the Developer. The Developer hereby represents and warrants to the City as follows:

(a) Organization. The Developer is a duly organized, validly existing California limited partnership and is in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted. The copies of the documents evidencing the organization of Developer delivered to City are true and correct copies of the originals as of the Effective Date.

(b) Authority of Developer. The Developer has full power and authority to execute and deliver this Agreement, and the other City Loan Documents to be executed and delivered pursuant to this Agreement, and to carry out, give effect to, consummate the

transactions contemplated hereby, perform and observe the terms and provisions of this Agreement.

(c) Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of the Developer, and all actions required under the Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Developer enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on the Developer, or any provision of the organizational documents of the Developer, or will conflict with or constitute a breach of or a default under any agreement to which the Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of the Developer, other than liens established pursuant hereto.

(f) Compliance with Laws; Consents and Approvals. The construction of the Improvements will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) Pending Proceedings. Neither the Developer, nor any of its members, is in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Developer, threatened against or affecting the Developer, or any of its members, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Developer, materially affect the Developer's ability to develop the Development.

(h) Title to Property. Upon the recordation of the City Grant Deed, the Developer will have good and marketable title to the Property and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than those liens approved by the City, liens for current real property taxes and assessments not yet due and payable, and liens in favor of the City or approved in writing by the City.

(i) Financial Statements. The financial statements of the Developer and other financial data and information furnished by the Developer to the City fairly present the information contained therein and do not omit any material item. As of the Effective Date, there has not been any adverse, material change in the financial condition of the Developer, or any of its members, from that shown by such financial statements and other data and information.

(j) Sufficient Funds. Upon the Closing, the Developer will hold sufficient funds or binding commitments for sufficient funds to complete the development of the Development in accordance with the Financing Plan Plans and Specifications, and Scope of Development.

(k) No Developer Bankruptcy. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, receivership or other proceedings are pending or threatened against the Developer, nor are any of such proceedings contemplated by Developer.

(l) Financing Plan. The Financing Plan constitutes Developer's best estimates as of the date provided with respect to the information set forth therein. Developer is not aware of any material misstatements in or omissions from the Financing Plan.

Each of the foregoing representations shall be deemed to be an ongoing representation and warranty. Developer shall advise the City in writing if there is any change pertaining to any matters set forth or referenced in the foregoing representations.

Section 10.17 Complete Understanding of the Parties. This Agreement and the attached exhibits (and, to the extent applicable, the City Documents) constitute the entire understanding and agreement of the Parties with respect to the matters set forth in this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. The Parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (including but not limited to Civil Code Section 1654 as may be amended from time to time) shall not apply to the interpretation of this Agreement.

Section 10.18 Operating Memoranda; Implementation Agreements. The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance for those items covered in general terms under this Agreement. If and when, from time to time, the Parties find that refinements or adjustments are desirable, such refinements or adjustments shall be accomplished through operating memoranda or implementation agreements approved by the Parties which, after execution shall be attached to this Agreement as addenda and become a part hereof.

Operating memoranda or implementation agreements may be executed on the City's behalf by the City Manager, or his or her designee. In the event a particular subject requires notice or hearing, such notice or hearing shall be appropriately given. Any significant

modification to the terms of performance under this Agreement, including but not limited to amendments or modifications to the City Loans, shall be processed as an amendment of this Agreement in accordance with Section 10.19 and must be approved by the City Council in accordance with applicable law.

Section 10.19 Amendments. The Parties can amend this Agreement only by means of a writing signed by both Parties. The City Manager or his or her designee is authorized to execute any amendments that do not increase the City Loan amounts without the approval of City Council; provided that, if the City Manager finds it necessary or advisable in his or her discretion to seek City Council approval of an amendment hereto, such amendment shall only be executed following approval by the City Council in accordance with applicable law.

Section 10.20 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the City and the Developer have executed this Agreement on or as of the Effective Date.

DEVELOPER:

MISSION COTTAGES, LP,  
a California limited partnership

By: Cottages Management, LLC,  
a California limited liability company,  
its Administrative General Partner

By: \_\_\_\_\_  
Steven P. Semingson  
Managing Member

By: AOF Mission Trails LLC,  
a California limited liability company,  
its Managing General Partner

By: AOF/Pacific Affordable Housing  
Corporation, a California nonprofit public  
benefit corporation,  
its Sole Member and Manager

By: \_\_\_\_\_  
Philip J. Kennedy  
President

*[Signatures continue on next page]*



CITY:

CITY OF LAKE ELSINORE, a municipal corporation

By: \_\_\_\_\_  
Grant Yates, City Manager

ATTEST:

By: \_\_\_\_\_  
Mark Mahan, Deputy City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Barbara Leibold, City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LAKE ELSINORE, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 15, THE SOUTHEAST QUARTER OF SECTION 16; AND THE NORTHEAST QUARTER OF SECTION 21, ALL OF TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 12, IN BLOCK "G" OF RANCHO LA LAGUNA,  
AS SHOWN BY MAP ON FILE IN BOOK 6 PAGE 296 OF MAPS, SAN DIEGO COUNTY RECORDS;

THENCE SOUTH 15°15' EAST ON THE EASTERLY LINE OF SAID RANCHO, 990 FEET, TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 15°15' EAST, ALONG SAID RANCHO LINE 165 FEET;

THENCE NORTH 74°45' EAST, 1313 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY LINE OF MISSION TRAIL HIGHWAY;

THENCE NORTHERLY ON THE WESTERLY LINE OF SAID MISSION TRAIL HIGHWAY 167 FEET, MORE OR LESS TO A POINT WHICH BEARS NORTH 74°45' EAST FROM THE TRUE POINT OF BEGINNING;

THENCE SOUTH 74°45'20" WEST 1281 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING;

SAID LAND ALSO DESCRIBED AS ALL OF LOTS 1282, 1254, 1226, 1191, 1163, 1123, 1098, 1053, 1031, 980 AND THE NORTHWESTERLY HALF OF LOTS 1281, 1255, 1192, 1124, 1097, 1054, 1162, 1225, 1030 AND 981 AS SHOWN ON ASSESSOR'S MAP NO. 48, RIVERSIDE COUNTY RECORDS.

ALSO THAT PORTION OF THE ABANDONED RIGHT OF WAY TO ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY ADJACENT THERETO.

PARCEL 2:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 15; THE SOUTHEAST QUARTER OF SECTION 16; AND THE NORTHEAST QUARTER OF SECTION 21, ALL IN TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 12 IN BLOCK G OF RANCHO LA LAGUNA AS PER MAP RECORDED IN BOOK 6, PAGE 296 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, CALIFORNIA;

THENCE SOUTH 15°15' EAST ON THE EASTERLY LINE OF SAID RANCHO, A DISTANCE OF 1155 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 15°15' EAST ALONG SAID RANCHO LINE, A DISTANCE OF 165 FEET;

THENCE NORTH 74°45' EAST A DISTANCE OF 1344.95 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY LINE OF MISSION LINE OF MISSION TRAIL HIGHWAY, WHICH IS ALSO THE NORTHEASTERLY CORNER OF THAT PROPERTY CONVEYED TO ALEXANDER DEUTCH, AS RECORDED IN BOOK 2573, PAGE 519, OFFICIAL RECORDS;

THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID MISSION TRAIL HIGHWAY, A DISTANCE OF 169 FEET, MORE OR LESS, TO THE SOUTHEASTERLY CORNER OF THE PROPERTY CONVEYED TO G. E. ORR, ET AL., AS RECORDED IN BOOK 3193, PAGE 166, OFFICIAL RECORDS;

THENCE SOUTH 74°45' WEST, ALONG THE SOUTHERLY LINE OF SAID G.E. ORR PROPERTY TO THE POINT OF BEGINNING.

SAID LAND BEING ALSO DESCRIBED AS LOTS 982, 1029, 1055, 1096, 1125, 1161, 1193, 1224, 1256, 1280 AND THE SOUTHERLY HALF OF LOTS 981, 1030, 1054, 1097, 1124, 1162, 1192, 1225, 1255, 1281 AND THE NORTHERLY HALF OF LOT 1298, AS SHOWN ON ASSESSORS MAP NO. 48, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY.

ALSO THAT PORTION OF THE ABANDONED RIGHT OF WAY TO ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY ADJACENT THERETO.

PARCEL 3:

PARCEL NO. 2, AS SHOWN ON RECORD OF SURVEY ON FILE IN BOOK 56, PAGE 69 OF RECORDS OF SURVEY, RIVERSIDE COUNTY, RECORDS, BEING A PORTION OF SECTIONS 15 AND 16, TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN.

EXCEPTING THEREFROM ALL MINERALS, OIL, GAS, OR HYDROCARBON SUBSTANCES, IN, UPON OR UNDER SAID LAND.

APN: 365-030-005, 006, 007, et.al.

EXHIBIT B

FORM OF LMIHAF DEED OF TRUST

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

City of Lake Elsinore  
130 South Main Street  
Lake Elsinore, CA 92530  
Attention: City Manager

---

(Space above for Recorder's use.)

(Exempt from Recording Fees Per Government Code Section 27383.)

**DEED OF TRUST, FIXTURE FILING AND ASSIGNMENT OF RENTS**

(Cottages at Mission Trail - City LMIHAF Loan)

**THIS DEED OF TRUST, FIXTURE FILING AND ASSIGNMENT OF RENTS** ("Deed of Trust") is made as of this 28<sup>th</sup> day of March, 2019, by and among MISSION COTTAGES LP, a California limited partnership ("**Trustor**") and CHICAGO TITLE COMPANY, a California corporation ("**Trustee**"), for the benefit of the CITY OF LAKE ELSINORE, a municipal corporation ("**Beneficiary**").

THIS DEED OF TRUST CONSTITUTES A FIXTURE FILING UNDER SECTION 9-102(40) OF THE UNIFORM COMMERCIAL CODE OF THE STATE OF CALIFORNIA. TO THE EXTENT THE GOODS ARE FIXTURES UNDER THE LAWS OF THE STATE OF CALIFORNIA, THE FIXTURES ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY LOCATED IN THE CITY OF LAKE ELSINORE IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, COMMONLY KNOWN AS COTTAGES AT MISSION TRAIL, IN THE CITY OF LAKE ELSINORE, CALIFORNIA, MORE PARTICULARLY DESCRIBED ON EXHIBIT A ATTACHED HERETO. THE NAME OF THE RECORD OWNER OF THE FEE INTEREST IN THE REAL PROPERTY AS DESCRIBED IN EXHIBIT A IS MISSION COTTAGES LP, A CALIFORNIA LIMITED PARTNERSHIP. TRUSTOR'S ORGANIZATIONAL IDENTIFICATION NUMBER IS: CA-201711500003.

**RECITALS**

The following recitals are a substantive part of this Deed of Trust:

A. Concurrently herewith, Trustor and Beneficiary are entering into a Disposition, Development and Loan Agreement (the "**Loan Agreement**"), pursuant to which a construction and permanent loan is made by Beneficiary to Trustor of Five Million Seventy Four Thousand Two Hundred Seventy Six Dollars (\$5,074,276) (the "**City LMIHAF Loan**" or "**Loan**"), subject to the terms and conditions contained therein. The Loan is made from Low and Moderate Income Housing Asset Funds ("**LMIHAF**") allocated to Beneficiary. The Loan is given for the purpose of providing acquisition, construction and permanent financing for the development of property located on Mission Trail in the City of Lake Elsinore. Capitalized terms not defined herein shall have the meaning set forth in the Loan Agreement. All terms not defined herein or in the Loan Agreement shall have the meaning given them in the Uniform Commercial Code, as enacted in the State of California, or under the Uniform Commercial Code in any other state to the extent the same is applicable law (collectively, as amended, recodified, and in effect from

time to time, the “UCC”). If a term is defined differently in Article 9 of the UCC than in another Article, Article 9 shall control.

B. The City LMIHAF Loan is evidenced by a Residual Receipts Promissory Note (“**Note**”) given by Trustor in favor of Beneficiary. Upon recordation of this Deed of Trust, the Note shall be secured by this Deed of Trust. This Deed of Trust and the Loan Agreement, together with all of their exhibits, and all other documents which evidence, secure, or otherwise pertain to the Loan, including, without limitation, that certain Regulatory Agreement and Declaration of Restrictive Covenants (Low and Moderate Income Housing Asset Funds) recorded concurrently herewith (the “**Regulatory Agreement**”), collectively constitute the “**Loan Documents**.”

C. Trustor and City desire to enter into this Deed of Trust in connection with the making of the City LMIHAF Loan in accordance with the terms and conditions of the Loan Agreement.

## **AGREEMENT**

**NOW, THEREFORE**, the parties hereto agree as follows:

### **1. Grant in Trust and Secured Obligations.**

**1.1 Grant in Trust.** In consideration and for the purpose of securing payment and performance of the Secured Obligations (as defined below), Trustor hereby irrevocably and unconditionally grants, bargains, conveys, sells, transfers, and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title, and interest which Trustor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the “**Property**”):

(a) The real property located on Mission Trail in the City of Lake Elsinore, County of Riverside, California, as more fully described in **Exhibit A** attached hereto and made a part hereof, together with all rights, privileges, easements, appurtenances, tenements, hereditaments, rights of way, appendages, projections, water rights including riparian and littoral rights and whether or not appurtenant, streets, ways, alleys, and strips and gores of land, now or hereafter in any way belonging, adjoining, crossing or pertaining to such real property (the “**Land**”); together with

(b) All buildings, structures and improvements now located or later to be constructed on the Land (the “**Improvements**”); together with

(c) All articles of personal property (including those specified below) and any software imbedded therein, now owned or hereafter acquired by Trustor and attached to, placed upon for an indefinite term, or used in connection with the Land and/or Improvements, together with all goods and other property that are, or at any time become, so related to the Property that an interest in them arises under real estate law, or they are otherwise a “fixture” under applicable law (each a “**Fixture**,” collectively “**Fixtures**”); together with

(d) All existing and future as-extracted collateral produced from or allocated to the Land, including, all minerals, oil, gas, other hydrocarbons and associated substances,

sulphur, nitrogen, carbon dioxide, helium and any other commercially valuable substances which may be in, under or produced from any part of the Land, and all products processed or obtained therefrom, and the proceeds thereof, and all development rights and credits, air rights, water, water courses, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, easements, rights-of-way, gores or strips of land, and any land lying in the streets, ways, alleys, passages, roads or avenues, open or proposed, in front of or adjoining the Land and Improvements; together with

(e) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements, concessions, and other agreements of any kind relating to the use or occupancy of all or any portion of the Property, whether now in effect or entered into in the future (each a “**Lease**,” collectively, the “**Leases**”) relating to the use and enjoyment of all or any part of the Land and Improvements, all amendments, extensions, renewals, or modifications thereof (subject to Beneficiary’s right to approve same pursuant to the terms of the Loan Documents), and any and all guaranties of, and security for, lessees’ performance under any and all Leases, and all other agreements relating to or made in connection with any of such Leases; together with

(f) All rents (and payments in lieu of rents), royalties, issues, profits, income, proceeds, payments, and revenues of or from the Property, and/or at any time payable under any and all Leases, including all rent loss insurance proceeds, prepaid rents and any and all security deposits received or to be received by Trustor pursuant to any and all Leases, and all rights and benefits accrued, or to accrue, to Trustor under any and all Leases (some or all collectively, as the context may require, “**Rents**”); together with

(g) All rights to the name, signs, trade names, trademarks, trademark applications, service marks, licenses, software, and symbols used in connection with the Land and Improvements; together with

(h) All goods, materials, supplies, chattels, furniture, fixtures, machinery, apparatus, fittings, equipment, and articles of personal property of every kind and nature whatsoever, including consumable goods, now or hereafter located in or upon the Property or any part thereof, or to be attached to or placed in or on, or used or useable in connection with any present or future use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including by way of description but without limiting the generality of the foregoing, all computer systems, telephone and telecommunication systems, televisions and television systems, pumps or pumping plants, tanks, motors, conduits, engines, pipes, ditches and flumes, and also all gas and electrical apparatus (including, but not limited to, all electrical transformers, switches, switch boxes, and equipment boxes), cooking, heating, cooling, air conditioning, sprinkler equipment, lighting, power equipment, ventilation, incineration, refrigeration and plumbing apparatus, fixtures and equipment, screens, storm doors and windows, stoves, wall beds, refrigerators, attached cabinets, partitions, ovens, ranges, disposals, dishwashers, carpeting, plants and shrubbery, ground maintenance equipment, ducts and compressors; together with all building materials, goods and personal property on or off the Property intended to be affixed to or incorporated in the Property but not yet affixed to or incorporated in the Property, all which shall be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust; together with

(i) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Land or elsewhere, which have been or later will be

acquired for the purpose of being delivered to, incorporated into or installed in or about the Land or Improvements; together with

(j) All deposit accounts of Trustor, including but not limited to, the Replacement Reserve Account (if any), the Operating Reserve Account (if any), and all Loan funds deposited into any such account, whether disbursed or not, and Trustor's own funds now or later to be held on deposit in all such accounts; together with

(k) To the extent not expressly prohibited by law, all federal, state, and local tax benefits (except the low income housing tax credits) related to the Property; together with

(l) All rights to the payment of money and all guaranties thereof and judgments therefor, and all accounts, accounts receivable, reserves, deferred payments, refunds of real property and personal property taxes and other refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Trustor with third parties (including all utility deposits), warranty rights, contract rights, management contracts, service contracts, construction and architectural contracts, contracts for the purchase and sale of the Property or any part thereof, end-loan or other financing commitments, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, promissory notes, drafts, letters of credit (other than letters of credit in favor of Beneficiary), letter of credit rights (whether or not the letter of credit is evidenced by a writing), supporting obligations, and general intangibles, including payment intangibles, whether any of the foregoing are tangible or electronic, which arise from or relate to construction on the Land or to any business now or later to be conducted on it, or to the Land and Improvements generally; together with

(m) All insurance policies (and the unearned premiums therefor) and bonds required by the Loan Documents and all proceeds thereof, and all proceeds (including all claims to and demands for them) of the voluntary or involuntary conversion of any of the Land, the Improvements, or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to, or defect in, the Land, the Improvements, or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud, misrepresentation, or concealment of a material fact; together with

(n) All books, records, and all recorded data of any kind or nature (regardless of the medium of recording) pertaining to any and all of the property described above, including records relating to tenants under any leases, and the qualification of such tenants, and all certificates, vouchers, and other documents in any way related thereto, and all records relating to the application and allocation of any federal, state, and local tax credits or benefits, including computer-readable memory and any computer hardware or software necessary to access and process such memory (collectively, the "**Books and Records**"); together with



(o) All commercial tort claims Trustor now has or hereafter acquires relating to any of the property described above; together with

(p) All software embedded within or used in connection with any of the property described above; together with

(q) All products, accounts, and proceeds (cash or non-cash) of, additions, betterments, extensions, accessions and accretions to, substitutions, renewals and replacements for, and changes in any of the property described above, including all proceeds of any voluntary or involuntary disposition or claim respecting any such property (arising out of any judgment, condemnation or award, or otherwise arising) and all supporting obligations ancillary to or arising in connection therewith, general intangibles (including payment intangibles) arising in connection therewith, and all goods, accounts, instruments, documents, promissory notes, chattel paper, deposit accounts, supporting obligations, and general intangibles (including payment intangibles) (whether any of the foregoing are tangible or electronic), wherever located, acquired with cash proceeds of any of the foregoing or its proceeds.

Trustor shall and will warrant and forever defend the above-bargained Property in the quiet and peaceable possession of Trustee, its successors and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof. Trustor agrees that any greater title to the Property hereafter acquired by Trustor during the term hereof shall be subject hereto.

## **1.2 Secured Obligations.**

(a) Trustor makes the grant, bargain, conveyance, sale, transfer, and assignment set forth above and grants the security interest set forth in **Section 3** below for the purpose of securing the following obligations (the “**Secured Obligations**”) in such order of priority as Beneficiary may determine:

(i) Payment of all obligations at any time owing under a Residual Receipts Promissory Note (City LMIHAF Loan) (the “**Note**”) secured by Deed of Trust dated as of March 28, 2019, payable by Trustor as maker to the order of Beneficiary in the stated principal amount of Five Million Seventy Four Thousand Two Hundred Seventy Six Dollars (\$5,074,276) to the order of Beneficiary, including principal, interest and all other amounts payable under the terms of the Note and performance of each covenant and agreement of Trustor in the Note and all modifications, amendments, replacements, extensions and renewals thereof and substitution therefore; and

(ii) Payment and performance of all obligations of Trustor under this Deed of Trust; and

(iii) Payment and performance of all obligations of Trustor under the Loan Agreement, under any Loan Documents, and under the Regulatory Agreement; provided, however, that this Deed of Trust does not secure any Loan Document or other document, or any provision of any Loan Document or other document, that is expressly stated to be unsecured; and

(iv) Payment and performance of all future advances and other obligations that Trustor, or any successor in interest to Trustor, and/or any other obligor (if

different than Trustor), or any successor in ownership of all or part of the Property, may agree to pay and/or perform (whether as principal, surety, or guarantor) for the benefit of Beneficiary, when a writing evidences the parties' agreement that the advance or obligation be secured by this Deed of Trust; and

(v) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations, including any successor agreements or instruments which restate and supersede any agreements or instruments evidencing the Secured Obligations; and

(vi) Payment of all sums advanced by Beneficiary to protect the security of this Deed of Trust or the Property, with interest at the Default Rate as defined in the Note.

(b) All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Note or the Loan Agreement which permit borrowing, repayment, and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

## **2. Assignment of Lessor's Interest in Leases and Assignment of Rents.**

**2.1 Absolute Assignment.** Effective upon the recordation of this Deed of Trust, Trustor hereby irrevocably, absolutely, presently, and unconditionally assigns, transfers, and sets over to Beneficiary:

(a) All of Trustor's right, title, and interest in, to, and under any and all Leases, all amendments, extensions, renewals, or modifications thereof (subject to Beneficiary's right to approve same pursuant to the terms of the Loan Documents), and any and all guaranties of, and security for, lessees' performance under any and all Leases, and all other agreements relating to or made in connection with any of such Leases; and

(b) All Rents. In the event that anyone establishes and exercises any right to develop, bore for, or mine for any water, gas, oil, or mineral on or under the surface of the Property, any sums that may become due and payable to Trustor as bonus or royalty payments, and any damages or other compensation payable to Trustor in connection with the exercise of any such rights, shall also be considered Rents assigned under this Section.

**THIS IS AN ABSOLUTE ASSIGNMENT, NOT AN ASSIGNMENT FOR SECURITY ONLY.**

**2.2 Grant of License.** Beneficiary hereby confers upon Trustor a license (the "License") to collect and retain the Rents as they become due and payable, so long as no Event of Default (as such term is defined below) shall exist. Upon the occurrence of an Event of Default, the License shall terminate (automatically and without notice or demand of any kind and without regard to the adequacy of Beneficiary's security under this Deed of Trust).

**2.3 Collection and Application of Rents and Enforcement of Leases.** Subject to the License granted to Trustor above and the other provisions of this Section, Beneficiary has the right, power, and authority to collect any and all Rents and enforce the provisions of any Lease. In connection with the provisions of this Section, Trustor hereby constitutes and irrevocably appoints Beneficiary its attorney-in-fact, with full power of substitution, to perform any and all of the following acts, if and at the times when Beneficiary in its sole and absolute discretion may so choose:

- (a) Demand, receive, and enforce payment of any and all Rents, and endorse all checks and other payment instruments related thereto;
- (b) Give receipts, releases, and satisfactions for any and all Rents;
- (c) Sue either in the name of Trustor or in the name of Beneficiary for any and all Rents;
- (d) Enforce the provisions of any and all Leases;
- (e) Enter into Leases; and/or
- (f) Perform and discharge any and all undertakings of Trustor or otherwise under any Lease.

The appointment granted in this Section shall be deemed to be a power coupled with an interest. Beneficiary's rights under this Section do not depend on whether or not Beneficiary takes possession of the Property as permitted under this Deed of Trust. In Beneficiary's sole and absolute discretion, Beneficiary may choose to collect Rents or enforce any and all Leases either with or without taking possession of the Property and either in person or through a court-appointed receiver. Beneficiary's rights and powers under this Section are in addition to the other remedies herein provided for upon the occurrence of an Event of Default and may be exercised independently of or concurrently with any other such remedies.

**2.4 Notice.** All lessees under any and all Leases are hereby irrevocably authorized and notified by Trustor to rely upon and to comply with (and will be fully protected in so doing) any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of lessees' undertakings under the Leases, and lessees have no right or duty to inquire whether any Event of Default has actually occurred or is then existing hereunder or to obtain Trustor's consent.

**2.5 Proceeds.** Beneficiary has the right to apply all amounts received by it pursuant to this assignment to pay any of the following in the amounts and in the order Beneficiary deems appropriate: (a) any and all Secured Obligations, in any order and proportions as Beneficiary in its sole and absolute discretion may choose, and (b) the costs and expenses of operation of the Property and collection of Rents and other sums that may be incurred by Trustee, Beneficiary, and/or any receiver, including but not limited to reasonable attorneys' fees and any and all expenses of leasing, operating, maintaining, and managing the Property, and all other costs and charges incident to the Property; including, without limitation, (i) salaries, fees, commissions and wages of a managing agent, and other employees, agents, or independent contractors; (ii) taxes, charges, claims, assessments, any other liens, and premiums for all insurance; and (iii) the cost of

all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property. In addition, Beneficiary may hold the same as security for the payment of the Secured Obligations. Beneficiary shall have no liability for any funds which it does not actually receive.

**2.6 Beneficiary Not Responsible.** Under no circumstances shall Beneficiary have any duty to produce Rents from the Property. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land and the Improvements, Beneficiary is not and shall not be deemed to be:

- (a) A “mortgagee in possession” for any purpose;
- (b) Responsible for performing any of the obligations of the Trustor as lessor under any lease;
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or
- (d) Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

**2.7 Leasing.** Trustor shall not accept any deposit or prepayment of Rents for any rental period exceeding two (2) months without Beneficiary’s express prior written consent. Trustor shall not lease the Property or any part of it except strictly in accordance with the Loan Agreement. Trustor shall apply all Rents received by it in the manner required by the Loan Agreement.

### **3. Grant of Security Interest.**

**3.1 Security Agreement.** The parties intend for this Deed of Trust to create a lien on the Property, and an absolute assignment of the Rents and Leases, all in favor of Beneficiary. The parties acknowledge that some of the Property and some of the Rents and Leases may be determined under applicable law to be personal property or fixtures. To the extent that any Property, Rents, or Leases may be or be determined to be personal property, Trustor, as debtor, hereby grants to Beneficiary, as secured party, a security interest in all such Property, Rents, and Leases, to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the UCC, covering all such Property, Rents, and Leases. To the extent such Property, Rents, or Leases are not real property encumbered by the lien granted above, and are not absolutely assigned by the assignment set forth above, it is the intention of the parties that such Property, Rents, and/or Leases shall constitute “proceeds, products, offspring, rents, or profits” (as defined in and for the purposes of Section 552(b) of the United States Bankruptcy Code, as such section may be modified or supplemented) of the Land and Improvements.

**3.2 Financing Statements; Authorization to File; Power of Attorney.** Trustor hereby authorizes Beneficiary, at any time and from time to time, to file any initial financing statements, amendments thereto, and continuation statements, with or without the signature of Trustor, as authorized by applicable law, as applicable to the Property or any part thereof.

Trustor shall pay all fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require and all other reasonable fees and costs Beneficiary incurs in connection with perfection of its security interests. For purposes of such filings, Trustor agrees to promptly furnish any information requested by Beneficiary. Trustor also ratifies its authorization for Beneficiary to have filed any like initial financing statements, amendments thereto, or continuation statements if filed prior to the date of this Deed of Trust. Trustor hereby irrevocably constitutes and appoints Beneficiary, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Trustor to execute in Trustor's name any such documents and to otherwise carry out the purposes of this Section, to the extent that Trustor's authorization above is not sufficient. Such power is deemed to be coupled with an interest, and is therefore irrevocable. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it.

Everything used in connection with the Property and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the real estate encumbered by this Deed of Trust regardless of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for lessening of value, or (3) Trustor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property conveyed hereby, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Beneficiary as determined by this instrument or impugning the priority of Beneficiary's lien granted hereby or by any other recorded document. Such mention in the Financing Statement is declared to be solely for the protection of Beneficiary in the event any court or judge shall at any time hold, with respect to the matters set forth in the foregoing clauses (1), (2), and (3), that notice of Beneficiary's priority of interest is required in order to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government, shall be filed in the UCC records.

**4. Effective as a Financing Statement; Fixture Filing.** This Deed of Trust constitutes a financing statement filed as a fixture filing under the applicable section of the UCC, covering any Property which now is or later may become fixtures attached to the Land or Improvements. This Deed of Trust shall also be effective as a financing statement covering as-extracted collateral (including oil and gas), accounts, and general intangibles under the UCC, and is to be filed of record in the real estate records of each county where any part of the Land is situated. This Deed of Trust shall also be effective as a financing statement covering any other Property and may be filed in any other appropriate filing or recording office. The mailing address of Trustor is the address of Trustor set forth at the end of this Deed of Trust, and the address of Beneficiary from which information concerning the security interests hereunder may be obtained is the address of Beneficiary set forth at the end of this Deed of Trust. A carbon, photographic, or other reproduction of this Deed of Trust or of any financing statement related to this Deed of

Trust shall be sufficient as a financing statement for any of the purposes referred to in this Section.

**5. Rights and Duties of the Parties.**

**5.1 Representations and Warranties.** Trustor represents and warrants that, except as previously disclosed to Beneficiary in writing:

(a) Trustor is indefeasibly seized of and lawfully possesses and holds good and marketable fee simple title to all of the Land and the Improvements, unless any portion of Trustor's present interest in the Land is described in **Exhibit A** as a leasehold interest, in which case Trustor lawfully possesses and holds a leasehold interest in such portion of the Land as stated in **Exhibit A**; and Trustor and its successors and assigns warrant and shall forever defend title to the Property, subject only to such exceptions and conditions to title as Beneficiary has approved in its sole and absolute discretion (the "**Permitted Title Exceptions**") (and any later such encumbrances approved by Beneficiary in writing), unto Trustee and Trustee's successors and assigns against the claims and demands of all persons claiming or to claim the same or any part thereof;

(b) Trustor has the full and unlimited power, right, and authority to encumber the Property and assign the Rents;

(c) This Deed of Trust creates a lien on the Property free and clear of all liens, encumbrances, and claims whatsoever, except for the liens of any construction or permanent lender with whom Beneficiary has entered into a recorded Subordination Agreement, and subject only to the Permitted Title Exceptions;

(d) The Property includes all property and rights which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Land and the Improvements;

(e) Trustor owns any Property which is personal property free and clear of all liens, encumbrances, and claims whatsoever, as well as any security agreements, reservations of title, or conditional sales contracts, and there is no presently effective financing statement affecting such personal property on file in any public office nor is any of such personal property subject to a security interest having priority over Beneficiary's priority to the same except with respect to junior indebtedness, if any, approved and permitted by Beneficiary as a Permitted Title Exception and Trustor has the right to convey and encumber such property and will warrant and defend such property against the claims of all persons and parties;

(f) The Property has frontage on and direct access for ingress and egress to publicly dedicated streets;

(g) Electricity (and gas, if available), water facilities, sewer facilities and any other necessary utilities are, and at all times hereafter shall be, available in sufficient capacity to service the Property satisfactorily and any easements necessary to the furnishing of such utilities are or will be granted and duly recorded; and

(h) Trustor's exact legal name, and, if Trustor is not an individual, organizational identification number (if any assigned by Trustor's state of incorporation or organization) are correctly set forth in this Deed of Trust. If Trustor is an individual, Trustor's principal residence has for the preceding four months been and will continue to be (unless Trustor notifies Beneficiary of any change in writing at least thirty (30) days prior to the date of such change) the address of the principal residence of Trustor as set forth at the end of this Deed of Trust. If Trustor is not an individual, Trustor is an organization of the type and (if not an unregistered entity) is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Deed of Trust. If Trustor is an unregistered entity (including a general partnership), it is organized under the laws of the state specified in the introductory paragraph of this Deed of Trust. Trustor's principal place of business and chief executive office and the place where it keeps its Books and Records has for the preceding four months (or, if less, the entire period of the existence of Trustor) been and will continue to be (unless Trustor notifies Beneficiary of any change in writing at least thirty (30) days prior to the date of such change) the address of Trustor set forth at the end of this Deed of Trust.

## **5.2 Taxes and Assessments.**

(a) Trustor shall pay prior to delinquency all taxes, levies, charges and assessments, including assessments on appurtenant water stock (individually and collectively, an "**Imposition**"), imposed by any public or quasi-public authority or utility company that are (or if not paid, may become) a lien on all or part of the Property or any interest in it, or that, if not paid, may cause any decrease in the value of the Property or any part of it. If any Imposition becomes delinquent, Beneficiary may require Trustor to present evidence that it has been paid in full, on ten (10) days' written notice by Beneficiary to Trustor. Notwithstanding the foregoing provisions of this Section, Trustor may, at its expense, contest the validity or application of any Imposition by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, provided that (i) Beneficiary is reasonably satisfied that neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, or lost as a result of such contest, and (ii) Trustor shall have posted a bond or furnished other security as may be reasonably required from time to time by Beneficiary; and provided further that if at any time payment of any obligation imposed upon Trustor by this Section becomes necessary to prevent a lien foreclosure sale or forfeiture or loss of the Property, or any part thereof, then Trustor must pay the same in sufficient time to prevent such sale, forfeiture, or loss.

(b) Following an Event of Default, Trustor shall, upon demand of Beneficiary, pay monthly to Beneficiary an amount sufficient, as estimated by Beneficiary, to accumulate the sum required to pay thirty (30) days prior to the due date thereof the annual cost of any real property taxes and any assessments or other Impositions and the estimated next premiums for hazard and other required insurance on the Property. These funds will be held by Beneficiary (and may be commingled with other funds of Beneficiary) without interest and will be released to Trustor for payment of Impositions and insurance premiums, or directly applied to such costs by Beneficiary, as Beneficiary may elect.

(c) Notwithstanding anything to the contrary in subsection (b) above, if a property tax reserve account, taxes and insurance reserve account, or similar reserve for real property taxes is required pursuant to the terms of the Loan Agreement or other Loan Documents, then, if and at all such times as such reserve is required pursuant to the terms of the Loan Agreement, Trustor shall pay to Beneficiary the reserve deposits, including, if applicable,

any initial reserve deposit and any monthly or periodic reserve deposits, as described in the Loan Agreement or other applicable Loan Document, and all terms and conditions set forth in therein related to such reserve shall apply and are herein incorporated by reference; provided, however, no reserve will be required if a similar reserve is being held by any lender holding a lien superior to Beneficiary (“**Senior Lender**”).

**5.3     Performance of Secured Obligations.** Trustor shall promptly pay and perform each Secured Obligation in accordance with its terms.

**5.4     Liens, Charges, and Encumbrances.** Trustor shall immediately discharge any lien on the Property that Beneficiary has not expressly consented to in writing. Trustor shall pay when due each obligation secured by or reducible to a lien, charge, or encumbrance which now does or later may encumber all or part of the Property or any interest in it, whether the lien, charge, or encumbrance is or would be senior or subordinate to this Deed of Trust. This Section is subject to any right granted to Trustor in the Loan Agreement to contest in good faith claims and liens for labor done and materials and services furnished in connection with construction of the Improvements. Trustor shall pay, perform and observe all obligations under any Permitted Title Exceptions, and will not modify or permit modification of them without Beneficiary’s prior written consent.

**5.5     Damages and Insurance and Condemnation Proceeds.**

(a) Subject to the rights of any Senior Lender, Trustor hereby absolutely and irrevocably assigns to Beneficiary, and authorizes the payor to pay to Beneficiary, the following claims, causes of action, awards, payments, and rights to payment (whether awarded or to be awarded or which may be awarded because of judicial action, private action, settlement, or compromise):

(i) All awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation or taking for public or private use which affects all or part of the Property or any interest in it; and

(ii) All other awards, claims, and causes of action, arising out of any warranty affecting all or any part of the Property, or for damage or injury to or decrease in value of all or part of the Property or any interest in it; and

(iii) All proceeds of any insurance policies payable because of loss sustained to all or part of the Property, whether or not such insurance policies are required by Beneficiary; and

(iv) All interest which may accrue on any of the foregoing.

(b) Trustor shall immediately notify Beneficiary in writing if:

(i) Any material damage occurs or any injury or loss is sustained to all or any part of the Property, or any action or proceeding relating to any such damage, injury, or loss is commenced; or



(ii) Any written offer is made, or any action or proceeding is threatened or commenced, which relates to any actual or proposed condemnation or taking of all or part of the Property.

(c) If Beneficiary chooses to do so, Beneficiary may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on warranty, or for damage, injury, or loss to all or part of the Property, and Beneficiary may make any compromise or settlement of the action or proceeding with respect to its rights and interests. Beneficiary, if it so chooses, may participate in any action or proceeding relating to condemnation or taking of all or part of the Property, and may join Trustor in adjusting any loss covered by insurance, and in connection therewith, Beneficiary shall have the right to be represented by counsel of its choice.

(d) All proceeds of these assigned claims and all other property and rights which Trustor may receive or be entitled to shall be paid to Beneficiary. In each instance, Beneficiary shall apply such proceeds first toward reimbursement of all of Beneficiary's reasonable costs and expenses of recovering the proceeds, including reasonable attorneys' fees. If, in any instance, each and all of the following conditions are satisfied in Beneficiary's reasonable judgment, Beneficiary shall permit Trustor to use the balance of such proceeds (the "**Net Claims Proceeds**") to pay costs of repairing or reconstructing the Property in the manner described below:

(i) The plans and specifications, cost breakdown, construction contract, construction schedule, contractor and payment and performance bond (or acceptable substitute therefore) for the work of repair or reconstruction shall all be reasonably acceptable to Beneficiary; and

(ii) Beneficiary shall receive evidence reasonably satisfactory to it that after repair or reconstruction, the Property would be at least as valuable as it was immediately before the damage or condemnation occurred, and to that end and notwithstanding any other provision of the Loan Documents, Beneficiary may order an appraisal from an appraiser acceptable to Beneficiary, the cost of which shall be borne by Trustor; and

(iii) The Net Claims Proceeds (together with the net proceeds of any rental interruption insurance and reasonably projected rental receipts during the repair or reconstruction period) shall be sufficient in Beneficiary's determination to pay for the total cost of repair or reconstruction, including all associated development costs and interest and other sums projected to be payable on the Secured Obligations until the repair or reconstruction is complete; or Trustor shall provide its own funds in an amount equal to the difference between the Net Claims Proceeds and a reasonable estimate, made by Trustor and found acceptable by Beneficiary, of the total cost of repair or reconstruction; and

(iv) Unless otherwise agreed to by Beneficiary, Beneficiary shall receive evidence satisfactory to it that, after the repair or reconstruction is complete, the Property will continue to operate in substantially the same manner, and will generate the same debt service coverage as immediately before the damage or condemnation occurred; and

(v) Beneficiary shall be satisfied that the repair or reconstruction can be completed prior to the maturity date of the Note; and

(vi) No default or Event of Default (as defined in the applicable document, subject to applicable notice and cure periods) shall have occurred and be continuing under this Deed of Trust, the Note, the Loan Agreement or any other Loan Document.

If Beneficiary finds that such conditions have been met, Beneficiary shall hold the Net Claims Proceeds, and any funds which Trustor is required to provide, in an account and shall disburse them to Trustor to pay costs of repair or reconstruction upon presentation of evidence reasonably satisfactory to Beneficiary that repair or reconstruction has been completed satisfactorily and lien-free, including partial progress payments of Net Claims Proceeds from time to time, in accordance with a cost breakdown approved by Beneficiary and the same procedures and subject to the same conditions as are set forth in the Loan Agreement for Loan disbursements. However, if Beneficiary finds that one or more of such conditions have not been satisfied, Beneficiary may apply the Net Claims Proceeds to pay or prepay some or all of the Secured Obligations in such order and proportions as Beneficiary may determine, all without affecting the lien and security interest created by this Deed of Trust. Notwithstanding the foregoing, if the Senior Lender finds that the above conditions have been met, Beneficiary shall also so agree and all Net Claims Proceeds shall be held or disbursed pursuant to the terms of the Senior Loan Documents until the obligations under the Senior Loan are satisfied. Any remaining proceeds shall be held or disbursed pursuant to this Deed of Trust and the Loan Documents.

(e) Notwithstanding the foregoing, subsequent to the initial fifteen (15) year tax credit compliance period, in the event any governmental agency or authority shall require, or commence any proceedings for, the demolition of any buildings or structures comprising a substantial part of the Improvements, or shall commence any proceedings to condemn or otherwise take pursuant to the power of eminent domain a material portion of the Land or Improvements, Beneficiary may, at its option, declare the Secured Obligations to be immediately due and payable and apply any condemnation awards or proceeds to the Secured Obligations. Prior to the expiration of the initial fifteen (15) year tax credit compliance period, Trustor covenants and agrees to use any such proceeds for rebuilding the Project. If the proceeds are not used to rebuild the Project, Beneficiary may, at its option, declare the Secured Obligations to be immediately due and payable and apply any condemnation awards or proceeds to the Secured Obligations.

(f) Trustor hereby specifically, unconditionally, and irrevocably waives all rights of a property owner granted under any applicable law that provides for allocation of condemnation proceeds between a property owner and a lienholder, and any other law or successor statute of similar import.

## **5.6 Surety Bond Proceeds.**

(a) Subject to the rights of any Senior Lender, Trustor hereby absolutely and irrevocably assigns to Beneficiary, and authorizes the payor to pay to Beneficiary, all payments, rights to payment, and all other compensation payable, directly or indirectly, under any payment, performance, or other bond (each a “**Surety Bond**”) related to, or issued in connection with, the construction of any Improvements or the performance of any acts, related to the Property or any interest in it, whether or not such Surety Bonds are required by Beneficiary.

(b) Trustor shall immediately notify Beneficiary in writing of:

(i) Any threatened or actual default or breach of any obligation under any Surety Bond; or

(ii) Any action or inaction, including a breach by any contractor under their contract (if applicable), which would give rise to the obligation of the payor/surety to pay any sums or perform any acts pursuant to the terms of any Surety Bond.

(c) If Beneficiary chooses to do so, Beneficiary may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on any claim under a Surety Bond, and Beneficiary may make any compromise or settlement of any such action or proceeding.

(d) Subject to the rights of any Senior Lender, all proceeds of these assigned payments, rights to payment, and compensation payable, directly or indirectly, under any Surety Bond which Trustor may receive or be entitled to, shall be paid to Beneficiary. In each instance, Beneficiary shall apply such proceeds first toward reimbursement of all of Beneficiary's costs and expenses of recovering the proceeds, including reasonable attorneys' fees. The balance of such proceeds (the "**Net Bond Proceeds**") shall be used to pay the costs of completing all or a part of the construction of certain of the Improvements. When each and all of the following conditions are satisfied in Beneficiary's reasonable judgment, Beneficiary shall permit Trustor to pay such costs of construction, in the manner described below:

(i) The plans and specifications, cost breakdown, construction contract (including any replacement contract), construction schedule (including all revisions thereto), contractor (including any replacement contractor), and, if required by Beneficiary, any replacement payment and performance bond for the construction work, shall all be acceptable to Beneficiary; and

(ii) To the extent allowed pursuant to the terms of the Surety Bond, Beneficiary shall have approved any replacement contractor(s); and

(iii) Beneficiary shall receive evidence satisfactory to it that after the construction is complete, the Property would be at least as valuable as it would have been if completed pursuant to the original construction contract, and to that end and notwithstanding any other provisions of the Loan Documents, Beneficiary may order an appraisal from an appraiser acceptable to Beneficiary, the cost of which shall be borne by Trustor; and

(iv) The Net Bond Proceeds shall be sufficient in Beneficiary's reasonable determination to pay for the total cost of the applicable construction, including all associated development costs and interest and other sums projected to be payable on the Secured Obligations until the applicable construction is complete; or Trustor shall provide its own funds in an amount equal to the difference between the Net Bond Proceeds and a reasonable estimate, made by Trustor and found acceptable by Beneficiary, of the total cost of such construction; and

(v) Beneficiary shall be satisfied that the repair or reconstruction can be completed prior to the maturity date of the Note; and

(vi) No default or Event of Default (as defined in the applicable document, subject to applicable notice and cure periods) shall have occurred and be continuing

under this Deed of Trust, the Note, the Loan Agreement, the Regulatory Agreement or any other Loan Document.

If Beneficiary finds that such conditions have been met, Beneficiary shall hold the Net Bond Proceeds, and any funds which Trustor is required to provide, in a non-interest-bearing account and shall disburse them to Trustor to pay costs of construction upon presentation of evidence reasonably satisfactory to Beneficiary that the construction has been completed satisfactorily and lien-free, including partial progress payments of Net Bond Proceeds from time to time, in accordance with a cost breakdown approved by Beneficiary and the same procedures and subject to the same conditions, as are set forth in the Loan Agreement for Loan disbursements. However, if Beneficiary finds that one or more of such conditions have not been satisfied, Beneficiary may apply the Net Bond Proceeds to pay or prepay some or all of the Secured Obligations in such order and proportions as Beneficiary may choose, all without affecting the lien and security interest created by this Deed of Trust. Notwithstanding the foregoing, if the Senior Lender finds that the above conditions have been met, Beneficiary shall also so agree and all Net Bond Proceeds shall be held or disbursed pursuant to the terms of the Senior Loan Documents until the obligations under the Senior Loan are satisfied. Any remaining proceeds shall be held or disbursed in accordance with this Deed of Trust and the Loan Documents.

(e) Notwithstanding anything herein to the contrary, to the extent that any of the terms of this Section conflict with the terms of any Surety Bond which has been approved in writing by Beneficiary, the terms of such Surety Bond shall control.

#### **5.7 Maintenance and Preservation of Property.**

(a) Trustor shall insure the Property as required by the Loan Agreement and keep the Property in good condition and repair.

(b) Trustor shall not remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change in any zoning or other land use classification which affects the Property or any part of it, except as permitted or required by the Loan Documents or with Beneficiary's express prior written consent in each instance.

(c) If all or part of the Property becomes damaged or destroyed, Trustor shall, upon direction of Beneficiary, promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices and only if insurance proceeds from any Property insurer are available for such purpose; provided, however, this subsection is subject to the provisions of Sections 5.5 and 5.6 above.

(d) Trustor shall not commit or allow any act upon or use of the Property which would violate: (i) any applicable law or order of any governmental authority, whether now existing or later to be enacted and whether foreseen or unforeseen; or (ii) any public or private covenant, condition, restriction or equitable servitude affecting the Property. Trustor shall not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Trustor on the Property or any part of it under the Loan Documents.

(e) Trustor shall not commit or allow waste of the Property, including those acts or omissions characterized under the Loan Agreement as waste that arise out of Hazardous Materials (as such term is defined in the Loan Agreement).

(f) Trustor shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value and utility.

(g) If any part of Trustor's interest in the Property is a leasehold interest, Trustor shall observe and perform all obligations of Trustor under any such lease or leases and shall refrain from taking any actions prohibited by any lease or leases, and Trustor shall preserve and protect such leasehold estate and its value.

(h) If any easement or right of way appurtenant to, or recorded agreement which benefits, the Property exists or is hereafter entered into, Trustor shall perform its obligations and duties under such easement, right of way, or agreement, and shall take all such actions as may be necessary to prevent such easement, right of way, or agreement from being terminated for Trustor's non-performance. Trustor irrevocably appoints Beneficiary its attorney-in-fact, with full power of substitution, for the purpose of performing any act to be performed by Trustor under any such easement, right of way, or agreement, such power deemed to be coupled with an interest and therefore irrevocable.

**5.8 Trustee's Acceptance of Trust.** Trustee accepts this trust when this Deed of Trust is recorded.

**5.9 Required Insurance.**

(a) Trustor shall at all times provide, maintain and keep in force or cause to be provided, maintained and kept in force, at no expense to Trustee or Beneficiary, policies of insurance in accordance with the terms of the Loan Documents in form and amounts, providing for deductibles, and issued by companies, associations or organizations covering such casualties, risks, perils, liabilities and other hazards as required by the Loan Documents or by Beneficiary pursuant thereto.

(b) Trustor shall not obtain separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Beneficiary is included thereon under a standard, non-contributory mortgagee clause or endorsement acceptable to Beneficiary. Trustor shall immediately notify Beneficiary whenever any such separate insurance is obtained and shall promptly deliver to Beneficiary the original policy or policies of such insurance.

(c) Within 90 days following the end of each fiscal year of Trustor, at the request of Beneficiary, Trustor at Trustor's expense shall furnish such evidence of replacement costs as the insurance carrier providing casualty insurance for the building(s) and other improvements on the Property may require to determine, or which such carrier may provide in determining, the then replacement cost of the building(s) and other improvements on The Property.

### **5.10 Delivery of Policies, Payment of Premiums.**

(a) At Beneficiary's option Trustor shall furnish Beneficiary with an original of all policies of insurance required under Section 5.9 above or evidence of insurance issued by the applicable insurance company for each required policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number and the period of coverage, and otherwise in form and substance satisfactory to Beneficiary in all respects.

(b) In the event Trustor fails to provide, maintain, keep in force or deliver to Beneficiary the policies of insurance required by this Deed of Trust or by any Loan Documents, Beneficiary may (but shall have no obligation to) procure such insurance or single-interest insurance for such risks covering Beneficiary's interest and Trustor will pay all premiums thereon and reimburse Beneficiary for all amounts paid or incurred by it in connection therewith promptly upon demand by Beneficiary and, until such payment and reimbursement is made by Trustor, the amount of all such premiums and amounts paid or incurred by Beneficiary shall become indebtedness secured by this Deed of Trust and bear interest at the Default Rate. In such event, upon the request of Beneficiary, Trustor further agrees to cause all bills, statements or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements or other documents evidencing that a premium for a required policy is then payable, and providing Trustor has deposited sufficient funds with Beneficiary pursuant to this Section, Beneficiary shall timely pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If at any time and for any reason the funds deposited with Beneficiary are or will be insufficient to pay such amounts as may be then or subsequently due, Beneficiary shall notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of the funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this Section, nor shall anything contained herein modify the obligation of Trustor set forth above to maintain and keep such insurance in force at all times. Beneficiary may commingle the reserve with its own funds and Trustor shall be entitled to no interest thereon.

### **5.11 Intentionally Omitted.**

**5.12 Assignment of Policies Upon Foreclosure.** In the event of foreclosure of this Deed of Trust or other transfer of title or assignment of the Trust Estate in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of Trustor in and to all policies of insurance obtained by Trustor, whether required by the Loan Documents or otherwise, shall inure to the benefit of and pass to the successor in interest of Trustor or the purchaser or grantee of the Trust Estate.

### **5.13 Releases, Extensions, Modifications, and Additional Security.**

(a) From time to time, Beneficiary may perform any of the following acts without incurring any liability or giving notice to any person:

(i) Release any person liable for payment of any Secured Obligation;  
or

(ii) Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation; or

(iii) Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security; or

(iv) Alter, substitute or release any property securing the Secured Obligations.

(b) From time to time, when requested to do so by Beneficiary in writing, Trustee may perform any of the following acts without incurring any liability or giving notice to any person:

(i) Consent to the making of any plat or map of the Property or any part of it; or

(ii) Join in granting any easement or creating any restriction affecting the Property; or

(iii) Join in any subordination or other agreement affecting this Deed of Trust or the lien of it; or

(iv) Reconvey the Property or any part of it without any warranty.

**5.14 Reconveyance.** Prepayment or payment of the City LMIHAF Loan shall not relieve Trustor of its obligations under the Regulatory Agreement. Trustor's performance under the Regulatory Agreement is secured by this Deed of Trust. Even if all amounts payable under the Promissory Note are paid in full, Beneficiary shall only reconvey this Deed of Trust upon satisfaction of all of Trustor's obligations under the Regulatory Agreement.

**5.15 Compensation, Exculpation, Indemnification.**

(a) Trustor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Beneficiary and Trustee when the law provides no maximum limit, for any services that Beneficiary or Trustee may render in connection with this Deed of Trust, including Beneficiary's providing a statement of the Secured Obligations or Trustee's rendering of services in connection with a release or reconveyance (full or partial). Trustor shall also pay or reimburse all of Beneficiary's and Trustee's costs and expenses which may be incurred in rendering any such services. Trustor further agrees to pay or reimburse Beneficiary for all costs, expenses, and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including the exercise of any rights or remedies afforded to Beneficiary or Trustee or both of them under the remedies section below, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Deed of Trust, including reasonable attorneys' fees and other legal costs (which shall include reimbursement for the allocated costs of in-house counsel used by Beneficiary and/or Trustee to the extent not prohibited by law), costs of any Trustee's Sale (as described below), any judicial foreclosure of this Deed of Trust, and any cost of evidence of title. If Beneficiary chooses to dispose of Property through more than one

Trustee's Sale or judicial foreclosure, Trustor shall pay all costs, expenses, or other advances that may be incurred or made by Trustee or Beneficiary in each of such Trustee's Sales or judicial foreclosure actions.

(b) Beneficiary shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following:

(i) Beneficiary's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary in this Deed of Trust;

(ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust;

(iii) Any waste committed by lessees of the Property or any other parties, or any dangerous or defective condition of the Property; or

(iv) Any loss sustained by Trustor or any third party resulting from Beneficiary's failure to lease the Property, or from any other act or omission of Beneficiary in operating or managing the Property, after an Event of Default, unless the loss is caused solely by the gross negligence or willful misconduct of Beneficiary.

Trustor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Beneficiary.

(c) Trustor agrees to indemnify, defend, and hold Trustee and Beneficiary harmless, for, from, and against, and reimburse them for, all losses, damages, liabilities, claims, causes of action, judgments, penalties, court costs, reasonable attorneys' fees and other legal expenses and expenses of professional consultants and experts, cost of evidence of title, cost of evidence of value, and other costs and expenses, including the settlement of any such matter, excepting those arising out of, or resulting, solely from Beneficiary's or Trustee's, as the case may be, gross negligence or willful misconduct, which either may suffer or incur as a result of a third party claim against Trustee or Beneficiary:

(i) In performing any act required or permitted by this Deed of Trust or any of the other Loan Documents or by law;

(ii) Because of any failure of Trustor to perform any of Trustor's obligations; or

(iii) Because of any obligation of or undertaking by Trustor to perform or discharge any of the representations, warranties, conditions, covenants, or other obligations in any document relating to the Property other than the Loan Documents.

This agreement by Trustor to indemnify Trustee and Beneficiary shall survive payoff, termination, or the release and cancellation of any or all of the Secured Obligations, and the full or partial release and/or reconveyance of this Deed of Trust.

(d) Trustor shall pay all obligations to pay money arising under this Section immediately upon written demand by Trustee or Beneficiary. Each such obligation shall



be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date the obligation arises at the Default Rate (as such term may be defined in the Note), or if no Default Rate is specified, at five percent (5%) in excess of the Stated Rate. For purposes hereof, “**Stated Rate**” means the stated interest rate in effect from time to time under the Note and/or other debt instrument evidencing the Loan; provided that if more than one rate of interest is in effect, the highest rate shall be used.

**5.16 Defense and Notice of Claims and Actions.** At Trustor’s sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing if any claim is asserted which does or could affect any of such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

**5.17 Subrogation.** Beneficiary shall be subrogated to the liens of all encumbrances affecting the Property, whether released or not, which are discharged in whole or in part by Beneficiary in accordance with this Deed of Trust or with the proceeds of any loan secured by this Deed of Trust.

**5.18 Site Visits, Observation and Testing.** Beneficiary and its agents and representatives and the other City Indemnitees (as such term is defined in the Loan Agreement), and their agents and representatives, shall have the right at any reasonable time to enter and visit the Property for the purposes of observing the Property, performing appraisals, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. The City Indemnitees have no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation, or testing by any City Indemnitee shall impose any liability on any City Indemnitee. In no event shall any site visit, observation, or testing by any City Indemnitee be a representation that Hazardous Substances (as such term is defined in the Loan Agreement) are or are not present in, on, or under the Property, or that there has been or shall be compliance with any law, regulation, or ordinance pertaining to Hazardous Substances or any other applicable governmental law. Neither Trustor nor any other party is entitled to rely on any site visit, observation, or testing by any City Indemnitee. The City Indemnitees owe no duty of care to protect Trustor or any other party against, or to inform Trustor or any other party of, any Hazardous Substances or any other adverse condition affecting the Property. The City Indemnitees may in their discretion disclose to Trustor or any other party any report or findings made as a result of, or in connection with, any site visit, observation, or testing by the City Indemnitees. Trustor understands and agrees that the City Indemnitees make no representation or warranty to Trustor or any other party regarding the truth, accuracy, or completeness of any such report or findings that may be disclosed. Trustor also understands that, depending on the results of any site visit, observation, or testing by any City Indemnitee which are disclosed to Trustor, Trustor may have a legal obligation to notify one or more environmental agencies of the results. Any City Indemnitee shall give Trustor reasonable prior electronic or written notice before entering the Property. Such City Indemnitee shall make reasonable efforts to avoid interfering with Trustor’s use of the Property in exercising any rights provided in this Section. In connection with any such site visit, observation, or testing, Trustor shall have any rights with respect to the release and/or disclosure of environmental reports as set forth in the Loan Agreement.

**5.19 Notice of Change.** Trustor will not cause or permit any change to be made in (a) its name, identity, or corporate, partnership, limited liability company, or other entity structure, (b) its jurisdiction of organization (c) its organizational identification number, (d) its place of business or, if more than one, its chief executive office, (e) its mailing address, or (f) any change in the location of any Property, unless Trustor shall have notified Beneficiary in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all action required by Beneficiary for the purpose of further perfecting or protecting the lien and security interest of Beneficiary in the Property. Unless otherwise approved by Beneficiary in writing, all Property that consists of personal property (other than Books and Records) will be located on the Land and all Books and Records will be located at Trustor's place of business or chief executive office if Trustor has more than one place of business.

**5.20 Further Assurances.** Trustor shall, promptly on request of Beneficiary, (a) correct any defect, error or omission which may be discovered in the contents, execution, or acknowledgment of this Deed of Trust or any other Loan Document; (b) execute, authenticate, acknowledge, deliver, procure, and record and/or file and/or authorize the filing of such further documents (including, without limitation, further deeds of trust, security agreements, financing statements, financing statement amendments, continuation statements, and assignments of rents or leases) and do such further acts as may be necessary, desirable, or proper (i) to carry out more effectively the purposes of this Deed of Trust and the other Loan Documents, (ii) to more fully identify and subject to the liens and security interests hereof any property intended to be covered hereby (including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property), or (iii) as deemed advisable by Beneficiary to protect the lien or security interest hereunder against the rights or interests of third persons; and (c) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper to enable Beneficiary to comply with the requirements or requests of any agency having jurisdiction over Beneficiary or any examiners of such agencies with respect to the Secured Obligations, the Trustor, or the Property. Trustor shall pay all costs connected with any of the foregoing within five (5) days after the written demand by Trustee or Beneficiary. If not paid when due, such costs shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date of such written demand at the Default Rate (as such term may be defined in the Note), or if no Default Rate is specified, at ten percent (10%) in excess of the Stated Rate. Notwithstanding anything to the contrary set forth herein, Trustor shall have no obligation to execute any document, or to take any action, which (i) would alter any business term or condition of the Loan Documents, or (ii) impose greater liabilities upon Trustor, any Guarantor and/or any partner, member or officer thereof.

## **6. Accelerating Transfers, Default and Remedies.**

**6.1 Due on Sale or Other Accelerating Transfers.** Upon an Accelerating Transfer, Beneficiary may, in its sole discretion, declare all Secured Obligations immediately due and payable.

(a) **"Accelerating Transfer"** means any sale, contract to sell, conveyance, encumbrance, pledge, mortgage, lease not expressly permitted under Article 7 of the Loan Agreement, or other transfer of all or any material part of the Property or any interest in it, whether voluntary, involuntary, by operation of law, or otherwise.

(b) Trustor acknowledges that Beneficiary is making one or more advances under the Loan Agreement in reliance on the expertise, skill, and experience of Trustor; thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Beneficiary's reliance, Trustor agrees that Trustor shall not make any Accelerating Transfer, other than a transfer allowed pursuant to the express terms of the Loan Documents, unless the transfer is preceded by Beneficiary's express written consent to the particular transaction and transferee. Beneficiary may withhold such consent in its sole and absolute discretion. If any Accelerating Transfer occurs, an Event of Default will occur under the Loan Agreement, and Beneficiary may implement available rights and remedies under the Loan Agreement and the other Loan Documents including declaration of all of the Secured Obligations to be immediately due and payable, and Beneficiary and Trustee may invoke any rights and remedies under this Deed of Trust. Trustor acknowledges the materiality of the provisions of this Section as a covenant of Trustor, given individual weight and consideration by Beneficiary in entering into the Secured Obligations, and that any Accelerating Transfer in violation of the prohibited transfer provisions herein set forth shall result in a material impairment of Beneficiary's interest in the Property and be deemed a breach of the foregoing covenant.

(c) Notwithstanding the foregoing, Beneficiary acknowledges and agrees that any transfer specifically allowed or permitted by, and made in accordance with, the terms of Article 7 of the Loan Agreement, if any, shall not be an Accelerating Transfer under this Section.

**6.2 Events of Default.** Trustor will be in default under this Deed of Trust upon the occurrence of any one or more of the following events (some or all collectively, "**Events of Default**;" any one singly, an "**Event of Default**");

(a) Trustor fails to perform any obligation to pay money which arises under this Deed of Trust, and does not cure that failure within ten (10) days after written notice from Beneficiary or Trustee; or

(b) Trustor fails to perform any obligation arising under this Deed of Trust other than one to pay money, and does not cure that failure either within thirty (30) days (the "**Initial Cure Period**") after written notice from Beneficiary or Trustee, or within sixty (60) days after such written notice, so long as Trustor begins within the Initial Cure Period, and Beneficiary, exercising reasonable judgment, determines that the cure cannot reasonably be completed at or before expiration of the Initial Cure Period; or

(c) A default or Event of Default by Trustor (as such term is defined in the applicable document, subject to any applicable notice and cure periods) has occurred under the Loan Agreement or any other Loan Document or any document evidencing any Secured Obligation; or

(d) Trustor makes or permits the occurrence of an Accelerating Transfer; or

(e) Any default by Trustor occurs under any other mortgage, deed of trust, security deed, or other security instrument on all or any part of the Property, subject to any applicable notice and cure period provided for therein or under any obligation secured by such security instrument, whether such security instrument is prior to or subordinate to this Deed of Trust.

**6.3 Remedies.** Except as otherwise expressly set forth in the Loan Agreement or any other Loan Document, at any time after an Event of Default, Beneficiary and Trustee shall be entitled to invoke any and all of the rights and remedies described below or permitted by applicable law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Acceleration. Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately and may terminate any Loan Document in accordance with its terms.

(b) Receiver. Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property. Trustor hereby consents to such appointment.

(c) Entry. Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and in its own name or in the name of Trustor sue for or otherwise collect any and all Rents, including those that are past due, and may also do any and all other things in connection with those actions that Beneficiary may in its sole and absolute discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing all of Trustor's or the then owner's Books and Records; entering into, enforcing, modifying, or canceling leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents (but not in excess of any applicable maximum low income rents for residential tenants); collecting and receiving any payment of money owing to Trustor; completing any unfinished construction; contracting for and making repairs and alterations; and/or performing such acts of cultivation or irrigation as necessary to conserve the value of the Property. If Beneficiary so requests, Trustor shall assemble all of the Property that has been removed from the Land and make all of it available to Beneficiary at the site of the Land. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact, with full power of substitution, to perform such acts and execute such documents as Beneficiary in its sole and absolute discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments. The appointment granted in this Section shall be deemed to be a power coupled with an interest. Regardless of any provision of this Deed of Trust, or any other Loan Document, Beneficiary shall not be considered to have accepted any property other than cash or immediately available funds in satisfaction of any obligation of Trustor to Beneficiary, unless Beneficiary has given express written notice of Beneficiary's election of that remedy in accordance with applicable law. Trustor agrees to deliver to Beneficiary all Books and Records pertaining to the Property, including computer-readable memory and any computer hardware or software necessary to access or process such memory, as may reasonably be requested by Beneficiary in order to enable Beneficiary to exercise its rights under this Section.

(d) Cure; Protection of Security. Either Beneficiary or Trustee may cure any breach or default of Trustor, and if it chooses to do so in connection with any such cure, Beneficiary or Trustee may also enter the Property and/or do any and all other things that it may, in its sole and absolute discretion, consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding that purports to affect the security of, or the rights or powers of Beneficiary or Trustee under, this Deed of Trust; paying, purchasing, contesting or compromising any

encumbrance, charge, lien or claim of lien, which in Beneficiary's or Trustee's sole judgment is or may be senior in priority to this Deed of Trust; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Documents; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary or Trustee. Beneficiary and Trustee may take any of the actions permitted under this Section either with or without giving notice to any person.

(e) Cure Rights of Limited Partner. Trustor's limited partner(s) (collectively, "**Limited Partner**") shall have the right but not the obligation to cure any Event of Default of Trustor under the Loan Documents, and Beneficiary agrees to accept any cure tendered by Limited Partner on behalf of Trustor within the cure periods described in this **Section 6**. In addition to any notice required to be given by Beneficiary to Trustor, Beneficiary shall give concurrent written notice of any Event of Default under the Loan Documents to Limited Partner. The notice shall specify: (i) the nature of the event or deficiency giving rise to the Event of Default, (ii) the action required to cure the event or deficiency, if an action to cure is possible and can be ascertained, and (iii) a date by which such action to cure must be taken, if applicable, which date shall in no event be less than thirty (30) calendar days from the mailing of the notice for monetary defaults or sixty (60) calendar days from the mailing of the notice for non-monetary defaults. If the cure of a non-monetary default requires more than sixty (60) days, Beneficiary may, in its reasonable discretion, extend the time within which the Event of Default must be cured, provided Limited Partner promptly commences to cure the Event of Default and thereafter diligently pursues or prosecutes such cure to completion, or diligently pursues the removal and replacement of the general partner of Trustor. In the event Beneficiary fails to provide notice of an Event of Default to Limited Partner as set forth herein, Beneficiary's failure to provide such notice to Limited Partner shall not result in liability to Beneficiary, but Beneficiary shall grant Limited Partner thirty (30) calendar days from receipt of actual notice of a monetary default or sixty (60) days from receipt of actual notice of a non-monetary default to pay any and all sums or perform any and all acts necessary to cure such Events of Default, provided Limited Partner has recorded a request for notice of default and has taken any and all other steps necessary to mitigate its damages in the event of a default by Trustor. Notwithstanding the foregoing, in no event shall Limited Partner's right to cure an Event of Default extend beyond five (5) calendar days prior to Beneficiary's foreclosure of its interest in the Property.

(f) UCC Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the UCC.

(g) Judicial Action. Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust in the manner provided by law for the foreclosure of deeds of trusts or mortgages on real property and/or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust. If Beneficiary brings such an action, Trustor agrees to pay Beneficiary's reasonable attorneys' fees (including the allocated costs of in-house counsel to the extent not prohibited by applicable law) and court costs as determined by the court.

(h) Power of Sale. Under the power of sale hereby granted, Beneficiary shall have the discretionary right to cause some or all of the Property, including any Property which

constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

(i) Sales of Personal Property.

(A) For purposes of this power of sale, and to the extent not prohibited by applicable law, Beneficiary may elect to treat as personal property any Property which is intangible or which can be severed from the Land or Improvements without causing structural damage. If it chooses to do so, Beneficiary may dispose of any personal property separately from the sale of real property, in any manner permitted by the UCC, including any public or private sale, or in any manner permitted by any other applicable law. Any proceeds of any such disposition shall not cure any Event of Default or reinstate any Secured Obligation.

(B) In connection with any sale or other disposition of such personal property disposed of separately from the sale of the real property, Trustor agrees that the following procedures constitute a commercially reasonable sale. Beneficiary shall mail written notice of the sale to Trustor not later than ten (10) days prior to the date of public sale of the Property or prior to the date after which a private sale of the Property will be made, and such notice shall constitute reasonable notice; provided that, if Beneficiary fails to comply with this subsection in any respect, its liability for such failure shall be limited to the liability, if any, imposed on it as a matter of law under the UCC. Upon receipt of any written request, Beneficiary will make the personal property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding, Beneficiary shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equal the fair value of the personal property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(j) Trustee's Sales of Real Property or Mixed Collateral.

(A) Beneficiary may choose to dispose of some or all of the Property which consists solely of real property in any manner then permitted by applicable law. In its sole and absolute discretion, and to the extent not prohibited by applicable law, Beneficiary may also or alternatively choose to dispose of some or all of the Property, in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to real property, as may be permitted by the UCC. Trustor agrees that such a sale of personal property together with real property constitutes a commercially reasonable sale of the personal property. For purposes of this power of sale, either a sale of real property alone, or a sale of both real and personal property together in accordance with the UCC, will sometimes be referred to as a **"Trustee's Sale."**

(B) Before any Trustee's Sale, Beneficiary or Trustee shall give such statement of breach or nonperformance, notice of sale, and/or notice of default as may then be required by applicable law. When all time periods then legally mandated have expired, and after such notice of sale and/or other notice as may then be legally required has been given, Trustee shall sell the property being sold at a public auction to be held at the time and place specified in the notice of sale. Neither Trustee nor Beneficiary shall have any obligation to make demand on Trustor before any Trustee's Sale. From time to time in accordance with then applicable law, Trustee may, and in any event at Beneficiary's request shall, postpone any Trustee's Sale by

public announcement at the time and place noticed for that Trustee's Sale, unless otherwise required by applicable law.

(C) At any Trustee's Sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States, payable at the time of sale unless otherwise required by applicable law. Trustee shall execute and deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any Trustee's Sale, shall be conclusive proof of their truthfulness, absent manifest error. Absent manifest error, any such deed shall be (1) conclusive against all persons as to the facts recited in it; and (2) conclusive evidence in favor of purchasers and encumbrancers for value and without actual notice, that all requirements of this Deed of Trust and all requirements of law were met relating to the exercise of the power of sale and the Trustee's Sale of the Property conveyed by such deed. Knowledge of the Trustee shall not be imputed to the Beneficiary.

(k) Attorney-in-Fact. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact, with full power of substitution, to perform such acts and execute such documents as Beneficiary in its sole and absolute discretion may consider to be appropriate (1) to effect the purpose of this Deed of Trust; and (2) in connection with taking the measures described in this Section, including endorsement of Trustor's name on any instruments. This appointment granted in this Section shall be deemed to be a power coupled with an interest, and is therefore irrevocable.

(l) Single or Multiple Foreclosure Sales. Unless prohibited by applicable law, Beneficiary may elect to dispose of the Property, or any portion thereof, including but not limited to lots, parcels, and/or items through a single consolidated sale or disposition to be held or made under the power of sale granted above, or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Beneficiary may deem to be in its best interests (any such sale or disposition, a "Foreclosure Sale;" any two or more, "Foreclosure Sales"). If the Property consists of more than one lot, parcel or item of property, Beneficiary may designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition. If Beneficiary chooses to have more than one Foreclosure Sale, Beneficiary at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Beneficiary may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the lien of this Deed of Trust on any part of the Property which has not been sold, until all of the Secured Obligations have been paid and performed in full.

**6.4 Personal Property.** It shall not be necessary that Beneficiary take possession of all or any part of the Property that is personal property or fixture property prior to the time that any sale pursuant to the provisions of this Section is conducted, and it shall not be necessary that such Property or any part thereof be present at the location of such sale. With respect to application of proceeds from disposition of such Property, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses (including, without limitation, the allocated costs for in-house counsel to the extent not prohibited by applicable law) incurred by Beneficiary. Any and all statements of fact or other recitals made in

any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Secured Obligations or as to the occurrence of any default or Event of Default, or as to Beneficiary having declared all of such indebtedness to be due and payable, or as to notice of time, place, and terms of sale, and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Beneficiary, shall be taken as prima facie evidence of the truth of the facts so stated and recited (absent manifest error). Beneficiary may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Beneficiary, including the sending of notices and the conduct of the sale, but in the name and on behalf of Beneficiary. Beneficiary may comply with any applicable state or federal law or regulatory requirements in connection with a disposition of the Property or any part thereof, and such compliance will not be considered to affect adversely the commercial reasonableness of any sale of such Property. Beneficiary may sell all or any portion of the Property without giving any warranties as to such Property, and may specifically disclaim any warranties of title, merchantability, fitness for a specific purpose, or the like, and this procedure will not be considered to affect adversely the commercial reasonableness of any sale of such Property. Trustor acknowledges that a private sale of all or any part of the Property may result in less proceeds than a public sale, and Trustor acknowledges that the Property may be sold at a loss to Trustor, and that, in such event, Beneficiary shall have no liability or responsibility to Trustor for such loss. In addition to the rights granted elsewhere in this Deed of Trust, after the occurrence of any default or Event of Default, Beneficiary may at any time notify the account debtors or obligors of any accounts, chattel paper (whether tangible or electronic), general intangibles (including payment intangibles), negotiable instruments, promissory notes, or other evidences of indebtedness included in the Property to pay Beneficiary directly.

**6.5 Credit Bids.** At any Trustee's Sale, Foreclosure Sale, or any sale of personal property collateral under this Deed of Trust, any person, including Trustor, Trustee or Beneficiary, may bid for and acquire the Property being sold or any part of it to the extent not expressly prohibited by then applicable law. Instead of paying cash for such property, Beneficiary shall have the benefit of any applicable law permitting credit bids.

**6.6 Application of Trustee's Sale or Foreclosure Sale Proceeds.** Except as may be otherwise required by law, Beneficiary and Trustee shall apply the proceeds of any Trustee's Sale, Foreclosure Sale, or any other sale of personal property collateral under this Deed of Trust, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, including all costs and expenses of exercising the power of sale and other costs of sale, including, but not limited to, trustee's fees and reasonable attorneys' fees, the costs of any action, and any other sums for which Trustor is obligated to reimburse Beneficiary or Trustee under this Deed of Trust; and

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Beneficiary or Trustee under the terms of this Deed of Trust which then remain unpaid; and

(c) Third, to pay all other Secured Obligations, to the extent not expressly prohibited by applicable law, in any order and proportions as Beneficiary in its sole and absolute discretion may choose; and



(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it, or, if permitted or required by applicable law, to the clerk of the court of the county in which the Trustee's Sale, Foreclosure Sale, or any other sale of personal property collateral under this Deed of Trust, took place.

If the Secured Obligations include more than one loan or line of credit, by cross-collateralization or otherwise, it is specifically agreed that the proceeds of any Trustee's Sale or other foreclosure action shall not be applied pro-rata unless such application is directed by Beneficiary, but instead shall be applied to all such Secured Obligations in any order, proportions and manner as Beneficiary in its sole and absolute discretion may choose.

**6.7 Application of Rents and Other Sums.** Beneficiary shall apply any and all Rents collected by it in such order as set forth in **Section 2.5** above, and any and all other sums, other than proceeds of a Trustee's Sale or a judicial foreclosure sale under this Deed of Trust, which Beneficiary may receive or collect under this Section, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation of the Property and collection of Rents and other sums that may be incurred by Trustee, Beneficiary, and/or any receiver, including but not limited to reasonable attorneys' fees and any and all expenses of leasing, operating, maintaining, and managing the Property, and all other costs and charges incident to the Property; and

(b) Second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole and absolute discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it.

Beneficiary shall have no liability for any funds which it does not actually receive.

**6.8 Request for Notice.** Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth herein.

**6.9 Forbearance by Lender Not a Waiver.** Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Beneficiary of payment of any sum secured by this Deed of Trust after the due date of such payment shall not be a waiver of Beneficiary's right either to require prompt payment when due of all other sums so secured or to declare an Event of Default for failure to make prompt payment. The procurement of insurance or this payment of taxes or other liens or charges by Beneficiary shall not be a waiver of Beneficiary's right to accelerate the maturity of the indebtedness secured by this Deed of Trust nor shall Beneficiary's receipt of any awards, proceeds or damages under this Deed of Trust operate to cure or waive any Event of Default with respect to any payment secured by this Deed of Trust.

**6.10 Restriction on Rental Increases.** Notwithstanding anything to the contrary contained in the Loan Documents, the Beneficiary acknowledges and agrees that in the event of a foreclosure or deed-in-lieu of foreclosure (collectively, "Foreclosure") with respect to the Project, the following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, shall apply:

For a period of three (3) years from the date of Foreclosure, with respect to any unit that had been regulated by a regulatory agreement with the California Tax Credit Allocation Committee, (i) none of the tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code.

**7. Miscellaneous.**

**7.1 Amendments.** This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

**7.2 Trustor Waiver of Rights.** Trustor waives to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the Trust Estate, (b) all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created, (c) all rights and remedies which Trustor may have or be able to assert by reason of the laws of the State of California pertaining to the rights and remedies of sureties, (d) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Deed of Trust or to any action brought to enforce the Agreement or any other obligation secured by this Deed of Trust, and (e) any rights, legal or equitable, to require marshalling of assets or to require upon foreclosure sales in a particular order, including any rights under Civil Code Sections 2899 and 3433. Beneficiary shall have the right to determine the order in which any or all of the Trust Estate shall be subjected to the remedies provided herein. Beneficiary shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Nothing contained herein shall be deemed to be a waiver of Trustor's rights under Section 2924c of the Civil Code.

**7.3 Notices.** Any approval, disapproval, demand, document or other notice ("Notice") required or permitted under this Deed of Trust must be in writing and may be given by any commercially acceptable means to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

If to Beneficiary:      City of Lake Elsinore  
                                    130 South Main Street  
                                    Lake Elsinore, CA 92530  
                                    Attention: City Manager

Copy to:                    Leibold McClendon & Mann  
                                    9841 Irvine Center Drive, Suite 230  
                                    Irvine, California 92618-4316  
                                    Attn: Barbara Leibold

If to Trustor:                                    Mission Cottages LP  
    c/o Cottages Management LLC  
    7777 Center Drive, Ste 300

Huntington Beach, CA 92647  
Attn: Steve Semingson

With a copy to:

Friedman Stroffe & Gerard PC  
19800 MacArthur Blvd., Ste 1100  
Irvine, CA 92612  
Attn: James D. Stroffe, Esq.

Any Notice shall be deemed received immediately if delivered by hand and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail.

**7.4 Subordination.** Notwithstanding anything to the contrary contained herein, all rights of Beneficiary hereunder shall be subject to the prior and superior rights of any Senior Lender to the Property and its security interest therein, provided that such Senior Lender has entered into a subordination agreement with Beneficiary prior to or concurrently with recordation of such lien.

**7.5 Survival of Warranties.** All representations, warranties and covenants of Trustor contained in the Loan Documents or incorporated by reference therein, shall survive the execution and delivery of this Deed of Trust and shall remain continuing obligations, warranties and representations of Trustor so long as any portion of the obligations secured by this Deed of Trust remains outstanding.

**7.6 Successors and Assigns.** This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, and the heirs, legatees, devisees, administrators, executors, successors and assigns of Beneficiary. The term "Beneficiary" means the owner and holder of the Promissory Note, whether or not named as Beneficiary herein. In exercising any rights hereunder or taking any actions provided for herein, Beneficiary may act through its employees, agents or independent contractors authorized by Beneficiary.

**7.7 Acceptance by Trustee.** Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

**7.8 Captions.** The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

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

**7.10 Subrogation.** To the extent that proceeds of the Promissory Note are used to pay any outstanding lien, charge or prior encumbrance against the Trust Estate, such proceeds have been or will be advanced by Beneficiary at Trustor's request and Beneficiary shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether the liens, charges or encumbrances are released.

**7.11 Attorneys' Fees.** In the event that either party hereto brings any action or files any proceeding in connection with the enforcement of its respective rights under this Deed of Trust or the Promissory Note, as a consequence of any breach by the other party of its obligations thereunder, the prevailing party in such action or proceeding shall be entitled to have its reasonable attorneys' fees and out-of-pocket expenditures paid by the losing party. The attorneys' fees so recovered shall include fees for prosecuting or defending any appeal and shall be awarded for any supplemental proceedings until the final judgment is satisfied in full. In addition to the foregoing award of attorneys' fees, the prevailing party in any lawsuit with respect to the Promissory Note or this Deed of Trust shall also be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. In addition to the foregoing, Trustor agrees to pay or reimburse Beneficiary, upon demand by Beneficiary, for all costs incurred by Beneficiary in connection with enforcement of this Deed of Trust or the Promissory Note, including without limitation, reasonable attorneys' fees and costs, if there shall be filed by or against Trustor any proceedings under any federal or state bankruptcy or insolvency laws, whether Beneficiary is a creditor in such proceedings or otherwise.

As used herein, the terms "attorneys' fees" or "attorneys' fees and costs" means the fees and expenses of counsel to the parties hereto (including, without limitation, in-house counsel employed by Beneficiary) which may include printing, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred.

**7.12 Waiver of Special or Consequential Damages.** Each of Trustor and Beneficiary shall in no event be entitled to, and hereby waives, any right to seek consequential or special damages of any kind or nature from the other arising out of or in connection with this Deed of Trust, and in connection with such waiver each of Trustor and Beneficiary is familiar with and each hereby waives the provision 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."

**7.13 Nondiscrimination.** Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, Section 12955.2 and Section 12955.3 of the California Government Code, nor shall the Trustor or any person claiming under or through the Trustor establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property. With respect to familial status, this Section 7.13 shall not be construed

to apply to housing for older persons, as defined in Section 12955.9 of the California Government Code. With respect to familial status, nothing in this Section shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51, and subdivisions (n), (o), and (p) of Section 12955 of the California Government Code shall apply to this Section 7.13. The foregoing covenants shall run with the land.

**7.14 No Merger of Lease.** If both the lessor's and lessee's estate under any lease or any portion thereof which now or hereafter constitutes a part of the Trust Estate shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Beneficiary so elects as evidenced by recording a written declaration so stating, and, unless and until Beneficiary so elects, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Trust Estate pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Trust Estate shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

**7.15 Governing Law.** This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

**7.16 Joint and Several Obligations.** Should this Deed of Trust be signed by more than one party, all obligations herein contained shall be deemed to be the joint and several obligations of each party executing this Deed of Trust. Any married person signing this Deed of Trust agrees that recourse may be had against community assets and against his or her separate property for the satisfaction of all obligations contained herein.

**7.17 Interpretation.** In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

**7.18 Reconveyance by Trustee.** Upon written request of Beneficiary stating that all sums secured hereby have been paid and all obligations under the Regulatory Agreement have been satisfied, and upon surrender of this Deed of Trust and the Promissory Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto." Such grantee shall pay Trustee a reasonable fee and Trustee's costs incurred in so reconveying the Trust Estate.

**7.19 Counterparts.** This document may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to physically form one document, which may be recorded.

**7.20 Nonforeign Entity.** Section 1445 of the Internal Revenue Code of 1986, as amended (the “**Code**”) and Sections 18805, 18815 and 26131, as applicable, of the Revenue and Taxation Code (“**CRTC**”) provide that a transferee of a U.S. real property interest must withhold tax, in the case of the Code, if the transferor is a foreign person, or if, in the case of the CRTC, the transferor is not a California resident. To inform Beneficiary that the withholding of tax will not be required in the event of the disposition of the Property or the Improvements, or any portion thereof or interest therein, pursuant to the terms of this Deed of Trust, Trustor hereby certifies, under penalty of perjury, that: (a) Trustor is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Code and the regulations promulgated thereunder; and (b) Trustor’s U.S. employer identification number is 82-1354730; and (c) Trustor’s principal place of business is 7777 Center Drive, Ste 300, Huntington Beach, CA 92647; Attn: Steve Semingson. It is understood that Beneficiary may disclose the contents of this certification to the Internal Revenue Service and the California Franchise Tax Board, and that any false statement contained herein could be punished by fine, imprisonment or both. Trustor covenants and agrees to execute such further certificates, which shall be signed under penalty of perjury, as Beneficiary shall reasonably require. The covenant set forth herein shall survive the foreclosure of the lien of this Deed of Trust or acceptance of a deed in lieu thereof.

**7.21 Substitute Trustee.** Beneficiary at any time and from time to time, by instrument in writing, may substitute and appoint a successor Trustee (either corporate or individual) to any Trustee named herein or previously substituted hereunder, which instrument when executed, acknowledged, and recorded in the Official Records of the Office of the Recorder of the county or counties where The Property is located shall be conclusive proof of the proper substitution and appointment of each successor trustee or trustees, who shall then have all the title, powers, duties and rights of the predecessor Trustee, without the necessity of any conveyance from such predecessor. Trustee shall not be obligated to notify any party hereto of pending sale under any other Deed of Trust, or, unless brought by Trustee, or any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party.

**7.22 Fixture Filing.** This Deed of Trust constitutes a fixture filing under Sections 9313 and 9402 of the California Uniform Commercial Code, as amended or recodified from time to time (“**UCC**”), and is acknowledged and agreed to be a “construction mortgage” under the UCC. This Deed of Trust as fixture filing covers the personal property that is or is to become fixtures on the Property or Real Property. “Fixtures” include all articles of personal property now or hereafter attached to, placed upon or used for an indefinite term or used in connection with said Property and/or Real Property, and/or included within the term “Trust Estate” together with all property that is or at any time becomes so related to the Property that an interest in them arises under real estate law.

This Deed of Trust also constitutes a Security Agreement (this “**Security Agreement**”) between Trustor as the “Debtor” and Beneficiary as the “Secured Party” with respect to all items constituting the Property (“Collateral”), a security interest in all such Collateral being hereby transferred, pledged, assigned, set over, conveyed and granted to Beneficiary by Trustor as security for the payment of the Note and all sums becoming due and owing thereunder or under any other Loan Document and the observance and performance by Trustor of all of the terms, covenants and provisions of the Loan Documents on the part of Trustor to be observed and performed (said indebtedness, interest and all other sums which may or shall become due under,

and said obligation to observe and perform terms, covenants and provisions of the Loan Documents are collectively part of the Secured Obligations). This Deed of Trust constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder in the county in which the Property is located with respect to any and all fixtures as used herein and with respect to any goods or other personal property that may now be or hereafter become such fixtures.

**7.23 Notices.** TRUSTOR ACKNOWLEDGES RECEIPT OF A TRUE COPY OF THIS DEED OF TRUST WITHOUT CHARGE.

TRUSTOR PLEASE NOTE: UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, CALIFORNIA PROCEDURE PERMITS TRUSTEE TO SELL THE TRUST ESTATE AT A SALE HELD WITHOUT SUPERVISION BY ANY COURT AFTER EXPIRATION OF A PERIOD PRESCRIBED BY LAW. UNLESS YOU PROVIDE AN ADDRESS FOR THE GIVING OF NOTICE, YOU MAY NOT BE ENTITLED TO NOTICE OF THE COMMENCEMENT OF ANY SALE PROCEEDINGS. BY EXECUTION OF THIS DEED OF TRUST, YOU CONSENT TO SUCH PROCEDURE. BENEFICIARY URGES YOU TO GIVE PROMPT NOTICE OF ANY CHANGE IN YOUR ADDRESS SO THAT YOU MAY RECEIVE PROMPTLY ANY NOTICE GIVEN PURSUANT TO THIS DEED OF TRUST.

*[Signatures On Next Page]*

**IN WITNESS WHEREOF**, Trustor has executed this Deed of Trust as of the day and year first above written.

**TRUSTOR:**

MISSION COTTAGES, LP,  
a California limited partnership

By: Cottages Management, LLC,  
a California limited liability company,  
its Administrative General Partner

By: \_\_\_\_\_  
Steven P. Semingson  
Managing Member

By: AOF Mission Trails LLC,  
a California limited liability company,  
its Managing General Partner

By: AOF/Pacific Affordable Housing Corporation,  
a California nonprofit public benefit  
corporation,  
its Sole Member and Manager

By: \_\_\_\_\_  
Philip J. Kennedy  
President

**[SIGNATURE PAGE TO DEED OF TRUST]**

**[PAGE 1 OF 1]**



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

STATE OF CALIFORNIA )  
 ) §  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature of Notary

(Affix seal here)

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

STATE OF CALIFORNIA )  
 ) §  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature of Notary

(Affix seal here)

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LAKE ELSINORE, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

**PARCEL 1:**

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 15, THE SOUTHEAST QUARTER OF SECTION 16; AND THE NORTHEAST QUARTER OF SECTION 21, ALL OF TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 12, IN BLOCK "G" OF RANCHO LA LAGUNA,  
AS SHOWN BY MAP ON FILE IN BOOK 6 PAGE 296 OF MAPS, SAN DIEGO COUNTY RECORDS;

THENCE SOUTH 15°15' EAST ON THE EASTERLY LINE OF SAID RANCHO, 990 FEET, TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 15°15' EAST, ALONG SAID RANCHO LINE 165 FEET;

THENCE NORTH 74°45' EAST, 1313 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY LINE OF MISSION TRAIL HIGHWAY;

THENCE NORTHERLY ON THE WESTERLY LINE OF SAID MISSION TRAIL HIGHWAY 167 FEET, MORE OR LESS TO A POINT WHICH BEARS NORTH 74°45' EAST FROM THE TRUE POINT OF BEGINNING;

THENCE SOUTH 74°45'20" WEST 1281 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING;

SAID LAND ALSO DESCRIBED AS ALL OF LOTS 1282, 1254, 1226, 1191, 1163, 1123, 1098, 1053, 1031, 980 AND THE NORTHWESTERLY HALF OF LOTS 1281, 1255, 1192, 1124, 1097, 1054, 1162, 1225, 1030 AND 981 AS SHOWN ON ASSESSOR'S MAP NO. 48, RIVERSIDE COUNTY RECORDS.

ALSO THAT PORTION OF THE ABANDONED RIGHT OF WAY TO ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY ADJACENT THERETO.

**PARCEL 2:**

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 15; THE SOUTHEAST QUARTER OF SECTION 16; AND THE NORTHEAST QUARTER OF SECTION 21, ALL IN TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 12 IN BLOCK G OF RANCHO LA LAGUNA AS PER MAP RECORDED IN BOOK 6, PAGE 296 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, CALIFORNIA;

THENCE SOUTH 15°15' EAST ON THE EASTERLY LINE OF SAID RANCHO, A DISTANCE OF 1155 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 15°15' EAST ALONG SAID RANCHO LINE, A DISTANCE OF 165 FEET;

THENCE NORTH 74°45' EAST A DISTANCE OF 1344.95 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY LINE OF MISSION LINE OF MISSION TRAIL HIGHWAY, WHICH IS ALSO THE NORTHEASTERLY CORNER OF THAT PROPERTY CONVEYED TO ALEXANDER DEUTCH, AS RECORDED IN BOOK 2573, PAGE 519, OFFICIAL RECORDS;

THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID MISSION TRAIL HIGHWAY, A DISTANCE OF 169 FEET, MORE OR LESS, TO THE SOUTHEASTERLY CORNER OF THE PROPERTY CONVEYED TO G. E. ORR, ET AL., AS RECORDED IN BOOK 3193, PAGE 166, OFFICIAL RECORDS;

THENCE SOUTH 74°45' WEST, ALONG THE SOUTHERLY LINE OF SAID G.E. ORR PROPERTY TO THE POINT OF BEGINNING.

SAID LAND BEING ALSO DESCRIBED AS LOTS 982, 1029, 1055, 1096, 1125, 1161, 1193, 1224, 1256, 1280 AND THE SOUTHERLY HALF OF LOTS 981, 1030, 1054, 1097, 1124, 1162, 1192, 1225, 1255, 1281 AND THE NORTHERLY HALF OF LOT 1298, AS SHOWN ON ASSESSORS MAP NO. 48, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY.

ALSO THAT PORTION OF THE ABANDONED RIGHT OF WAY TO ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY ADJACENT THERETO.

PARCEL 3:

PARCEL NO. 2, AS SHOWN ON RECORD OF SURVEY ON FILE IN BOOK 56, PAGE 69 OF RECORDS OF SURVEY, RIVERSIDE COUNTY, RECORDS, BEING A PORTION OF SECTIONS 15 AND 16, TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN.

EXCEPTING THEREFROM ALL MINERALS, OIL, GAS, OR HYDROCARBON SUBSTANCES, IN, UPON OR UNDER SAID LAND.

APN: 365-030-005, 006, 007, et.al.

EXHIBIT C

FORM OF FUND 106 DEED OF TRUST

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

City of Lake Elsinore  
130 South Main Street  
Lake Elsinore, CA 92530  
Attention: City Manager

---

(Space above for Recorder's use.)

(Exempt from Recording Fees Per Government Code Section 27383.)

**DEED OF TRUST, FIXTURE FILING AND ASSIGNMENT OF RENTS**

(Cottages at Mission Trail - City Fund 106 Loan)

**THIS DEED OF TRUST, FIXTURE FILING AND ASSIGNMENT OF RENTS** (“**Deed of Trust**”) is made as of this 28<sup>th</sup> day of March, 2019, by and among MISSION COTTAGES LP, a California limited partnership (“**Trustor**”) and CHICAGO TITLE COMPANY, a California corporation (“**Trustee**”), for the benefit of the CITY OF LAKE ELSINORE, a municipal corporation (“**Beneficiary**”).

THIS DEED OF TRUST CONSTITUTES A FIXTURE FILING UNDER SECTION 9-102(40) OF THE UNIFORM COMMERCIAL CODE OF THE STATE OF CALIFORNIA. TO THE EXTENT THE GOODS ARE FIXTURES UNDER THE LAWS OF THE STATE OF CALIFORNIA, THE FIXTURES ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY LOCATED IN THE CITY OF LAKE ELSINORE IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, COMMONLY KNOWN AS COTTAGES AT MISSION TRAIL APARTMENTS, IN THE CITY OF LAKE ELSINORE, CALIFORNIA, MORE PARTICULARLY DESCRIBED ON EXHIBIT A ATTACHED HERETO. THE NAME OF THE RECORD OWNER OF THE FEE INTEREST IN THE REAL PROPERTY AS DESCRIBED IN EXHIBIT A IS MISSION COTTAGES LP, A CALIFORNIA LIMITED PARTNERSHIP. TRUSTOR’S ORGANIZATIONAL IDENTIFICATION NUMBER IS: CA-201711500003.

**RECITALS**

The following recitals are a substantive part of this Deed of Trust:

A. Concurrently herewith, Trustor and Beneficiary are entering into a Disposition, Development and Loan Agreement (the “**Loan Agreement**”), pursuant to which an acquisition, construction and permanent loan is made by Beneficiary to Trustor of Six Hundred Forty Six Thousand Nine Hundred Seventy Four Dollars (\$646,974) (the “**City Fund 106 Loan**” or “**Loan**”), subject to the terms and conditions contained therein. The Loan is made from certain funds (“**Fund 106 Funds**”) which the City owns in its own right and not as the successor to the “housing assets” of the former Redevelopment Agency of the City of Lake Elsinore. The Loan is given for the purpose of providing construction and permanent financing for the development of property located on Mission Trail in the City of Lake Elsinore. Capitalized terms not defined herein shall have the meaning set forth in the Loan Agreement. All terms not defined herein or in the Loan Agreement shall have the meaning given them in the Uniform Commercial Code, as enacted in the State of California, or under the Uniform Commercial Code in any other state to

the extent the same is applicable law (collectively, as amended, recodified, and in effect from time to time, the “UCC”). If a term is defined differently in Article 9 of the UCC than in another Article, Article 9 shall control.

B. The City Fund 106 Loan is evidenced by a Residual Receipts Promissory Note (“**Note**”) given by Trustor in favor of Beneficiary. Upon recordation of this Deed of Trust, the Note shall be secured by this Deed of Trust. This Deed of Trust and the Loan Agreement, together with all of their exhibits, and all other documents which evidence, secure, or otherwise pertain to the Loan, including, without limitation, that certain Regulatory Agreement and Declaration of Restrictive Covenants (LMIHAF) recorded concurrently herewith (the “**Regulatory Agreement**”), collectively constitute the “**Loan Documents**.”

C. Trustor and City desire to enter into this Deed of Trust in connection with the making of the City Fund 106 Loan in accordance with the terms and conditions of the Loan Agreement.

## **AGREEMENT**

**NOW, THEREFORE**, the parties hereto agree as follows:

### **1. Grant in Trust and Secured Obligations.**

**1.1 Grant in Trust.** In consideration and for the purpose of securing payment and performance of the Secured Obligations (as defined below), Trustor hereby irrevocably and unconditionally grants, bargains, conveys, sells, transfers, and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title, and interest which Trustor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the “**Property**”):

(a) The real property located on Mission Trail in the City of Lake Elsinore, County of Riverside, California, as more fully described in **Exhibit A** attached hereto and made a part hereof, together with all rights, privileges, easements, appurtenances, tenements, hereditaments, rights of way, appendages, projections, water rights including riparian and littoral rights and whether or not appurtenant, streets, ways, alleys, and strips and gores of land, now or hereafter in any way belonging, adjoining, crossing or pertaining to such real property (the “**Land**”); together with

(b) All buildings, structures and improvements now located or later to be constructed on the Land (the “**Improvements**”); together with

(c) All articles of personal property (including those specified below) and any software imbedded therein, now owned or hereafter acquired by Trustor and attached to, placed upon for an indefinite term, or used in connection with the Land and/or Improvements, together with all goods and other property that are, or at any time become, so related to the Property that an interest in them arises under real estate law, or they are otherwise a “fixture” under applicable law (each a “**Fixture**,” collectively “**Fixtures**”); together with

(d) All existing and future as-extracted collateral produced from or allocated to the Land, including, all minerals, oil, gas, other hydrocarbons and associated substances,

sulphur, nitrogen, carbon dioxide, helium and any other commercially valuable substances which may be in, under or produced from any part of the Land, and all products processed or obtained therefrom, and the proceeds thereof, and all development rights and credits, air rights, water, water courses, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, easements, rights-of-way, gores or strips of land, and any land lying in the streets, ways, alleys, passages, roads or avenues, open or proposed, in front of or adjoining the Land and Improvements; together with

(e) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements, concessions, and other agreements of any kind relating to the use or occupancy of all or any portion of the Property, whether now in effect or entered into in the future (each a “**Lease**,” collectively, the “**Leases**”) relating to the use and enjoyment of all or any part of the Land and Improvements, all amendments, extensions, renewals, or modifications thereof (subject to Beneficiary’s right to approve same pursuant to the terms of the Loan Documents), and any and all guaranties of, and security for, lessees’ performance under any and all Leases, and all other agreements relating to or made in connection with any of such Leases; together with

(f) All rents (and payments in lieu of rents), royalties, issues, profits, income, proceeds, payments, and revenues of or from the Property, and/or at any time payable under any and all Leases, including all rent loss insurance proceeds, prepaid rents and any and all security deposits received or to be received by Trustor pursuant to any and all Leases, and all rights and benefits accrued, or to accrue, to Trustor under any and all Leases (some or all collectively, as the context may require, “**Rents**”); together with

(g) All rights to the name, signs, trade names, trademarks, trademark applications, service marks, licenses, software, and symbols used in connection with the Land and Improvements; together with

(h) All goods, materials, supplies, chattels, furniture, fixtures, machinery, apparatus, fittings, equipment, and articles of personal property of every kind and nature whatsoever, including consumable goods, now or hereafter located in or upon the Property or any part thereof, or to be attached to or placed in or on, or used or useable in connection with any present or future use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including by way of description but without limiting the generality of the foregoing, all computer systems, telephone and telecommunication systems, televisions and television systems, pumps or pumping plants, tanks, motors, conduits, engines, pipes, ditches and flumes, and also all gas and electrical apparatus (including, but not limited to, all electrical transformers, switches, switch boxes, and equipment boxes), cooking, heating, cooling, air conditioning, sprinkler equipment, lighting, power equipment, ventilation, incineration, refrigeration and plumbing apparatus, fixtures and equipment, screens, storm doors and windows, stoves, wall beds, refrigerators, attached cabinets, partitions, ovens, ranges, disposals, dishwashers, carpeting, plants and shrubbery, ground maintenance equipment, ducts and compressors; together with all building materials, goods and personal property on or off the Property intended to be affixed to or incorporated in the Property but not yet affixed to or incorporated in the Property, all which shall be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust; together with

(i) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Land or elsewhere, which have been or later will be



acquired for the purpose of being delivered to, incorporated into or installed in or about the Land or Improvements; together with

(j) All deposit accounts of Trustor, including but not limited to, the Replacement Reserve Account (if any), the Operating Reserve Account (if any), and all Loan funds deposited into any such account, whether disbursed or not, and Trustor's own funds now or later to be held on deposit in all such accounts; together with

(k) To the extent not expressly prohibited by law, all federal, state, and local tax benefits (except the low income housing tax credits) related to the Property; together with

(l) All rights to the payment of money and all guaranties thereof and judgments therefor, and all accounts, accounts receivable, reserves, deferred payments, refunds of real property and personal property taxes and other refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Trustor with third parties (including all utility deposits), warranty rights, contract rights, management contracts, service contracts, construction and architectural contracts, contracts for the purchase and sale of the Property or any part thereof, end-loan or other financing commitments, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, promissory notes, drafts, letters of credit (other than letters of credit in favor of Beneficiary), letter of credit rights (whether or not the letter of credit is evidenced by a writing), supporting obligations, and general intangibles, including payment intangibles, whether any of the foregoing are tangible or electronic, which arise from or relate to construction on the Land or to any business now or later to be conducted on it, or to the Land and Improvements generally; together with

(m) All insurance policies (and the unearned premiums therefor) and bonds required by the Loan Documents and all proceeds thereof, and all proceeds (including all claims to and demands for them) of the voluntary or involuntary conversion of any of the Land, the Improvements, or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to, or defect in, the Land, the Improvements, or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud, misrepresentation, or concealment of a material fact; together with

(n) All books, records, and all recorded data of any kind or nature (regardless of the medium of recording) pertaining to any and all of the property described above, including records relating to tenants under any leases, and the qualification of such tenants, and all certificates, vouchers, and other documents in any way related thereto, and all records relating to the application and allocation of any federal, state, and local tax credits or benefits, including computer-readable memory and any computer hardware or software necessary to access and process such memory (collectively, the "**Books and Records**"); together with

(o) All commercial tort claims Trustor now has or hereafter acquires relating to any of the property described above; together with

(p) All software embedded within or used in connection with any of the property described above; together with

(q) All products, accounts, and proceeds (cash or non-cash) of, additions, betterments, extensions, accessions and accretions to, substitutions, renewals and replacements for, and changes in any of the property described above, including all proceeds of any voluntary or involuntary disposition or claim respecting any such property (arising out of any judgment, condemnation or award, or otherwise arising) and all supporting obligations ancillary to or arising in connection therewith, general intangibles (including payment intangibles) arising in connection therewith, and all goods, accounts, instruments, documents, promissory notes, chattel paper, deposit accounts, supporting obligations, and general intangibles (including payment intangibles) (whether any of the foregoing are tangible or electronic), wherever located, acquired with cash proceeds of any of the foregoing or its proceeds.

Trustor shall and will warrant and forever defend the above-bargained Property in the quiet and peaceable possession of Trustee, its successors and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof. Trustor agrees that any greater title to the Property hereafter acquired by Trustor during the term hereof shall be subject hereto.

## **1.2 Secured Obligations.**

(a) Trustor makes the grant, bargain, conveyance, sale, transfer, and assignment set forth above and grants the security interest set forth in **Section 3** below for the purpose of securing the following obligations (the “**Secured Obligations**”) in such order of priority as Beneficiary may determine:

(i) Payment of all obligations at any time owing under a Residual Receipts Promissory Note (City Fund 106 Loan) (the “**Note**”) secured by Deed of Trust dated as of March 28, 2019, payable by Trustor as maker to the order of Beneficiary in the stated principal amount of Six Hundred Forty Six Thousand Nine Hundred Seventy Four Dollars (\$646,974) to the order of Beneficiary, including principal, interest and all other amounts payable under the terms of the Note and performance of each covenant and agreement of Trustor in the Note and all modifications, amendments, replacements, extensions and renewals thereof and substitution therefore; and

(ii) Payment and performance of all obligations of Trustor under this Deed of Trust; and

(iii) Payment and performance of all obligations of Trustor under the Loan Agreement, under any Loan Documents, and under the Regulatory Agreement; provided, however, that this Deed of Trust does not secure any Loan Document or other document, or any provision of any Loan Document or other document, that is expressly stated to be unsecured; and

(iv) Payment and performance of all future advances and other obligations that Trustor, or any successor in interest to Trustor, and/or any other obligor (if

different than Trustor), or any successor in ownership of all or part of the Property, may agree to pay and/or perform (whether as principal, surety, or guarantor) for the benefit of Beneficiary, when a writing evidences the parties' agreement that the advance or obligation be secured by this Deed of Trust; and

(v) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations, including any successor agreements or instruments which restate and supersede any agreements or instruments evidencing the Secured Obligations; and

(vi) Payment of all sums advanced by Beneficiary to protect the security of this Deed of Trust or the Property, with interest at the Default Rate as defined in the Note.

(b) All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Note or the Loan Agreement which permit borrowing, repayment, and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

## **2. Assignment of Lessor's Interest in Leases and Assignment of Rents.**

**2.1 Absolute Assignment.** Effective upon the recordation of this Deed of Trust, Trustor hereby irrevocably, absolutely, presently, and unconditionally assigns, transfers, and sets over to Beneficiary:

(a) All of Trustor's right, title, and interest in, to, and under any and all Leases, all amendments, extensions, renewals, or modifications thereof (subject to Beneficiary's right to approve same pursuant to the terms of the Loan Documents), and any and all guaranties of, and security for, lessees' performance under any and all Leases, and all other agreements relating to or made in connection with any of such Leases; and

(b) All Rents. In the event that anyone establishes and exercises any right to develop, bore for, or mine for any water, gas, oil, or mineral on or under the surface of the Property, any sums that may become due and payable to Trustor as bonus or royalty payments, and any damages or other compensation payable to Trustor in connection with the exercise of any such rights, shall also be considered Rents assigned under this Section.

**THIS IS AN ABSOLUTE ASSIGNMENT, NOT AN ASSIGNMENT FOR SECURITY ONLY.**

**2.2 Grant of License.** Beneficiary hereby confers upon Trustor a license (the "License") to collect and retain the Rents as they become due and payable, so long as no Event of Default (as such term is defined below) shall exist. Upon the occurrence of an Event of Default, the License shall terminate (automatically and without notice or demand of any kind and without regard to the adequacy of Beneficiary's security under this Deed of Trust).

**2.3 Collection and Application of Rents and Enforcement of Leases.** Subject to the License granted to Trustor above and the other provisions of this Section, Beneficiary has the right, power, and authority to collect any and all Rents and enforce the provisions of any Lease. In connection with the provisions of this Section, Trustor hereby constitutes and irrevocably appoints Beneficiary its attorney-in-fact, with full power of substitution, to perform any and all of the following acts, if and at the times when Beneficiary in its sole and absolute discretion may so choose:

- (a) Demand, receive, and enforce payment of any and all Rents, and endorse all checks and other payment instruments related thereto;
- (b) Give receipts, releases, and satisfactions for any and all Rents;
- (c) Sue either in the name of Trustor or in the name of Beneficiary for any and all Rents;
- (d) Enforce the provisions of any and all Leases;
- (e) Enter into Leases; and/or
- (f) Perform and discharge any and all undertakings of Trustor or otherwise under any Lease.

The appointment granted in this Section shall be deemed to be a power coupled with an interest. Beneficiary's rights under this Section do not depend on whether or not Beneficiary takes possession of the Property as permitted under this Deed of Trust. In Beneficiary's sole and absolute discretion, Beneficiary may choose to collect Rents or enforce any and all Leases either with or without taking possession of the Property and either in person or through a court-appointed receiver. Beneficiary's rights and powers under this Section are in addition to the other remedies herein provided for upon the occurrence of an Event of Default and may be exercised independently of or concurrently with any other such remedies.

**2.4 Notice.** All lessees under any and all Leases are hereby irrevocably authorized and notified by Trustor to rely upon and to comply with (and will be fully protected in so doing) any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of lessees' undertakings under the Leases, and lessees have no right or duty to inquire whether any Event of Default has actually occurred or is then existing hereunder or to obtain Trustor's consent.

**2.5 Proceeds.** Beneficiary has the right to apply all amounts received by it pursuant to this assignment to pay any of the following in the amounts and in the order Beneficiary deems appropriate: (a) any and all Secured Obligations, in any order and proportions as Beneficiary in its sole and absolute discretion may choose, and (b) the costs and expenses of operation of the Property and collection of Rents and other sums that may be incurred by Trustee, Beneficiary, and/or any receiver, including but not limited to reasonable attorneys' fees and any and all expenses of leasing, operating, maintaining, and managing the Property, and all other costs and charges incident to the Property; including, without limitation, (i) salaries, fees, commissions and wages of a managing agent, and other employees, agents, or independent contractors; (ii) taxes, charges, claims, assessments, any other liens, and premiums for all insurance; and (iii) the cost of

all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property. In addition, Beneficiary may hold the same as security for the payment of the Secured Obligations. Beneficiary shall have no liability for any funds which it does not actually receive.

**2.6 Beneficiary Not Responsible.** Under no circumstances shall Beneficiary have any duty to produce Rents from the Property. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land and the Improvements, Beneficiary is not and shall not be deemed to be:

- (a) A “mortgagee in possession” for any purpose;
- (b) Responsible for performing any of the obligations of the Trustor as lessor under any lease;
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or
- (d) Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

**2.7 Leasing.** Trustor shall not accept any deposit or prepayment of Rents for any rental period exceeding two (2) months without Beneficiary’s express prior written consent. Trustor shall not lease the Property or any part of it except strictly in accordance with the Loan Agreement. Trustor shall apply all Rents received by it in the manner required by the Loan Agreement.

### **3. Grant of Security Interest.**

**3.1 Security Agreement.** The parties intend for this Deed of Trust to create a lien on the Property, and an absolute assignment of the Rents and Leases, all in favor of Beneficiary. The parties acknowledge that some of the Property and some of the Rents and Leases may be determined under applicable law to be personal property or fixtures. To the extent that any Property, Rents, or Leases may be or be determined to be personal property, Trustor, as debtor, hereby grants to Beneficiary, as secured party, a security interest in all such Property, Rents, and Leases, to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the UCC, covering all such Property, Rents, and Leases. To the extent such Property, Rents, or Leases are not real property encumbered by the lien granted above, and are not absolutely assigned by the assignment set forth above, it is the intention of the parties that such Property, Rents, and/or Leases shall constitute “proceeds, products, offspring, rents, or profits” (as defined in and for the purposes of Section 552(b) of the United States Bankruptcy Code, as such section may be modified or supplemented) of the Land and Improvements.

**3.2 Financing Statements; Authorization to File; Power of Attorney.** Trustor hereby authorizes Beneficiary, at any time and from time to time, to file any initial financing statements, amendments thereto, and continuation statements, with or without the signature of Trustor, as authorized by applicable law, as applicable to the Property or any part thereof.

Trustor shall pay all fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require and all other reasonable fees and costs Beneficiary incurs in connection with perfection of its security interests. For purposes of such filings, Trustor agrees to promptly furnish any information requested by Beneficiary. Trustor also ratifies its authorization for Beneficiary to have filed any like initial financing statements, amendments thereto, or continuation statements if filed prior to the date of this Deed of Trust. Trustor hereby irrevocably constitutes and appoints Beneficiary, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Trustor to execute in Trustor's name any such documents and to otherwise carry out the purposes of this Section, to the extent that Trustor's authorization above is not sufficient. Such power is deemed to be coupled with an interest, and is therefore irrevocable. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it.

Everything used in connection with the Property and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the real estate encumbered by this Deed of Trust regardless of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for lessening of value, or (3) Trustor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property conveyed hereby, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Beneficiary as determined by this instrument or impugning the priority of Beneficiary's lien granted hereby or by any other recorded document. Such mention in the Financing Statement is declared to be solely for the protection of Beneficiary in the event any court or judge shall at any time hold, with respect to the matters set forth in the foregoing clauses (1), (2), and (3), that notice of Beneficiary's priority of interest is required in order to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government, shall be filed in the UCC records.

**4. Effective as a Financing Statement; Fixture Filing.** This Deed of Trust constitutes a financing statement filed as a fixture filing under the applicable section of the UCC, covering any Property which now is or later may become fixtures attached to the Land or Improvements. This Deed of Trust shall also be effective as a financing statement covering as-extracted collateral (including oil and gas), accounts, and general intangibles under the UCC, and is to be filed of record in the real estate records of each county where any part of the Land is situated. This Deed of Trust shall also be effective as a financing statement covering any other Property and may be filed in any other appropriate filing or recording office. The mailing address of Trustor is the address of Trustor set forth at the end of this Deed of Trust, and the address of Beneficiary from which information concerning the security interests hereunder may be obtained is the address of Beneficiary set forth at the end of this Deed of Trust. A carbon, photographic, or other reproduction of this Deed of Trust or of any financing statement related to this Deed of

Trust shall be sufficient as a financing statement for any of the purposes referred to in this Section.

**5. Rights and Duties of the Parties.**

**5.1 Representations and Warranties.** Trustor represents and warrants that, except as previously disclosed to Beneficiary in writing:

(a) Trustor is indefeasibly seized of and lawfully possesses and holds good and marketable fee simple title to all of the Land and the Improvements, unless any portion of Trustor's present interest in the Land is described in **Exhibit A** as a leasehold interest, in which case Trustor lawfully possesses and holds a leasehold interest in such portion of the Land as stated in **Exhibit A**; and Trustor and its successors and assigns warrant and shall forever defend title to the Property, subject only to such exceptions and conditions to title as Beneficiary has approved in its sole and absolute discretion (the "**Permitted Title Exceptions**") (and any later such encumbrances approved by Beneficiary in writing), unto Trustee and Trustee's successors and assigns against the claims and demands of all persons claiming or to claim the same or any part thereof;

(b) Trustor has the full and unlimited power, right, and authority to encumber the Property and assign the Rents;

(c) This Deed of Trust creates a lien on the Property free and clear of all liens, encumbrances, and claims whatsoever, except for the liens of any construction or permanent lender with whom Beneficiary has entered into a recorded Subordination Agreement, and subject only to the Permitted Title Exceptions;

(d) The Property includes all property and rights which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Land and the Improvements;

(e) Trustor owns any Property which is personal property free and clear of all liens, encumbrances, and claims whatsoever, as well as any security agreements, reservations of title, or conditional sales contracts, and there is no presently effective financing statement affecting such personal property on file in any public office nor is any of such personal property subject to a security interest having priority over Beneficiary's priority to the same except with respect to junior indebtedness, if any, approved and permitted by Beneficiary as a Permitted Title Exception and Trustor has the right to convey and encumber such property and will warrant and defend such property against the claims of all persons and parties;

(f) The Property has frontage on and direct access for ingress and egress to publicly dedicated streets;

(g) Electricity (and gas, if available), water facilities, sewer facilities and any other necessary utilities are, and at all times hereafter shall be, available in sufficient capacity to service the Property satisfactorily and any easements necessary to the furnishing of such utilities are or will be granted and duly recorded; and

(h) Trustor's exact legal name, and, if Trustor is not an individual, organizational identification number (if any assigned by Trustor's state of incorporation or organization) are correctly set forth in this Deed of Trust. If Trustor is an individual, Trustor's principal residence has for the preceding four months been and will continue to be (unless Trustor notifies Beneficiary of any change in writing at least thirty (30) days prior to the date of such change) the address of the principal residence of Trustor as set forth at the end of this Deed of Trust. If Trustor is not an individual, Trustor is an organization of the type and (if not an unregistered entity) is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Deed of Trust. If Trustor is an unregistered entity (including a general partnership), it is organized under the laws of the state specified in the introductory paragraph of this Deed of Trust. Trustor's principal place of business and chief executive office and the place where it keeps its Books and Records has for the preceding four months (or, if less, the entire period of the existence of Trustor) been and will continue to be (unless Trustor notifies Beneficiary of any change in writing at least thirty (30) days prior to the date of such change) the address of Trustor set forth at the end of this Deed of Trust.

## **5.2 Taxes and Assessments.**

(a) Trustor shall pay prior to delinquency all taxes, levies, charges and assessments, including assessments on appurtenant water stock (individually and collectively, an "**Imposition**"), imposed by any public or quasi-public authority or utility company that are (or if not paid, may become) a lien on all or part of the Property or any interest in it, or that, if not paid, may cause any decrease in the value of the Property or any part of it. If any Imposition becomes delinquent, Beneficiary may require Trustor to present evidence that it has been paid in full, on ten (10) days' written notice by Beneficiary to Trustor. Notwithstanding the foregoing provisions of this Section, Trustor may, at its expense, contest the validity or application of any Imposition by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, provided that (i) Beneficiary is reasonably satisfied that neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, or lost as a result of such contest, and (ii) Trustor shall have posted a bond or furnished other security as may be reasonably required from time to time by Beneficiary; and provided further that if at any time payment of any obligation imposed upon Trustor by this Section becomes necessary to prevent a lien foreclosure sale or forfeiture or loss of the Property, or any part thereof, then Trustor must pay the same in sufficient time to prevent such sale, forfeiture, or loss.

(b) Following an Event of Default, Trustor shall, upon demand of Beneficiary, pay monthly to Beneficiary an amount sufficient, as estimated by Beneficiary, to accumulate the sum required to pay thirty (30) days prior to the due date thereof the annual cost of any real property taxes and any assessments or other Impositions and the estimated next premiums for hazard and other required insurance on the Property. These funds will be held by Beneficiary (and may be commingled with other funds of Beneficiary) without interest and will be released to Trustor for payment of Impositions and insurance premiums, or directly applied to such costs by Beneficiary, as Beneficiary may elect.

(c) Notwithstanding anything to the contrary in subsection (b) above, if a property tax reserve account, taxes and insurance reserve account, or similar reserve for real property taxes is required pursuant to the terms of the Loan Agreement or other Loan Documents, then, if and at all such times as such reserve is required pursuant to the terms of the Loan Agreement, Trustor shall pay to Beneficiary the reserve deposits, including, if applicable,



any initial reserve deposit and any monthly or periodic reserve deposits, as described in the Loan Agreement or other applicable Loan Document, and all terms and conditions set forth in therein related to such reserve shall apply and are herein incorporated by reference; provided, however, no reserve will be required if a similar reserve is being held by any lender holding a lien superior to Beneficiary (“**Senior Lender**”).

**5.3     Performance of Secured Obligations.** Trustor shall promptly pay and perform each Secured Obligation in accordance with its terms.

**5.4     Liens, Charges, and Encumbrances.** Trustor shall immediately discharge any lien on the Property that Beneficiary has not expressly consented to in writing. Trustor shall pay when due each obligation secured by or reducible to a lien, charge, or encumbrance which now does or later may encumber all or part of the Property or any interest in it, whether the lien, charge, or encumbrance is or would be senior or subordinate to this Deed of Trust. This Section is subject to any right granted to Trustor in the Loan Agreement to contest in good faith claims and liens for labor done and materials and services furnished in connection with construction of the Improvements. Trustor shall pay, perform and observe all obligations under any Permitted Title Exceptions, and will not modify or permit modification of them without Beneficiary’s prior written consent.

**5.5     Damages and Insurance and Condemnation Proceeds.**

(a) Subject to the rights of any Senior Lender, Trustor hereby absolutely and irrevocably assigns to Beneficiary, and authorizes the payor to pay to Beneficiary, the following claims, causes of action, awards, payments, and rights to payment (whether awarded or to be awarded or which may be awarded because of judicial action, private action, settlement, or compromise):

(i) All awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation or taking for public or private use which affects all or part of the Property or any interest in it; and

(ii) All other awards, claims, and causes of action, arising out of any warranty affecting all or any part of the Property, or for damage or injury to or decrease in value of all or part of the Property or any interest in it; and

(iii) All proceeds of any insurance policies payable because of loss sustained to all or part of the Property, whether or not such insurance policies are required by Beneficiary; and

(iv) All interest which may accrue on any of the foregoing.

(b) Trustor shall immediately notify Beneficiary in writing if:

(i) Any material damage occurs or any injury or loss is sustained to all or any part of the Property, or any action or proceeding relating to any such damage, injury, or loss is commenced; or

(ii) Any written offer is made, or any action or proceeding is threatened or commenced, which relates to any actual or proposed condemnation or taking of all or part of the Property.

(c) If Beneficiary chooses to do so, Beneficiary may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on warranty, or for damage, injury, or loss to all or part of the Property, and Beneficiary may make any compromise or settlement of the action or proceeding with respect to its rights and interests. Beneficiary, if it so chooses, may participate in any action or proceeding relating to condemnation or taking of all or part of the Property, and may join Trustor in adjusting any loss covered by insurance, and in connection therewith, Beneficiary shall have the right to be represented by counsel of its choice.

(d) Subject to the rights of any Senior Lender, all proceeds of these assigned claims and all other property and rights which Trustor may receive or be entitled to shall be paid to Beneficiary. In each instance, Beneficiary shall apply such proceeds first toward reimbursement of all of Beneficiary's reasonable costs and expenses of recovering the proceeds, including reasonable attorneys' fees. If, in any instance, each and all of the following conditions are satisfied in Beneficiary's reasonable judgment, Beneficiary shall permit Trustor to use the balance of such proceeds (the "**Net Claims Proceeds**") to pay costs of repairing or reconstructing the Property in the manner described below:

(i) The plans and specifications, cost breakdown, construction contract, construction schedule, contractor and payment and performance bond (or acceptable substitute therefore) for the work of repair or reconstruction shall all be reasonably acceptable to Beneficiary; and

(ii) Beneficiary shall receive evidence reasonably satisfactory to it that after repair or reconstruction, the Property would be at least as valuable as it was immediately before the damage or condemnation occurred, and to that end and notwithstanding any other provision of the Loan Documents, Beneficiary may order an appraisal from an appraiser acceptable to Beneficiary, the cost of which shall be borne by Trustor; and

(iii) The Net Claims Proceeds (together with the net proceeds of any rental interruption insurance and reasonably projected rental receipts during the repair or reconstruction period) shall be sufficient in Beneficiary's determination to pay for the total cost of repair or reconstruction, including all associated development costs and interest and other sums projected to be payable on the Secured Obligations until the repair or reconstruction is complete; or Trustor shall provide its own funds in an amount equal to the difference between the Net Claims Proceeds and a reasonable estimate, made by Trustor and found acceptable by Beneficiary, of the total cost of repair or reconstruction; and

(iv) Unless otherwise agreed to by Beneficiary, Beneficiary shall receive evidence satisfactory to it that, after the repair or reconstruction is complete, the Property will continue to operate in substantially the same manner, and will generate the same debt service coverage as immediately before the damage or condemnation occurred; and

(v) Beneficiary shall be satisfied that the repair or reconstruction can be completed prior to the maturity date of the Note; and

(vi) No default or Event of Default (as defined in the applicable document, subject to applicable notice and cure periods) shall have occurred and be continuing under this Deed of Trust, the Note, the Loan Agreement or any other Loan Document.

If Beneficiary finds that such conditions have been met, Beneficiary shall hold the Net Claims Proceeds, and any funds which Trustor is required to provide, in an account and shall disburse them to Trustor to pay costs of repair or reconstruction upon presentation of evidence reasonably satisfactory to Beneficiary that repair or reconstruction has been completed satisfactorily and lien-free, including partial progress payments of Net Claims Proceeds from time to time, in accordance with a cost breakdown approved by Beneficiary and the same procedures and subject to the same conditions as are set forth in the Loan Agreement for Loan disbursements. However, if Beneficiary finds that one or more of such conditions have not been satisfied, Beneficiary may apply the Net Claims Proceeds to pay or prepay some or all of the Secured Obligations in such order and proportions as Beneficiary may determine, all without affecting the lien and security interest created by this Deed of Trust. Notwithstanding the foregoing, if the Senior Lender finds that the above conditions have been met, Beneficiary shall also so agree and all Net Claims Proceeds shall be held or disbursed pursuant to the terms of the Senior Loan Documents until the obligations under the Senior Loan are satisfied. Any remaining proceeds shall be held or disbursed pursuant to this Deed of Trust and the Loan Documents.

(e) Notwithstanding the foregoing, subsequent to the initial fifteen (15) year tax credit compliance period, in the event any governmental agency or authority shall require, or commence any proceedings for, the demolition of any buildings or structures comprising a substantial part of the Improvements, or shall commence any proceedings to condemn or otherwise take pursuant to the power of eminent domain a material portion of the Land or Improvements, Beneficiary may, at its option, declare the Secured Obligations to be immediately due and payable and apply any condemnation awards or proceeds to the Secured Obligations. Prior to the expiration of the initial fifteen (15) year tax credit compliance period, Trustor covenants and agrees to use any such proceeds for rebuilding the Project. If the proceeds are not used to rebuild the Project, Beneficiary may, at its option, declare the Secured Obligations to be immediately due and payable and apply any condemnation awards or proceeds to the Secured Obligations.

(f) Trustor hereby specifically, unconditionally, and irrevocably waives all rights of a property owner granted under any applicable law that provides for allocation of condemnation proceeds between a property owner and a lienholder, and any other law or successor statute of similar import.

## **5.6 Surety Bond Proceeds.**

(a) Subject to the rights of any Senior Lender, Trustor hereby absolutely and irrevocably assigns to Beneficiary, and authorizes the payor to pay to Beneficiary, all payments, rights to payment, and all other compensation payable, directly or indirectly, under any payment, performance, or other bond (each a “**Surety Bond**”) related to, or issued in connection with, the construction of any Improvements or the performance of any acts, related to the Property or any interest in it, whether or not such Surety Bonds are required by Beneficiary.

(b) Trustor shall immediately notify Beneficiary in writing of:

(i) Any threatened or actual default or breach of any obligation under any Surety Bond; or

(ii) Any action or inaction, including a breach by any contractor under their contract (if applicable), which would give rise to the obligation of the payor/surety to pay any sums or perform any acts pursuant to the terms of any Surety Bond.

(c) If Beneficiary chooses to do so, Beneficiary may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on any claim under a Surety Bond, and Beneficiary may make any compromise or settlement of any such action or proceeding.

(d) Subject to the rights of any Senior Lender, all proceeds of these assigned payments, rights to payment, and compensation payable, directly or indirectly, under any Surety Bond which Trustor may receive or be entitled to, shall be paid to Beneficiary. In each instance, Beneficiary shall apply such proceeds first toward reimbursement of all of Beneficiary's costs and expenses of recovering the proceeds, including reasonable attorneys' fees. The balance of such proceeds (the "**Net Bond Proceeds**") shall be used to pay the costs of completing all or a part of the construction of certain of the Improvements. When each and all of the following conditions are satisfied in Beneficiary's reasonable judgment, Beneficiary shall permit Trustor to pay such costs of construction, in the manner described below:

(i) The plans and specifications, cost breakdown, construction contract (including any replacement contract), construction schedule (including all revisions thereto), contractor (including any replacement contractor), and, if required by Beneficiary, any replacement payment and performance bond for the construction work, shall all be acceptable to Beneficiary; and

(ii) To the extent allowed pursuant to the terms of the Surety Bond, Beneficiary shall have approved any replacement contractor(s); and

(iii) Beneficiary shall receive evidence satisfactory to it that after the construction is complete, the Property would be at least as valuable as it would have been if completed pursuant to the original construction contract, and to that end and notwithstanding any other provisions of the Loan Documents, Beneficiary may order an appraisal from an appraiser acceptable to Beneficiary, the cost of which shall be borne by Trustor; and

(iv) The Net Bond Proceeds shall be sufficient in Beneficiary's reasonable determination to pay for the total cost of the applicable construction, including all associated development costs and interest and other sums projected to be payable on the Secured Obligations until the applicable construction is complete; or Trustor shall provide its own funds in an amount equal to the difference between the Net Bond Proceeds and a reasonable estimate, made by Trustor and found acceptable by Beneficiary, of the total cost of such construction; and

(v) Beneficiary shall be satisfied that the repair or reconstruction can be completed prior to the maturity date of the Note; and

(vi) No default or Event of Default (as defined in the applicable document, subject to applicable notice and cure periods) shall have occurred and be continuing

under this Deed of Trust, the Note, the Loan Agreement, the Regulatory Agreement or any other Loan Document.

If Beneficiary finds that such conditions have been met, Beneficiary shall hold the Net Bond Proceeds, and any funds which Trustor is required to provide, in a non-interest-bearing account and shall disburse them to Trustor to pay costs of construction upon presentation of evidence reasonably satisfactory to Beneficiary that the construction has been completed satisfactorily and lien-free, including partial progress payments of Net Bond Proceeds from time to time, in accordance with a cost breakdown approved by Beneficiary and the same procedures and subject to the same conditions, as are set forth in the Loan Agreement for Loan disbursements. However, if Beneficiary finds that one or more of such conditions have not been satisfied, Beneficiary may apply the Net Bond Proceeds to pay or prepay some or all of the Secured Obligations in such order and proportions as Beneficiary may choose, all without affecting the lien and security interest created by this Deed of Trust. Notwithstanding the foregoing, if the Senior Lender finds that the above conditions have been met, Beneficiary shall also so agree and all Net Bond Proceeds shall be held or disbursed pursuant to the terms of the Senior Loan Documents until the obligations under the Senior Loan are satisfied. Any remaining proceeds shall be held or disbursed in accordance with this Deed of Trust and the Loan Documents.

(e) Notwithstanding anything herein to the contrary, to the extent that any of the terms of this Section conflict with the terms of any Surety Bond which has been approved in writing by Beneficiary, the terms of such Surety Bond shall control.

#### **5.7 Maintenance and Preservation of Property.**

(a) Trustor shall insure the Property as required by the Loan Agreement and keep the Property in good condition and repair.

(b) Trustor shall not remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change in any zoning or other land use classification which affects the Property or any part of it, except as permitted or required by the Loan Documents or with Beneficiary's express prior written consent in each instance.

(c) If all or part of the Property becomes damaged or destroyed, Trustor shall, upon direction of Beneficiary, promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices only if insurance proceeds from any Property insurer are available for such purpose; provided, however, this subsection is subject to the provisions of Sections 5.5 and 5.6 above.

(d) Trustor shall not commit or allow any act upon or use of the Property which would violate: (i) any applicable law or order of any governmental authority, whether now existing or later to be enacted and whether foreseen or unforeseen; or (ii) any public or private covenant, condition, restriction or equitable servitude affecting the Property. Trustor shall not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Trustor on the Property or any part of it under the Loan Documents.

(e) Trustor shall not commit or allow waste of the Property, including those acts or omissions characterized under the Loan Agreement as waste that arise out of Hazardous Materials (as such term is defined in the Loan Agreement).

(f) Trustor shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value and utility.

(g) If any part of Trustor's interest in the Property is a leasehold interest, Trustor shall observe and perform all obligations of Trustor under any such lease or leases and shall refrain from taking any actions prohibited by any lease or leases, and Trustor shall preserve and protect such leasehold estate and its value.

(h) If any easement or right of way appurtenant to, or recorded agreement which benefits, the Property exists or is hereafter entered into, Trustor shall perform its obligations and duties under such easement, right of way, or agreement, and shall take all such actions as may be necessary to prevent such easement, right of way, or agreement from being terminated for Trustor's non-performance. Trustor irrevocably appoints Beneficiary its attorney-in-fact, with full power of substitution, for the purpose of performing any act to be performed by Trustor under any such easement, right of way, or agreement, such power deemed to be coupled with an interest and therefore irrevocable.

**5.8 Trustee's Acceptance of Trust.** Trustee accepts this trust when this Deed of Trust is recorded.

**5.9 Required Insurance.**

(a) Trustor shall at all times provide, maintain and keep in force or cause to be provided, maintained and kept in force, at no expense to Trustee or Beneficiary, policies of insurance in accordance with the terms of the Loan Documents in form and amounts, providing for deductibles, and issued by companies, associations or organizations covering such casualties, risks, perils, liabilities and other hazards as required by the Loan Documents or by Beneficiary pursuant thereto.

(b) Trustor shall not obtain separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Beneficiary is included thereon under a standard, non-contributory mortgagee clause or endorsement acceptable to Beneficiary. Trustor shall immediately notify Beneficiary whenever any such separate insurance is obtained and shall promptly deliver to Beneficiary the original policy or policies of such insurance.

(c) Within 90 days following the end of each fiscal year of Trustor, at the request of Beneficiary, Trustor at Trustor's expense shall furnish such evidence of replacement costs as the insurance carrier providing casualty insurance for the building(s) and other improvements on the Property may require to determine, or which such carrier may provide in determining, the then replacement cost of the building(s) and other improvements on The Property.

### **5.10 Delivery of Policies, Payment of Premiums.**

(a) At Beneficiary's option Trustor shall furnish Beneficiary with an original of all policies of insurance required under Section 5.9 above or evidence of insurance issued by the applicable insurance company for each required policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number and the period of coverage, and otherwise in form and substance satisfactory to Beneficiary in all respects.

(b) In the event Trustor fails to provide, maintain, keep in force or deliver to Beneficiary the policies of insurance required by this Deed of Trust or by any Loan Documents, Beneficiary may (but shall have no obligation to) procure such insurance or single-interest insurance for such risks covering Beneficiary's interest and Trustor will pay all premiums thereon and reimburse Beneficiary for all amounts paid or incurred by it in connection therewith promptly upon demand by Beneficiary and, until such payment and reimbursement is made by Trustor, the amount of all such premiums and amounts paid or incurred by Beneficiary shall become indebtedness secured by this Deed of Trust and bear interest at the Default Rate. In such event, upon the request of Beneficiary, Trustor further agrees to cause all bills, statements or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements or other documents evidencing that a premium for a required policy is then payable, and providing Trustor has deposited sufficient funds with Beneficiary pursuant to this Section, Beneficiary shall timely pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If at any time and for any reason the funds deposited with Beneficiary are or will be insufficient to pay such amounts as may be then or subsequently due, Beneficiary shall notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of the funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this Section, nor shall anything contained herein modify the obligation of Trustor set forth above to maintain and keep such insurance in force at all times. Beneficiary may commingle the reserve with its own funds and Trustor shall be entitled to no interest thereon.

### **5.11 Intentionally Omitted.**

**5.12 Assignment of Policies Upon Foreclosure.** In the event of foreclosure of this Deed of Trust or other transfer of title or assignment of the Trust Estate in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of Trustor in and to all policies of insurance obtained by Trustor, whether required by the Loan Documents or otherwise, shall inure to the benefit of and pass to the successor in interest of Trustor or the purchaser or grantee of the Trust Estate.

### **5.13 Releases, Extensions, Modifications, and Additional Security.**

(a) From time to time, Beneficiary may perform any of the following acts without incurring any liability or giving notice to any person:

(i) Release any person liable for payment of any Secured Obligation;  
or

(ii) Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation; or

(iii) Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security; or

(iv) Alter, substitute or release any property securing the Secured Obligations.

(b) From time to time, when requested to do so by Beneficiary in writing, Trustee may perform any of the following acts without incurring any liability or giving notice to any person:

(i) Consent to the making of any plat or map of the Property or any part of it; or

(ii) Join in granting any easement or creating any restriction affecting the Property; or

(iii) Join in any subordination or other agreement affecting this Deed of Trust or the lien of it; or

(iv) Reconvey the Property or any part of it without any warranty.

**5.14 Reconveyance.** Prepayment or payment of the City Fund 106 Loan shall not relieve Trustor of its obligations under the Regulatory Agreement. Trustor's performance under the Regulatory Agreement is secured by this Deed of Trust. Even if all amounts payable under the Promissory Note are paid in full, Beneficiary shall only reconvey this Deed of Trust upon satisfaction of all of Trustor's obligations under the Regulatory Agreement.

**5.15 Compensation, Exculpation, Indemnification.**

(a) Trustor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Beneficiary and Trustee when the law provides no maximum limit, for any services that Beneficiary or Trustee may render in connection with this Deed of Trust, including Beneficiary's providing a statement of the Secured Obligations or Trustee's rendering of services in connection with a release or reconveyance (full or partial). Trustor shall also pay or reimburse all of Beneficiary's and Trustee's costs and expenses which may be incurred in rendering any such services. Trustor further agrees to pay or reimburse Beneficiary for all costs, expenses, and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including the exercise of any rights or remedies afforded to Beneficiary or Trustee or both of them under the remedies section below, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Deed of Trust, including reasonable attorneys' fees and other legal costs (which shall include reimbursement for the allocated costs of in-house counsel used by Beneficiary and/or Trustee to the extent not prohibited by law), costs of any Trustee's Sale (as described below), any judicial foreclosure of this Deed of Trust, and any cost of evidence of title. If Beneficiary chooses to dispose of Property through more than one



Trustee's Sale or judicial foreclosure, Trustor shall pay all costs, expenses, or other advances that may be incurred or made by Trustee or Beneficiary in each of such Trustee's Sales or judicial foreclosure actions.

(b) Beneficiary shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following:

(i) Beneficiary's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary in this Deed of Trust;

(ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust;

(iii) Any waste committed by lessees of the Property or any other parties, or any dangerous or defective condition of the Property; or

(iv) Any loss sustained by Trustor or any third party resulting from Beneficiary's failure to lease the Property, or from any other act or omission of Beneficiary in operating or managing the Property, after an Event of Default, unless the loss is caused solely by the gross negligence or willful misconduct of Beneficiary.

Trustor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Beneficiary.

(c) Trustor agrees to indemnify, defend, and hold Trustee and Beneficiary harmless, for, from, and against, and reimburse them for, all losses, damages, liabilities, claims, causes of action, judgments, penalties, court costs, reasonable attorneys' fees and other legal expenses and expenses of professional consultants and experts, cost of evidence of title, cost of evidence of value, and other costs and expenses, including the settlement of any such matter, excepting those arising out of, or resulting, solely from Beneficiary's or Trustee's, as the case may be, gross negligence or willful misconduct, which either may suffer or incur as a result of a third party claim against Trustee or Beneficiary:

(i) In performing any act required or permitted by this Deed of Trust or any of the other Loan Documents or by law;

(ii) Because of any failure of Trustor to perform any of Trustor's obligations; or

(iii) Because of any obligation of or undertaking by Trustor to perform or discharge any of the representations, warranties, conditions, covenants, or other obligations in any document relating to the Property other than the Loan Documents.

This agreement by Trustor to indemnify Trustee and Beneficiary shall survive payoff, termination, or the release and cancellation of any or all of the Secured Obligations, and the full or partial release and/or reconveyance of this Deed of Trust.

(d) Trustor shall pay all obligations to pay money arising under this Section immediately upon written demand by Trustee or Beneficiary. Each such obligation shall

be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date the obligation arises at the Default Rate (as such term may be defined in the Note), or if no Default Rate is specified, at five percent (5%) in excess of the Stated Rate. For purposes hereof, “**Stated Rate**” means the stated interest rate in effect from time to time under the Note and/or other debt instrument evidencing the Loan; provided that if more than one rate of interest is in effect, the highest rate shall be used.

**5.16 Defense and Notice of Claims and Actions.** At Trustor’s sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing if any claim is asserted which does or could affect any of such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

**5.17 Subrogation.** Beneficiary shall be subrogated to the liens of all encumbrances affecting the Property, whether released or not, which are discharged in whole or in part by Beneficiary in accordance with this Deed of Trust or with the proceeds of any loan secured by this Deed of Trust.

**5.18 Site Visits, Observation and Testing.** Beneficiary and its agents and representatives and the other City Indemnitees (as such term is defined in the Loan Agreement), and their agents and representatives, shall have the right at any reasonable time to enter and visit the Property for the purposes of observing the Property, performing appraisals, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. The City Indemnitees have no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation, or testing by any City Indemnitee shall impose any liability on any City Indemnitee. In no event shall any site visit, observation, or testing by any City Indemnitee be a representation that Hazardous Substances (as such term is defined in the Loan Agreement) are or are not present in, on, or under the Property, or that there has been or shall be compliance with any law, regulation, or ordinance pertaining to Hazardous Substances or any other applicable governmental law. Neither Trustor nor any other party is entitled to rely on any site visit, observation, or testing by any City Indemnitee. The City Indemnitees owe no duty of care to protect Trustor or any other party against, or to inform Trustor or any other party of, any Hazardous Substances or any other adverse condition affecting the Property. The City Indemnitees may in their discretion disclose to Trustor or any other party any report or findings made as a result of, or in connection with, any site visit, observation, or testing by the City Indemnitees. Trustor understands and agrees that the City Indemnitees make no representation or warranty to Trustor or any other party regarding the truth, accuracy, or completeness of any such report or findings that may be disclosed. Trustor also understands that, depending on the results of any site visit, observation, or testing by any City Indemnitee which are disclosed to Trustor, Trustor may have a legal obligation to notify one or more environmental agencies of the results. Any City Indemnitee shall give Trustor reasonable prior electronic or written notice before entering the Property. Such City Indemnitee shall make reasonable efforts to avoid interfering with Trustor’s use of the Property in exercising any rights provided in this Section. In connection with any such site visit, observation, or testing, Trustor shall have any rights with respect to the release and/or disclosure of environmental reports as set forth in the Loan Agreement.

**5.19 Notice of Change.** Trustor will not cause or permit any change to be made in (a) its name, identity, or corporate, partnership, limited liability company, or other entity structure, (b) its jurisdiction of organization (c) its organizational identification number, (d) its place of business or, if more than one, its chief executive office, (e) its mailing address, or (f) any change in the location of any Property, unless Trustor shall have notified Beneficiary in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all action required by Beneficiary for the purpose of further perfecting or protecting the lien and security interest of Beneficiary in the Property. Unless otherwise approved by Beneficiary in writing, all Property that consists of personal property (other than Books and Records) will be located on the Land and all Books and Records will be located at Trustor's place of business or chief executive office if Trustor has more than one place of business.

**5.20 Further Assurances.** Trustor shall, promptly on request of Beneficiary, (a) correct any defect, error or omission which may be discovered in the contents, execution, or acknowledgment of this Deed of Trust or any other Loan Document; (b) execute, authenticate, acknowledge, deliver, procure, and record and/or file and/or authorize the filing of such further documents (including, without limitation, further deeds of trust, security agreements, financing statements, financing statement amendments, continuation statements, and assignments of rents or leases) and do such further acts as may be necessary, desirable, or proper (i) to carry out more effectively the purposes of this Deed of Trust and the other Loan Documents, (ii) to more fully identify and subject to the liens and security interests hereof any property intended to be covered hereby (including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property), or (iii) as deemed advisable by Beneficiary to protect the lien or security interest hereunder against the rights or interests of third persons; and (c) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper to enable Beneficiary to comply with the requirements or requests of any agency having jurisdiction over Beneficiary or any examiners of such agencies with respect to the Secured Obligations, the Trustor, or the Property. Trustor shall pay all costs connected with any of the foregoing within five (5) days after the written demand by Trustee or Beneficiary. If not paid when due, such costs shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date of such written demand at the Default Rate (as such term may be defined in the Note), or if no Default Rate is specified, at ten percent (10%) in excess of the Stated Rate. Notwithstanding anything to the contrary set forth herein, Trustor shall have no obligation to execute any document, or to take any action, which (i) would alter any business term or condition of the Loan Documents, or (ii) impose greater liabilities upon Trustor, any Guarantor and/or any partner, member or officer thereof.

## **6. Accelerating Transfers, Default and Remedies.**

**6.1 Due on Sale or Other Accelerating Transfers.** Upon an Accelerating Transfer, Beneficiary may, in its sole discretion, declare all Secured Obligations immediately due and payable.

(a) **“Accelerating Transfer”** means any sale, contract to sell, conveyance, encumbrance, pledge, mortgage, lease not expressly permitted under Article 7 of the Loan Agreement, or other transfer of all or any material part of the Property or any interest in it, whether voluntary, involuntary, by operation of law, or otherwise.

(b) Trustor acknowledges that Beneficiary is making one or more advances under the Loan Agreement in reliance on the expertise, skill, and experience of Trustor; thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Beneficiary's reliance, Trustor agrees that Trustor shall not make any Accelerating Transfer, other than a transfer allowed pursuant to the express terms of the Loan Documents, unless the transfer is preceded by Beneficiary's express written consent to the particular transaction and transferee. Beneficiary may withhold such consent in its sole and absolute discretion. If any Accelerating Transfer occurs, an Event of Default will occur under the Loan Agreement, and Beneficiary may implement available rights and remedies under the Loan Agreement and the other Loan Documents including declaration of all of the Secured Obligations to be immediately due and payable, and Beneficiary and Trustee may invoke any rights and remedies under this Deed of Trust. Trustor acknowledges the materiality of the provisions of this Section as a covenant of Trustor, given individual weight and consideration by Beneficiary in entering into the Secured Obligations, and that any Accelerating Transfer in violation of the prohibited transfer provisions herein set forth shall result in a material impairment of Beneficiary's interest in the Property and be deemed a breach of the foregoing covenant.

(c) Notwithstanding the foregoing, Beneficiary acknowledges and agrees that any transfer specifically allowed or permitted by, and made in accordance with, the terms of Article 7 of the Loan Agreement, if any, shall not be an Accelerating Transfer under this Section.

**6.2 Events of Default.** Trustor will be in default under this Deed of Trust upon the occurrence of any one or more of the following events (some or all collectively, "**Events of Default**;" any one singly, an "**Event of Default**");

(a) Trustor fails to perform any obligation to pay money which arises under this Deed of Trust, and does not cure that failure within ten (10) days after written notice from Beneficiary or Trustee; or

(b) Trustor fails to perform any obligation arising under this Deed of Trust other than one to pay money, and does not cure that failure either within thirty (30) days (the "**Initial Cure Period**") after written notice from Beneficiary or Trustee, or within sixty (60) days after such written notice, so long as Trustor begins within the Initial Cure Period, and Beneficiary, exercising reasonable judgment, determines that the cure cannot reasonably be completed at or before expiration of the Initial Cure Period; or

(c) A default or Event of Default by Trustor (as such term is defined in the applicable document, subject to any applicable notice and cure periods) has occurred under the Loan Agreement or any other Loan Document or any document evidencing any Secured Obligation; or

(d) Trustor makes or permits the occurrence of an Accelerating Transfer; or

(e) Any default by Trustor occurs under any other mortgage, deed of trust, security deed, or other security instrument on all or any part of the Property, subject to any applicable notice and cure period provided for therein or under any obligation secured by such security instrument, whether such security instrument is prior to or subordinate to this Deed of Trust.

**6.3 Remedies.** Except as otherwise expressly set forth in the Loan Agreement or any other Loan Document, at any time after an Event of Default, Beneficiary and Trustee shall be entitled to invoke any and all of the rights and remedies described below or permitted by applicable law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Acceleration. Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately and may terminate any Loan Document in accordance with its terms.

(b) Receiver. Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property. Trustor hereby consents to such appointment.

(c) Entry. Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and in its own name or in the name of Trustor sue for or otherwise collect any and all Rents, including those that are past due, and may also do any and all other things in connection with those actions that Beneficiary may in its sole and absolute discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing all of Trustor's or the then owner's Books and Records; entering into, enforcing, modifying, or canceling leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents (but not in excess of any applicable maximum low income rents for residential tenants); collecting and receiving any payment of money owing to Trustor; completing any unfinished construction; contracting for and making repairs and alterations; and/or performing such acts of cultivation or irrigation as necessary to conserve the value of the Property. If Beneficiary so requests, Trustor shall assemble all of the Property that has been removed from the Land and make all of it available to Beneficiary at the site of the Land. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact, with full power of substitution, to perform such acts and execute such documents as Beneficiary in its sole and absolute discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments. The appointment granted in this Section shall be deemed to be a power coupled with an interest. Regardless of any provision of this Deed of Trust, or any other Loan Document, Beneficiary shall not be considered to have accepted any property other than cash or immediately available funds in satisfaction of any obligation of Trustor to Beneficiary, unless Beneficiary has given express written notice of Beneficiary's election of that remedy in accordance with applicable law. Trustor agrees to deliver to Beneficiary all Books and Records pertaining to the Property, including computer-readable memory and any computer hardware or software necessary to access or process such memory, as may reasonably be requested by Beneficiary in order to enable Beneficiary to exercise its rights under this Section.

(d) Cure; Protection of Security. Either Beneficiary or Trustee may cure any breach or default of Trustor, and if it chooses to do so in connection with any such cure, Beneficiary or Trustee may also enter the Property and/or do any and all other things that it may, in its sole and absolute discretion, consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding that purports to affect the security of, or the rights or powers of Beneficiary or Trustee under, this Deed of Trust; paying, purchasing, contesting or compromising any

encumbrance, charge, lien or claim of lien, which in Beneficiary's or Trustee's sole judgment is or may be senior in priority to this Deed of Trust; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Documents; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary or Trustee. Beneficiary and Trustee may take any of the actions permitted under this Section either with or without giving notice to any person.

(e) Cure Rights of Limited Partner. Trustor's limited partner(s) (collectively, "**Limited Partner**") shall have the right but not the obligation to cure any Event of Default of Trustor under the Loan Documents, and Beneficiary agrees to accept any cure tendered by Limited Partner on behalf of Trustor within the cure periods described in this **Section 6**. In addition to any notice required to be given by Beneficiary to Trustor, Beneficiary shall give concurrent written notice of any Event of Default under the Loan Documents to Limited Partner. The notice shall specify: (i) the nature of the event or deficiency giving rise to the Event of Default, (ii) the action required to cure the event or deficiency, if an action to cure is possible and can be ascertained, and (iii) a date by which such action to cure must be taken, if applicable, which date shall in no event be less than thirty (30) calendar days from the mailing of the notice for monetary defaults or sixty (60) calendar days from the mailing of the notice for non-monetary defaults. If the cure of a non-monetary default requires more than sixty (60) days, Beneficiary may, in its reasonable discretion, extend the time within which the Event of Default must be cured, provided Limited Partner promptly commences to cure the Event of Default and thereafter diligently pursues or prosecutes such cure to completion, or diligently pursues the removal and replacement of the general partner of Trustor. In the event Beneficiary fails to provide notice of an Event of Default to Limited Partner as set forth herein, Beneficiary's failure to provide such notice to Limited Partner shall not result in liability to Beneficiary, but Beneficiary shall grant Limited Partner thirty (30) calendar days from receipt of actual notice of a monetary default or sixty (60) days from receipt of actual notice of a non-monetary default to pay any and all sums or perform any and all acts necessary to cure such Events of Default, provided Limited Partner has recorded a request for notice of default and has taken any and all other steps necessary to mitigate its damages in the event of a default by Trustor. Notwithstanding the foregoing, in no event shall Limited Partner's right to cure an Event of Default extend beyond five (5) calendar days prior to Beneficiary's foreclosure of its interest in the Property.

(f) UCC Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the UCC.

(g) Judicial Action. Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust in the manner provided by law for the foreclosure of deeds of trusts or mortgages on real property and/or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust. If Beneficiary brings such an action, Trustor agrees to pay Beneficiary's reasonable attorneys' fees (including the allocated costs of in-house counsel to the extent not prohibited by applicable law) and court costs as determined by the court.

(h) Power of Sale. Under the power of sale hereby granted, Beneficiary shall have the discretionary right to cause some or all of the Property, including any Property which

constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

(i) Sales of Personal Property.

(A) For purposes of this power of sale, and to the extent not prohibited by applicable law, Beneficiary may elect to treat as personal property any Property which is intangible or which can be severed from the Land or Improvements without causing structural damage. If it chooses to do so, Beneficiary may dispose of any personal property separately from the sale of real property, in any manner permitted by the UCC, including any public or private sale, or in any manner permitted by any other applicable law. Any proceeds of any such disposition shall not cure any Event of Default or reinstate any Secured Obligation.

(B) In connection with any sale or other disposition of such personal property disposed of separately from the sale of the real property, Trustor agrees that the following procedures constitute a commercially reasonable sale. Beneficiary shall mail written notice of the sale to Trustor not later than ten (10) days prior to the date of public sale of the Property or prior to the date after which a private sale of the Property will be made, and such notice shall constitute reasonable notice; provided that, if Beneficiary fails to comply with this subsection in any respect, its liability for such failure shall be limited to the liability, if any, imposed on it as a matter of law under the UCC. Upon receipt of any written request, Beneficiary will make the personal property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding, Beneficiary shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equal the fair value of the personal property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(j) Trustee's Sales of Real Property or Mixed Collateral.

(A) Beneficiary may choose to dispose of some or all of the Property which consists solely of real property in any manner then permitted by applicable law. In its sole and absolute discretion, and to the extent not prohibited by applicable law, Beneficiary may also or alternatively choose to dispose of some or all of the Property, in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to real property, as may be permitted by the UCC. Trustor agrees that such a sale of personal property together with real property constitutes a commercially reasonable sale of the personal property. For purposes of this power of sale, either a sale of real property alone, or a sale of both real and personal property together in accordance with the UCC, will sometimes be referred to as a **"Trustee's Sale."**

(B) Before any Trustee's Sale, Beneficiary or Trustee shall give such statement of breach or nonperformance, notice of sale, and/or notice of default as may then be required by applicable law. When all time periods then legally mandated have expired, and after such notice of sale and/or other notice as may then be legally required has been given, Trustee shall sell the property being sold at a public auction to be held at the time and place specified in the notice of sale. Neither Trustee nor Beneficiary shall have any obligation to make demand on Trustor before any Trustee's Sale. From time to time in accordance with then applicable law, Trustee may, and in any event at Beneficiary's request shall, postpone any Trustee's Sale by

public announcement at the time and place noticed for that Trustee's Sale, unless otherwise required by applicable law.

(C) At any Trustee's Sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States, payable at the time of sale unless otherwise required by applicable law. Trustee shall execute and deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any Trustee's Sale, shall be conclusive proof of their truthfulness, absent manifest error. Absent manifest error, any such deed shall be (1) conclusive against all persons as to the facts recited in it; and (2) conclusive evidence in favor of purchasers and encumbrancers for value and without actual notice, that all requirements of this Deed of Trust and all requirements of law were met relating to the exercise of the power of sale and the Trustee's Sale of the Property conveyed by such deed. Knowledge of the Trustee shall not be imputed to the Beneficiary.

(k) Attorney-in-Fact. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact, with full power of substitution, to perform such acts and execute such documents as Beneficiary in its sole and absolute discretion may consider to be appropriate (1) to effect the purpose of this Deed of Trust; and (2) in connection with taking the measures described in this Section, including endorsement of Trustor's name on any instruments. This appointment granted in this Section shall be deemed to be a power coupled with an interest, and is therefore irrevocable.

(l) Single or Multiple Foreclosure Sales. Unless prohibited by applicable law, Beneficiary may elect to dispose of the Property, or any portion thereof, including but not limited to lots, parcels, and/or items through a single consolidated sale or disposition to be held or made under the power of sale granted above, or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Beneficiary may deem to be in its best interests (any such sale or disposition, a "Foreclosure Sale;" any two or more, "Foreclosure Sales"). If the Property consists of more than one lot, parcel or item of property, Beneficiary may designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition. If Beneficiary chooses to have more than one Foreclosure Sale, Beneficiary at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Beneficiary may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the lien of this Deed of Trust on any part of the Property which has not been sold, until all of the Secured Obligations have been paid and performed in full.

**6.4 Personal Property.** It shall not be necessary that Beneficiary take possession of all or any part of the Property that is personal property or fixture property prior to the time that any sale pursuant to the provisions of this Section is conducted, and it shall not be necessary that such Property or any part thereof be present at the location of such sale. With respect to application of proceeds from disposition of such Property, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses (including, without limitation, the allocated costs for in-house counsel to the extent not prohibited by applicable law) incurred by Beneficiary. Any and all statements of fact or other recitals made in



any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Secured Obligations or as to the occurrence of any default or Event of Default, or as to Beneficiary having declared all of such indebtedness to be due and payable, or as to notice of time, place, and terms of sale, and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Beneficiary, shall be taken as prima facie evidence of the truth of the facts so stated and recited (absent manifest error). Beneficiary may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Beneficiary, including the sending of notices and the conduct of the sale, but in the name and on behalf of Beneficiary. Beneficiary may comply with any applicable state or federal law or regulatory requirements in connection with a disposition of the Property or any part thereof, and such compliance will not be considered to affect adversely the commercial reasonableness of any sale of such Property. Beneficiary may sell all or any portion of the Property without giving any warranties as to such Property, and may specifically disclaim any warranties of title, merchantability, fitness for a specific purpose, or the like, and this procedure will not be considered to affect adversely the commercial reasonableness of any sale of such Property. Trustor acknowledges that a private sale of all or any part of the Property may result in less proceeds than a public sale, and Trustor acknowledges that the Property may be sold at a loss to Trustor, and that, in such event, Beneficiary shall have no liability or responsibility to Trustor for such loss. In addition to the rights granted elsewhere in this Deed of Trust, after the occurrence of any default or Event of Default, Beneficiary may at any time notify the account debtors or obligors of any accounts, chattel paper (whether tangible or electronic), general intangibles (including payment intangibles), negotiable instruments, promissory notes, or other evidences of indebtedness included in the Property to pay Beneficiary directly.

**6.5 Credit Bids.** At any Trustee's Sale, Foreclosure Sale, or any sale of personal property collateral under this Deed of Trust, any person, including Trustor, Trustee or Beneficiary, may bid for and acquire the Property being sold or any part of it to the extent not expressly prohibited by then applicable law. Instead of paying cash for such property, Beneficiary shall have the benefit of any applicable law permitting credit bids.

**6.6 Application of Trustee's Sale or Foreclosure Sale Proceeds.** Except as may be otherwise required by law, Beneficiary and Trustee shall apply the proceeds of any Trustee's Sale, Foreclosure Sale, or any other sale of personal property collateral under this Deed of Trust, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, including all costs and expenses of exercising the power of sale and other costs of sale, including, but not limited to, trustee's fees and reasonable attorneys' fees, the costs of any action, and any other sums for which Trustor is obligated to reimburse Beneficiary or Trustee under this Deed of Trust; and

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Beneficiary or Trustee under the terms of this Deed of Trust which then remain unpaid; and

(c) Third, to pay all other Secured Obligations, to the extent not expressly prohibited by applicable law, in any order and proportions as Beneficiary in its sole and absolute discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it, or, if permitted or required by applicable law, to the clerk of the court of the county in which the Trustee's Sale, Foreclosure Sale, or any other sale of personal property collateral under this Deed of Trust, took place.

If the Secured Obligations include more than one loan or line of credit, by cross-collateralization or otherwise, it is specifically agreed that the proceeds of any Trustee's Sale or other foreclosure action shall not be applied pro-rata unless such application is directed by Beneficiary, but instead shall be applied to all such Secured Obligations in any order, proportions and manner as Beneficiary in its sole and absolute discretion may choose.

**6.7 Application of Rents and Other Sums.** Beneficiary shall apply any and all Rents collected by it in such order as set forth in **Section 2.5** above, and any and all other sums, other than proceeds of a Trustee's Sale or a judicial foreclosure sale under this Deed of Trust, which Beneficiary may receive or collect under this Section, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation of the Property and collection of Rents and other sums that may be incurred by Trustee, Beneficiary, and/or any receiver, including but not limited to reasonable attorneys' fees and any and all expenses of leasing, operating, maintaining, and managing the Property, and all other costs and charges incident to the Property; and

(b) Second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole and absolute discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it.

Beneficiary shall have no liability for any funds which it does not actually receive.

**6.8 Request for Notice.** Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth herein.

**6.9 Forbearance by Lender Not a Waiver.** Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Beneficiary of payment of any sum secured by this Deed of Trust after the due date of such payment shall not be a waiver of Beneficiary's right either to require prompt payment when due of all other sums so secured or to declare an Event of Default for failure to make prompt payment. The procurement of insurance or this payment of taxes or other liens or charges by Beneficiary shall not be a waiver of Beneficiary's right to accelerate the maturity of the indebtedness secured by this Deed of Trust nor shall Beneficiary's receipt of any awards, proceeds or damages under this Deed of Trust operate to cure or waive any Event of Default with respect to any payment secured by this Deed of Trust.

**6.10 Restriction on Rental Increases.** Notwithstanding anything to the contrary contained in the Loan Documents, the Beneficiary acknowledges and agrees that in the event of a foreclosure or deed-in-lieu of foreclosure (collectively, "Foreclosure") with respect to the Project, the following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, shall apply:

For a period of three (3) years from the date of Foreclosure, with respect to any unit that had been regulated by a regulatory agreement with the California Tax Credit Allocation Committee, (i) none of the tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code.

**7. Miscellaneous.**

**7.1 Amendments.** This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

**7.2 Trustor Waiver of Rights.** Trustor waives to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the Trust Estate, (b) all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created, (c) all rights and remedies which Trustor may have or be able to assert by reason of the laws of the State of California pertaining to the rights and remedies of sureties, (d) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Deed of Trust or to any action brought to enforce the Agreement or any other obligation secured by this Deed of Trust, and (e) any rights, legal or equitable, to require marshalling of assets or to require upon foreclosure sales in a particular order, including any rights under Civil Code Sections 2899 and 3433. Beneficiary shall have the right to determine the order in which any or all of the Trust Estate shall be subjected to the remedies provided herein. Beneficiary shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Nothing contained herein shall be deemed to be a waiver of Trustor's rights under Section 2924c of the Civil Code.

**7.3 Notices.** Any approval, disapproval, demand, document or other notice ("Notice") required or permitted under this Deed of Trust must be in writing and may be given by any commercially acceptable means to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

If to Beneficiary: City of Lake Elsinore  
130 South Main Street  
Lake Elsinore, CA 92530  
Attention: City Manager

Copy to: Leibold, McClendon & Mann  
9841 Irvine Center Drive, Suite 230  
Irvine, California 92618-4316  
Attn: Barbara Leibold

If to Trustor: Mission Cottages LP  
c/o Cottages Management LLC  
7777 Center Drive, Ste 300  
Huntington Beach, CA 92647

Attn: Steve Semingson

With a copy to:

Friedman Stroffe & Gerard PC  
19800 MacArthur Blvd., Ste 1100  
Irvine, CA 92612  
Attn: James D. Stroffe, Esq.

Any Notice shall be deemed received immediately if delivered by hand and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail.

**7.4 Subordination.** Notwithstanding anything to the contrary contained herein, all rights of Beneficiary hereunder shall be subject to the prior and superior rights of any Senior Lender to the Property and its security interest therein, provided that such Senior Lender has entered into a subordination agreement with Beneficiary prior to or concurrently with recordation of such lien.

**7.5 Survival of Warranties.** All representations, warranties and covenants of Trustor contained in the Loan Documents or incorporated by reference therein, shall survive the execution and delivery of this Deed of Trust and shall remain continuing obligations, warranties and representations of Trustor so long as any portion of the obligations secured by this Deed of Trust remains outstanding.

**7.6 Successors and Assigns.** This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, and the heirs, legatees, devisees, administrators, executors, successors and assigns of Beneficiary. The term "Beneficiary" means the owner and holder of the Promissory Note, whether or not named as Beneficiary herein. In exercising any rights hereunder or taking any actions provided for herein, Beneficiary may act through its employees, agents or independent contractors authorized by Beneficiary.

**7.7 Acceptance by Trustee.** Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

**7.8 Captions.** The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

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

**7.10 Subrogation.** To the extent that proceeds of the Promissory Note are used to pay any outstanding lien, charge or prior encumbrance against the Trust Estate, such proceeds have been or will be advanced by Beneficiary at Trustor's request and Beneficiary shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether the liens, charges or encumbrances are released.

**7.11 Attorneys' Fees.** In the event that either party hereto brings any action or files any proceeding in connection with the enforcement of its respective rights under this Deed of Trust or the Promissory Note, as a consequence of any breach by the other party of its obligations thereunder, the prevailing party in such action or proceeding shall be entitled to have its reasonable attorneys' fees and out-of-pocket expenditures paid by the losing party. The attorneys' fees so recovered shall include fees for prosecuting or defending any appeal and shall be awarded for any supplemental proceedings until the final judgment is satisfied in full. In addition to the foregoing award of attorneys' fees, the prevailing party in any lawsuit with respect to the Promissory Note or this Deed of Trust shall also be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. In addition to the foregoing, Trustor agrees to pay or reimburse Beneficiary, upon demand by Beneficiary, for all costs incurred by Beneficiary in connection with enforcement of this Deed of Trust or the Promissory Note, including without limitation, reasonable attorneys' fees and costs, if there shall be filed by or against Trustor any proceedings under any federal or state bankruptcy or insolvency laws, whether Beneficiary is a creditor in such proceedings or otherwise.

As used herein, the terms "attorneys' fees" or "attorneys' fees and costs" means the fees and expenses of counsel to the parties hereto (including, without limitation, in-house counsel employed by Beneficiary) which may include printing, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred.

**7.12 Waiver of Special or Consequential Damages.** Each of Trustor and Beneficiary shall in no event be entitled to, and hereby waives, any right to seek consequential or special damages of any kind or nature from the other arising out of or in connection with this Deed of Trust, and in connection with such waiver, each of Trustor and Beneficiary is familiar with and each hereby waives the provision 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."

**7.13 Nondiscrimination.** Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, Section 12955.2 and Section 12955.3 of the California Government Code, nor shall the Trustor or any person claiming under or through the Trustor establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property. With respect to familial status, this Section 7.13 shall not be construed

to apply to housing for older persons, as defined in Section 12955.9 of the California Government Code. With respect to familial status, nothing in this Section shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51, and subdivisions (n), (o), and (p) of Section 12955 of the California Government Code shall apply to this Section 7.13. The foregoing covenants shall run with the land.

**7.14 No Merger of Lease.** If both the lessor's and lessee's estate under any lease or any portion thereof which now or hereafter constitutes a part of the Trust Estate shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Beneficiary so elects as evidenced by recording a written declaration so stating, and, unless and until Beneficiary so elects, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Trust Estate pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Trust Estate shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

**7.15 Governing Law.** This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

**7.16 Joint and Several Obligations.** Should this Deed of Trust be signed by more than one party, all obligations herein contained shall be deemed to be the joint and several obligations of each party executing this Deed of Trust. Any married person signing this Deed of Trust agrees that recourse may be had against community assets and against his or her separate property for the satisfaction of all obligations contained herein.

**7.17 Interpretation.** In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

**7.18 Reconveyance by Trustee.** Upon written request of Beneficiary stating that all sums secured hereby have been paid and all obligations under the Regulatory Agreement have been satisfied, and upon surrender of this Deed of Trust and the Promissory Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto." Such grantee shall pay Trustee a reasonable fee and Trustee's costs incurred in so reconveying the Trust Estate.

**7.19 Counterparts.** This document may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to physically form one document, which may be recorded.

**7.20 Nonforeign Entity.** Section 1445 of the Internal Revenue Code of 1986, as amended (the “**Code**”) and Sections 18805, 18815 and 26131, as applicable, of the Revenue and Taxation Code (“**CRTC**”) provide that a transferee of a U.S. real property interest must withhold tax, in the case of the Code, if the transferor is a foreign person, or if, in the case of the CRTC, the transferor is not a California resident. To inform Beneficiary that the withholding of tax will not be required in the event of the disposition of the Property or the Improvements, or any portion thereof or interest therein, pursuant to the terms of this Deed of Trust, Trustor hereby certifies, under penalty of perjury, that: (a) Trustor is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Code and the regulations promulgated thereunder; and (b) Trustor’s U.S. employer identification number is 82-1354730; and (c) Trustor’s principal place of business is 7777 Center Drive, Ste 300Huntington Beach, CA 92647. It is understood that Beneficiary may disclose the contents of this certification to the Internal Revenue Service and the California Franchise Tax Board, and that any false statement contained herein could be punished by fine, imprisonment or both. Trustor covenants and agrees to execute such further certificates, which shall be signed under penalty of perjury, as Beneficiary shall reasonably require. The covenant set forth herein shall survive the foreclosure of the lien of this Deed of Trust or acceptance of a deed in lieu thereof.

**7.21 Substitute Trustee.** Beneficiary at any time and from time to time, by instrument in writing, may substitute and appoint a successor Trustee (either corporate or individual) to any Trustee named herein or previously substituted hereunder, which instrument when executed, acknowledged, and recorded in the Official Records of the Office of the Recorder of the county or counties where The Property is located shall be conclusive proof of the proper substitution and appointment of each successor trustee or trustees, who shall then have all the title, powers, duties and rights of the predecessor Trustee, without the necessity of any conveyance from such predecessor. Trustee shall not be obligated to notify any party hereto of pending sale under any other Deed of Trust, or, unless brought by Trustee, or any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party.

**7.22 Fixture Filing.** This Deed of Trust constitutes a fixture filing under Sections 9313 and 9402 of the California Uniform Commercial Code, as amended or recodified from time to time (“**UCC**”), and is acknowledged and agreed to be a "construction mortgage" under the UCC. This Deed of Trust as fixture filing covers the personal property that is or is to become fixtures on the Property or Real Property. “Fixtures” include all articles of personal property now or hereafter attached to, placed upon or used for an indefinite term or used in connection with said Property and/or Real Property, and/or included within the term “Trust Estate” together with all property that is or at any time becomes so related to the Property that an interest in them arises under real estate law.

This Deed of Trust also constitutes a Security Agreement (this “**Security Agreement**”) between Trustor as the “Debtor” and Beneficiary as the “Secured Party” with respect to all items constituting the Property (“Collateral”), a security interest in all such Collateral being hereby transferred, pledged, assigned, set over, conveyed and granted to Beneficiary by Trustor as security for the payment of the Note and all sums becoming due and owing thereunder or under any other Loan Document and the observance and performance by Trustor of all of the terms, covenants and provisions of the Loan Documents on the part of Trustor to be observed and performed (said indebtedness, interest and all other sums which may or shall become due under, and said obligation to observe and perform terms, covenants and provisions of the Loan

Documents are collectively part of the Secured Obligations). This Deed of Trust constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder in the county in which the Property is located with respect to any and all fixtures as used herein and with respect to any goods or other personal property that may now be or hereafter become such fixtures.

**7.23 Notices.** TRUSTOR ACKNOWLEDGES RECEIPT OF A TRUE COPY OF THIS DEED OF TRUST WITHOUT CHARGE.

TRUSTOR PLEASE NOTE: UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, CALIFORNIA PROCEDURE PERMITS TRUSTEE TO SELL THE TRUST ESTATE AT A SALE HELD WITHOUT SUPERVISION BY ANY COURT AFTER EXPIRATION OF A PERIOD PRESCRIBED BY LAW. UNLESS YOU PROVIDE AN ADDRESS FOR THE GIVING OF NOTICE, YOU MAY NOT BE ENTITLED TO NOTICE OF THE COMMENCEMENT OF ANY SALE PROCEEDINGS. BY EXECUTION OF THIS DEED OF TRUST, YOU CONSENT TO SUCH PROCEDURE. BENEFICIARY URGES YOU TO GIVE PROMPT NOTICE OF ANY CHANGE IN YOUR ADDRESS SO THAT YOU MAY RECEIVE PROMPTLY ANY NOTICE GIVEN PURSUANT TO THIS DEED OF TRUST.

*[Signature On Next Page]*



**IN WITNESS WHEREOF**, Trustor has executed this Deed of Trust as of the day and year first above written.

**TRUSTOR:**

MISSION COTTAGES, LP,  
a California limited partnership

By: Cottages Management, LLC,  
a California limited liability company,  
its Administrative General Partner

By: \_\_\_\_\_  
Steven P. Semingson  
Managing Member

By: AOF Mission Trails LLC,  
a California limited liability company,  
its Managing General Partner

By: AOF/Pacific Affordable Housing Corporation,  
a California nonprofit public benefit  
corporation,  
its Sole Member and Manager

By: \_\_\_\_\_  
Philip J. Kennedy  
President

**[SIGNATURE PAGE TO FUND 106 DEED OF TRUST]**

**[PAGE 1 OF 1]**

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

STATE OF CALIFORNIA )  
 ) §  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature of Notary

(Affix seal here)

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

STATE OF CALIFORNIA )  
 ) §  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature of Notary

(Affix seal here)

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LAKE ELSINORE, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

**PARCEL 1:**

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 15, THE SOUTHEAST QUARTER OF SECTION 16; AND THE NORTHEAST QUARTER OF SECTION 21, ALL OF TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 12, IN BLOCK "G" OF RANCHO LA LAGUNA,  
AS SHOWN BY MAP ON FILE IN BOOK 6 PAGE 296 OF MAPS, SAN DIEGO COUNTY RECORDS;

THENCE SOUTH 15°15' EAST ON THE EASTERLY LINE OF SAID RANCHO, 990 FEET, TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 15°15' EAST, ALONG SAID RANCHO LINE 165 FEET;

THENCE NORTH 74°45' EAST, 1313 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY LINE OF MISSION TRAIL HIGHWAY;

THENCE NORTHERLY ON THE WESTERLY LINE OF SAID MISSION TRAIL HIGHWAY 167 FEET, MORE OR LESS TO A POINT WHICH BEARS NORTH 74°45' EAST FROM THE TRUE POINT OF BEGINNING;

THENCE SOUTH 74°45'20" WEST 1281 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING;

SAID LAND ALSO DESCRIBED AS ALL OF LOTS 1282, 1254, 1226, 1191, 1163, 1123, 1098, 1053, 1031, 980 AND THE NORTHWESTERLY HALF OF LOTS 1281, 1255, 1192, 1124, 1097, 1054, 1162, 1225, 1030 AND 981 AS SHOWN ON ASSESSOR'S MAP NO. 48, RIVERSIDE COUNTY RECORDS.

ALSO THAT PORTION OF THE ABANDONED RIGHT OF WAY TO ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY ADJACENT THERETO.

**PARCEL 2:**

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 15; THE SOUTHEAST QUARTER OF SECTION 16; AND THE NORTHEAST QUARTER OF SECTION 21, ALL IN TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 12 IN BLOCK G OF RANCHO LA LAGUNA AS PER MAP RECORDED IN BOOK 6, PAGE 296 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, CALIFORNIA;

THENCE SOUTH 15°15' EAST ON THE EASTERLY LINE OF SAID RANCHO, A DISTANCE OF 1155 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 15°15' EAST ALONG SAID RANCHO LINE, A DISTANCE OF 165 FEET;

THENCE NORTH 74°45' EAST A DISTANCE OF 1344.95 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY LINE OF MISSION LINE OF MISSION TRAIL HIGHWAY, WHICH IS ALSO THE NORTHEASTERLY CORNER OF THAT PROPERTY CONVEYED TO ALEXANDER DEUTCH, AS RECORDED IN BOOK 2573, PAGE 519, OFFICIAL RECORDS;

THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID MISSION TRAIL HIGHWAY, A DISTANCE OF 169 FEET, MORE OR LESS, TO THE SOUTHEASTERLY CORNER OF THE PROPERTY CONVEYED TO G. E. ORR, ET AL., AS RECORDED IN BOOK 3193, PAGE 166, OFFICIAL RECORDS;

THENCE SOUTH 74°45' WEST, ALONG THE SOUTHERLY LINE OF SAID G.E. ORR PROPERTY TO THE POINT OF BEGINNING.

SAID LAND BEING ALSO DESCRIBED AS LOTS 982, 1029, 1055, 1096, 1125, 1161, 1193, 1224, 1256, 1280 AND THE SOUTHERLY HALF OF LOTS 981, 1030, 1054, 1097, 1124, 1162, 1192, 1225, 1255, 1281 AND THE NORTHERLY HALF OF LOT 1298, AS SHOWN ON ASSESSORS MAP NO. 48, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY.

ALSO THAT PORTION OF THE ABANDONED RIGHT OF WAY TO ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY ADJACENT THERETO.

PARCEL 3:

PARCEL NO. 2, AS SHOWN ON RECORD OF SURVEY ON FILE IN BOOK 56, PAGE 69 OF RECORDS OF SURVEY, RIVERSIDE COUNTY, RECORDS, BEING A PORTION OF SECTIONS 15 AND 16, TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN.

EXCEPTING THEREFROM ALL MINERALS, OIL, GAS, OR HYDROCARBON SUBSTANCES, IN, UPON OR UNDER SAID LAND.

APN: 365-030-005, 006, 007, et.al.

EXHIBIT D

FORM OF FUND 106 NOTE

## EXHIBIT D

### FORM OF CITY FUND 106 NOTE

#### RESIDUAL RECEIPTS PROMISSORY NOTE (City Fund 106 Loan)

\$646,974

Lake Elsinore, California  
March 28, 2019

FOR VALUE RECEIVED, MISSION COTTAGES LP, a California limited partnership (“Borrower” or the “Developer”), promises to pay to the City of Lake Elsinore, a municipal corporation (the “City”), or order, the principal sum of Six Hundred Forty Six Thousand Nine Hundred Seventy Four Dollars (\$646,974), disbursed by the City to the Borrower pursuant to that certain Disposition, Development and Loan Agreement dated as of March 28, 2019, as may be amended from time to time (collectively, the “DDLA”), plus interest thereon pursuant to Section 2 below.

1. Borrower’s Obligation. This promissory note (the “Note”) evidences the Borrower’s obligation to pay the City the principal amount of Six Hundred Forty Six Thousand Nine Hundred Seventy Four Dollars (\$646,974) (the “City Fund 106 Loan”) plus interest pursuant to the DDLA. All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the DDLA.

2. Interest. The outstanding principal balance of this Note shall bear simple interest at the rate of three percent (3.0%) per annum; provided, however, if a Developer Event of Default occurs, interest on the principal balance shall begin to accrue, as of the date of the Developer Event of Default (following expiration of applicable notice and cure periods), and continuing until such time as the Loan funds are repaid in full or the Developer Event of Default is cured, at the default rate of ten percent (10%) compounded annually, or the highest rate permitted by law (whichever is lower) (the “Default Rate”).

3. Term and Repayment Requirements.

(a) The term of this Note (the “Term”) shall commence on the date set forth above and shall expire on the earliest of: (i) if Conversion to Permanent Financing does not occur by the date set forth in the Schedule of Performance, such date as is set forth in the Schedule of Performance for Conversion to Permanent Financing, or (ii) provided that Conversion to Permanent Financing occurs by the date set forth in the Schedule of Performance, such date as is fifty five (55) years from the date of recordation of a Notice of Completion for the Development.

(b) Subject to the provisions of subsection (d) below, all principal and interest, if any, on the Loan shall, at the option of the City, be due and payable upon the earliest of: (i) a Transfer other than a Transfer permitted or approved by the City as provided in the

DDLA; (ii) the occurrence of a Developer Event of Default for which the City exercises its right to cause the City Fund 106 Loan indebtedness to become immediately due and payable; or (iii) the expiration of the Term specified in subsection (a) above.

(c) The Borrower shall make annual repayments of the City Fund 106 Loan on or before June 30 of each year following completion of construction of the Improvements in accordance with Section 4.5 of the DDLA. All Residual Receipts payments made to the City shall be applied toward the City Fund 106 Loan until the City Fund 106 Loan is completely repaid. After the City Fund 106 Loan is completely repaid, all Residual Receipts payments to the City shall be applied to the City LMIHAF Loan.

(d) The Borrower shall have the right to prepay the City Fund 106 Loan, in whole or in part, at any time without penalty or additional charge.

(e) Repayment in full of the City Fund 106 Loan shall not terminate Borrower's obligations under the Regulatory Agreement.

4. No Assumption. This Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of the City, or as set forth in the DDLA.

5. Security. This Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing (the "Deed of Trust") of even date herewith, wherein the Borrower is Trustor and the City is the Beneficiary, recorded against the Property.

6. Terms of Payment.

(a) All payments due under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this Note shall be paid to the City at the following address: City of Lake Elsinore, 130 South Main Street, Lake Elsinore, CA 92530, Attention: Director of Administrative Services, or to such other place as the City may from time to time designate in writing.

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

(d) Notwithstanding any other provision of this Note, or any instrument securing the obligations of the Borrower under this Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that the City may legally charge under the laws of the State of California, then the amount by which payments exceeds the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no



event shall the Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

7. Default.

(a) Events of Default. Any of the following shall constitute an “Event of Default” or “Developer Event of Default” under this Note:

(i) Any failure to pay, in full, any payment required under this Note when due following written notice by the City of such failure and ten (10) days opportunity to cure;

(ii) Any failure in the performance by the Borrower of any other term, condition, provision or covenant set forth in the City Documents subject to the applicable notice and cure period set forth therein; and

(iii) The material falsity of any representation or breach of any warranty or covenant made by Borrower under the terms of this Note or the DDLA;

(iv) Borrower shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian or the like of its property, (ii) fail to pay or admit in writing its inability to pay its debts generally as they become due, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent or (v) commence a voluntary petition that is not withdrawn within thirty (30) days of the filing thereof or answer seeking an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or file an answer admitting the material allegations of a petition filed against it in any bankruptcy or insolvency proceeding;

(v) If without the application, approval or consent of Borrower, a proceeding shall be instituted in any court of competent jurisdiction, under any law relating to bankruptcy, in respect of Borrower, for an order for relief or an adjudication in bankruptcy, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like of Borrower or of all or any substantial part of Borrower’s assets, or other like relief in respect thereof under any bankruptcy or insolvency law, and, if such proceeding is being contested by Borrower, in good faith, the same shall (i) result in the entry of an order for relief or any such adjudication or appointment, or (ii) continue undismissed, or pending and unstayed, for any period of ninety (90) consecutive days;

(vi) A transfer, in violation of Article 7 of the DDLA; or

(vii) Subject to the notice and cure provisions set forth in the DDLA and the rights of any senior lenders, Borrower shall be in default under the terms of any other financing, whether junior or senior, relating to the Development, or any other secured or unsecured obligation relating to the Development, unless the default is cured within the cure period, if any, applicable thereto under the terms and obligation which is in default.

(b) Acceleration. Upon the occurrence of such an Event of Default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note and the Deed of Trust shall at the option of the City become

immediately due and payable upon written notice by the City to the Borrower without further demand.

(c) No Waiver. The failure to exercise the remedy set forth in subsection 7(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by the City hereof of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the City, except as and to the extent otherwise provided by law.

(d) City Remedies. Upon the occurrence of an Event of Default hereunder, City may, in its sole discretion, take any one or more of the following actions:

(i) By notice to Borrower, except in the case of a default by Borrower under Section 7(a)(iii) through Section 7(a)(v) in which event no notice shall be required, declare the entire then unpaid principal balance of the City Fund 106 Loan immediately due and payable, and the same shall become due and payable without further demand, protest or further notice of any kind, all of which are expressly waived. Upon such declaration, outstanding principal and (to the extent permitted by law) interest and any other sums outstanding in connection with the City Fund 106 Loan shall thereafter bear interest at the Default Rate, payable from the date of such declaration until paid in full;

(ii) Take any and all actions and do any and all things which are allowed, permitted or provided by law, in equity or by statute, in the sole discretion of City, to collect the amounts then due and thereafter to become due hereunder, and to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Note, the Deed of Trust, the DDLA or under any other document executed in connection herewith;

(iii) Upon the occurrence of an Event of Default which is occasioned by Borrower's failure to pay money, City may, but shall not be obligated to, make such payment. If such payment is made by City, Borrower shall deposit with City, upon written demand therefor, such sum plus interest at the Default Rate. In either case, the Event of Default with respect to which any such payment has been made by City shall not be deemed cured until such repayment (as the case may be) has been made by Borrower. Until repaid, such amounts shall have the security afforded disbursements under this Note;

(iv) Upon the occurrence of an Event of Default described in Section 7(a)(iv) or 7(a)(v) hereof, City shall be entitled and empowered by intervention in such proceedings or otherwise to file and prove a claim for the whole amount owing and unpaid on the Loan and, in the case of commencement of any judicial proceedings, to file such proof of claim and other papers or documents as may be necessary or advisable in the judgment of City and its counsel to protect the interests of City and to collect and receive any monies or other property in satisfaction of its claim; or

(v) No remedy herein conferred upon or reserved to City intended to be exclusive of any other available remedy or remedies, but each such remedy shall be

cumulative and shall be in addition to every other remedy given under this Note or now existing at law or in equity or by statute; and may be exercised in such number, at such times and in such order as City may determine in its sole discretion. No delay or omission to exercise any right or power upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient by City. In order to entitle City to exercise any right or remedy reserved to it under this Note, no notice shall be required except as expressly provided herein.

8. Waivers.

(a) The Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, and notice of dishonor of this Note. The Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that the City may accept further security or release any security for this Note, all without in any way affecting the liability of the Borrower.

(b) No extension of time for payment of this Note or any installment hereof made by agreement by the City with any person now or hereafter liable for payment of this Note shall operate to release, discharge, modify, change or affect the original liability of the Borrower under this Note, either in whole or in part.

(c) The obligations of the Borrower under this Note shall be absolute and the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

(d) Borrower shall in no event be entitled to, and hereby waives, any right to seek consequential or special damages of any kind or nature from City arising out of or in connection with this Note, and in connection with such waiver Borrower is familiar with and hereby waives the provision 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.”

9. Representations and Warranties of Borrower.

Borrower hereby warrants and represents to City that:

(a) Organization and Standing. Borrower is a California legal entity as described in the DDLA, duly organized, qualified to operate in California and validly existing and in good standing under all applicable laws, and has all requisite power and authority to enter into and perform its obligations under this Note, the DDLA, and all other documents executed in connection herewith.

(b) Enforceability. This Note, the DDLA and all other instruments to be executed by Borrower in connection with the City Fund 106 Loan constitute the legal, valid and binding obligation of Borrower, without joinder of any other party.

(c) Authorization and Consents. The execution, delivery and performance of this Note, the DDLA and all other instruments to be executed in connection herewith is consistent with the operating agreement, partnership agreement or articles and bylaws governing Borrower and have been duly authorized by all necessary action of Borrower's members, partners, directors, officers and shareholders.

(d) Due and Valid Execution. This Note, the DDLA and all other instruments to be executed in connection herewith, will, as of the date of their execution, have been duly and validly executed by Borrower.

(e) Licenses. Borrower will obtain and maintain all material licenses, permits, consents and approvals required by all applicable governmental authorities to engage in the predevelopment activities described in the DDLA.

(f) Litigation and Compliance. There are no suits, other proceedings or investigations pending or threatened against, or affecting the business or the properties of Borrower (other than those as have been previously disclosed in writing to City) which could materially impair its ability to perform its obligations under this Note or the DDLA, nor is Borrower in violation of any laws or ordinances which could materially impair Borrower's ability to perform its obligations under this Note or the DDLA.

(g) Default. There are no facts now in existence which would, with the giving of notice or the lapse of time, or both, constitute an "Event of Default" hereunder.

(h) No Violations. The execution and delivery of this Note, the DDLA and all other documents executed or given thereunder, and the performances hereunder and thereunder by Borrower, as applicable, will not constitute a breach of or default under any instrument or agreement to which Borrower may be a party nor, will the same constitute a breach of or violate any law or governmental regulation.

#### 10. Miscellaneous Provisions.

(a) All notices to the City or the Borrower shall be given in the manner and at the addresses set forth in Section 10.1 of the DDLA, or to such addresses as the City and the Borrower may hereinafter designate.

(b) The Borrower promises to pay all costs and expenses, including reasonable attorney's fees and costs and other professional service fees and costs, incurred by the City in the enforcement of the provision of this Note, regardless of whether suit is filed to seek enforcement.

(c) The obligation of Borrower to repay the City Fund 106 Loan and all accrued interest thereon shall be absolute and unconditional, and until such time as all of the outstanding principal of and interest on this Note shall have been fully paid, Borrower agrees that it: will not terminate or suspend any payment, duty, liability or obligation under this Note, the DDLA, or any other document executed hereunder or in connection herewith for any cause, including without limitation, any acts or circumstances that may constitute failure of consideration or commercial frustration of purpose.

(d) The City Fund 106 Loan proceeds shall be used by Borrower as provided in the DDLA and for such other uses approved in writing by City. In no event shall Borrower use or otherwise invest the proceeds of the City Fund 106 Loan except as expressly provided in this Note or in the DDLA.

(e) As additional consideration for the making of the City Fund 106 Loan by City, Borrower covenants as follows:

(i) Borrower shall comply with all of its obligations under the DDLA. Any amounts payable by Borrower under the DDLA (other than amounts also payable hereunder) shall be deemed added to the principal amount of the City Fund 106 Loan payable hereunder.

(ii) Borrower shall comply with all monetary and non-monetary covenants associated with any loan made to Borrower in connection with the Property or the Development. Borrower shall provide to City a copy of any notice of default within five business days after receiving any notice of a default or alleged default of such covenants by Borrower, and Borrower shall promptly cure any such default and cooperate in permitting City, to the extent City in its sole discretion elects to do so, to cure or assist in curing the default. Any cost or expenditure incurred by City in providing or assisting in such a cure shall be deemed added to the outstanding principal amount of the City Fund 106 Loan and not to any other loan made by the City to the Borrower.

(f) No official or employee of City shall have any personal interest, direct or indirect, in this Note, nor shall any official or employee of City participate in any decision relating to this Note which affects such official's or employee's pecuniary interest in any corporation, partnership or association in which such official or employee is directly or indirectly interested. No official or employee of City shall be personally liable in the event of a breach of this Note by City.

(g) This Note may not be changed orally, but only by an agreement in writing signed by the Party against whom enforcement of any waiver, change, modification or discharge is sought.

(h) This Note shall be governed by and construed in accordance with the laws of the State of California. The invalidity or unenforceability of any one or more provisions of this Note will in no way affect any other provisions.

(i) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(j) This Note, together with the DDLA, the Deed of Trust, and any other applicable City Loan Document, contain the entire agreement between the Parties as to the Loan.

(k) This Note is subject to the non-recourse provisions, and the limitations thereto, as set forth in Section 4.4 of the DDLA.

*Signatures on Following Page*

**BORROWER:**

**MISSION COTTAGES, LP,**  
a California limited partnership

By: Cottages Management, LLC,  
a California limited liability company,  
its Administrative General Partner

By: \_\_\_\_\_  
Steven P. Semingson  
Managing Member

By: AOF Mission Trails LLC,  
a California limited liability company,  
its Managing General Partner

By: AOF/Pacific Affordable Housing  
Corporation, a California nonprofit public  
benefit corporation,  
its Sole Member and Manager

By: \_\_\_\_\_  
Philip J. Kennedy  
President

**[SIGNATURE PAGE TO FUND 106 PROMISSORY NOTE]**

**[PAGE 1 OF 1]**

EXHIBIT E

FORM OF LMIHAF NOTE

## EXHIBIT E

### FORM OF CITY LMIHAF NOTE

#### RESIDUAL RECEIPTS PROMISSORY NOTE (City LMIHAF Loan)

\$5,074,276

Lake Elsinore, California  
March 28, 2019

FOR VALUE RECEIVED, MISSION COTTAGES LP, a California limited partnership (“Borrower” or the “Developer”), promises to pay to the City of Lake Elsinore, a municipal corporation (the “City”), or order, the principal sum of Five Million Seventy Four Thousand Two Hundred Seventy Six Dollars (\$5,074,276), disbursed by the City to the Borrower pursuant to that certain Disposition, Development and Loan Agreement dated as of March 28, 2019, as may be amended from time to time (collectively, the “DDLA”), plus interest thereon pursuant to Section 2 below.

1. Borrower’s Obligation. This promissory note (the “Note”) evidences the Borrower’s obligation to pay the City the principal amount of Five Million Seventy Four Thousand Two Hundred Seventy Six Dollars (\$5,074,276) (the “City LMIHAF Loan”) plus interest pursuant to the DDLA. All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the DDLA.

2. Interest. The outstanding principal balance of this Note shall bear simple interest at the rate of three percent (3.0%) per annum; provided, however, if a Developer Event of Default occurs, interest on the principal balance shall begin to accrue, as of the date of the Developer Event of Default (following expiration of applicable notice and cure periods), and continuing until such time as the Loan funds are repaid in full or the Developer Event of Default is cured, at the default rate of ten percent (10%) compounded annually, or the highest rate permitted by law (whichever is lower) (the “Default Rate”).

3. Term and Repayment Requirements.

(a) The term of this Note (the “Term”) shall commence on the date set forth above and shall expire on the earliest of: (i) if Conversion to Permanent Financing does not occur by the date set forth in the Schedule of Performance, such date as is set forth in the Schedule of Performance for Conversion to Permanent Financing, or (ii) provided that Conversion to Permanent Financing occurs by the date set forth in the Schedule of Performance, such date as is fifty five (55) years from the date of recordation of a Notice of Completion for the Development.

(b) Subject to the provisions of subsection (d) below, all principal and interest, if any, on the City LMIHAF Loan shall, at the option of the City, be due and payable upon the earliest of: (i) a Transfer other than a Transfer permitted or approved by the City as



provided in the DDLA; (ii) the occurrence of a Developer Event of Default for which the City exercises its right to cause the City LMIHAF Loan indebtedness to become immediately due and payable; or (iii) the expiration of the Term specified in subsection (a) above.

(c) The Borrower shall make annual repayments of the City LMIHAF Loan on or before June 30 of each year following completion of construction of the Improvements in accordance with Section 4.5 of the DDLA. All Residual Receipts payments made to the City shall be applied toward the City Fund 106 Loan until the City Fund 106 Loan is completely repaid. After the City Fund 106 Loan is completely repaid, all Residual Receipts payments to the City shall be applied to the City LMIHAF Loan.

(d) The Borrower shall have the right to prepay the City LMIHAF Loan, in whole or in part, at any time without penalty or additional charge.

(e) Repayment in full of the City LMIHAF Loan shall not terminate Borrower's obligations under the Regulatory Agreement.

4. No Assumption. This Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of the City, or as set forth in the DDLA.

5. Security. This Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing (the "Deed of Trust") of even date herewith, wherein the Borrower is Trustor and the City is the Beneficiary, recorded against the Property.

6. Terms of Payment.

(a) All payments due under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this Note shall be paid to the City at the following address: City of Lake Elsinore, 130 South Main Street, Lake Elsinore, CA 92530, Attention: Director of Administrative Services, or to such other place as the City may from time to time designate in writing.

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

(d) Notwithstanding any other provision of this Note, or any instrument securing the obligations of the Borrower under this Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that the City may legally charge under the laws of the State of California, then the amount by which payments exceeds the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no

event shall the Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

7. Default.

(a) Events of Default. Any of the following shall constitute an “Event of Default” or “Developer Event of Default” under this Note:

(i) Any failure to pay, in full, any payment required under this Note when due following written notice by the City of such failure and ten (10) days opportunity to cure;

(ii) Any failure in the performance by the Borrower of any other term, condition, provision or covenant set forth in the City Documents subject to the applicable notice and cure period set forth therein; and

(iii) The material falsity of any representation or breach of any warranty or covenant made by Borrower under the terms of this Note or the DDLA;

(iv) Borrower shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian or the like of its property, (ii) fail to pay or admit in writing its inability to pay its debts generally as they become due, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent or (v) commence a voluntary petition that is not withdrawn within thirty (30) days of the filing thereof or answer seeking an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or file an answer admitting the material allegations of a petition filed against it in any bankruptcy or insolvency proceeding;

(v) If without the application, approval or consent of Borrower, a proceeding shall be instituted in any court of competent jurisdiction, under any law relating to bankruptcy, in respect of Borrower, for an order for relief or an adjudication in bankruptcy, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like of Borrower or of all or any substantial part of Borrower’s assets, or other like relief in respect thereof under any bankruptcy or insolvency law, and, if such proceeding is being contested by Borrower, in good faith, the same shall (i) result in the entry of an order for relief or any such adjudication or appointment, or (ii) continue undismissed, or pending and unstayed, for any period of ninety (90) consecutive days;

(vi) A transfer, in violation of Article 7 of the DDLA; or

(vii) Subject to the notice and cure provisions set forth in the DDLA and the rights of any senior lenders, Borrower shall be in default under the terms of any other financing, whether junior or senior, relating to the Development, or any other secured or unsecured obligation relating to the Development, unless the default is cured within the cure period, if any, applicable thereto under the terms and obligation which is in default.

(b) Acceleration. Upon the occurrence of such an Event of Default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note and the Deed of Trust shall at the option of the City become

immediately due and payable upon written notice by the City to the Borrower without further demand.

(c) No Waiver. The failure to exercise the remedy set forth in subsection 7(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by the City hereof of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the City, except as and to the extent otherwise provided by law.

(d) City Remedies. Upon the occurrence of an Event of Default hereunder, City may, in its sole discretion, take any one or more of the following actions:

(i) By notice to Borrower, except in the case of a default by Borrower under Section 7(a)(iii) through Section 7(a)(v) in which event no notice shall be required, declare the entire then unpaid principal balance of the City LMIHAF Loan immediately due and payable, and the same shall become due and payable without further demand, protest or further notice of any kind, all of which are expressly waived. Upon such declaration, outstanding principal and (to the extent permitted by law) interest and any other sums outstanding in connection with the City LMIHAF Loan shall thereafter bear interest at the Default Rate, payable from the date of such declaration until paid in full;

(ii) Take any and all actions and do any and all things which are allowed, permitted or provided by law, in equity or by statute, in the sole discretion of City, to collect the amounts then due and thereafter to become due hereunder, and to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Note, the Deed of Trust, the DDLA or under any other document executed in connection herewith;

(iii) Upon the occurrence of an Event of Default which is occasioned by Borrower's failure to pay money, City may, but shall not be obligated to, make such payment. If such payment is made by City, Borrower shall deposit with City, upon written demand therefor, such sum plus interest at the Default Rate. In either case, the Event of Default with respect to which any such payment has been made by City shall not be deemed cured until such repayment (as the case may be) has been made by Borrower. Until repaid, such amounts shall have the security afforded disbursements under this Note;

(iv) Upon the occurrence of an Event of Default described in Section 7(a)(iv) or 7(a)(v) hereof, City shall be entitled and empowered by intervention in such proceedings or otherwise to file and prove a claim for the whole amount owing and unpaid on the Loan and, in the case of commencement of any judicial proceedings, to file such proof of claim and other papers or documents as may be necessary or advisable in the judgment of City and its counsel to protect the interests of City and to collect and receive any monies or other property in satisfaction of its claim; or

(v) No remedy herein conferred upon or reserved to City intended to be exclusive of any other available remedy or remedies, but each such remedy shall be

cumulative and shall be in addition to every other remedy given under this Note or now existing at law or in equity or by statute; and may be exercised in such number, at such times and in such order as City may determine in its sole discretion. No delay or omission to exercise any right or power upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient by City. In order to entitle City to exercise any right or remedy reserved to it under this Note, no notice shall be required except as expressly provided herein.

8. Waivers.

(a) The Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, and notice of dishonor of this Note. The Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that the City may accept further security or release any security for this Note, all without in any way affecting the liability of the Borrower.

(b) No extension of time for payment of this Note or any installment hereof made by agreement by the City with any person now or hereafter liable for payment of this Note shall operate to release, discharge, modify, change or affect the original liability of the Borrower under this Note, either in whole or in part.

(c) The obligations of the Borrower under this Note shall be absolute and the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

(d) Borrower shall in no event be entitled to, and hereby waives, any right to seek consequential or special damages of any kind or nature from City arising out of or in connection with this Note, and in connection with such waiver Borrower is familiar with and hereby waives the provision 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.”

9. Representations and Warranties of Borrower.

Borrower hereby warrants and represents to City that:

(a) Organization and Standing. Borrower is a California legal entity as described in the DDLA, duly organized, qualified to operate in California and validly existing and in good standing under all applicable laws, and has all requisite power and authority to enter into and perform its obligations under this Note, the DDLA, and all other documents executed in connection herewith.

(b) Enforceability. This Note, the DDLA and all other instruments to be executed by Borrower in connection with the City LMIHAF Loan constitute the legal, valid and binding obligation of Borrower, without joinder of any other party.

(c) Authorization and Consents. The execution, delivery and performance of this Note, the DDLA and all other instruments to be executed in connection herewith is consistent with the operating agreement, partnership agreement or articles and bylaws governing Borrower and have been duly authorized by all necessary action of Borrower's members, partners, directors, officers and shareholders.

(d) Due and Valid Execution. This Note, the DDLA and all other instruments to be executed in connection herewith, will, as of the date of their execution, have been duly and validly executed by Borrower.

(e) Licenses. Borrower will obtain and maintain all material licenses, permits, consents and approvals required by all applicable governmental authorities to engage in the predevelopment activities described in the DDLA.

(f) Litigation and Compliance. There are no suits, other proceedings or investigations pending or threatened against, or affecting the business or the properties of Borrower (other than those as have been previously disclosed in writing to City) which could materially impair its ability to perform its obligations under this Note or the DDLA, nor is Borrower in violation of any laws or ordinances which could materially impair Borrower's ability to perform its obligations under this Note or the DDLA.

(g) Default. There are no facts now in existence which would, with the giving of notice or the lapse of time, or both, constitute an "Event of Default" hereunder.

(h) No Violations. The execution and delivery of this Note, the DDLA and all other documents executed or given thereunder, and the performances hereunder and thereunder by Borrower, as applicable, will not constitute a breach of or default under any instrument or agreement to which Borrower may be a party nor, will the same constitute a breach of or violate any law or governmental regulation.

#### 10. Miscellaneous Provisions.

(a) All notices to the City or the Borrower shall be given in the manner and at the addresses set forth in Section 10.1 of the DDLA, or to such addresses as the City and the Borrower may hereinafter designate.

(b) The Borrower promises to pay all costs and expenses, including reasonable attorney's fees and costs and other professional service fees and costs, incurred by the City in the enforcement of the provision of this Note, regardless of whether suit is filed to seek enforcement.

(c) The obligation of Borrower to repay the City LMIHAF Loan and all accrued interest thereon shall be absolute and unconditional, and until such time as all of the outstanding principal of and interest on this Note shall have been fully paid, Borrower agrees that it: will not terminate or suspend any payment, duty, liability or obligation under this Note, the DDLA, or any other document executed hereunder or in connection herewith for any cause, including without limitation, any acts or circumstances that may constitute failure of consideration or commercial frustration of purpose.

(d) The City LMIHAF Loan proceeds shall be used by Borrower as provided in the DDLA and for such other uses approved in writing by City. In no event shall Borrower use or otherwise invest the proceeds of the City LMIHAF Loan except as expressly provided in this Note or in the DDLA.

(e) As additional consideration for the making of the City LMIHAF Loan by City, Borrower covenants as follows:

(i) Borrower shall comply with all of its obligations under the DDLA. Any amounts payable by Borrower under the DDLA (other than amounts also payable hereunder) shall be deemed added to the principal amount of the City LMIHAF Loan payable hereunder.

(ii) Borrower shall comply with all monetary and non-monetary covenants associated with any loan made to Borrower in connection with the Property or the Development. Borrower shall provide to City a copy of any notice of default within five business days after receiving any notice of a default or alleged default of such covenants by Borrower, and Borrower shall promptly cure any such default and cooperate in permitting City, to the extent City in its sole discretion elects to do so, to cure or assist in curing the default. Any cost or expenditure incurred by City in providing or assisting in such a cure shall be deemed added to the outstanding principal amount of the City LMIHAF Loan and not to any other loan made by the City to the Borrower.

(f) No official or employee of City shall have any personal interest, direct or indirect, in this Note, nor shall any official or employee of City participate in any decision relating to this Note which affects such official's or employee's pecuniary interest in any corporation, partnership or association in which such official or employee is directly or indirectly interested. No official or employee of City shall be personally liable in the event of a breach of this Note by City.

(g) This Note may not be changed orally, but only by an agreement in writing signed by the Party against whom enforcement of any waiver, change, modification or discharge is sought.

(h) This Note shall be governed by and construed in accordance with the laws of the State of California. The invalidity or unenforceability of any one or more provisions of this Note will in no way affect any other provisions.

(i) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(j) This Note, together with the DDLA, the Deed of Trust, and any other applicable City Loan Document, contain the entire agreement between the Parties as to the Loan.

(k) This Note is subject to the non-recourse provisions, and the limitations thereto, as set forth in Section 4.4 of the DDLA.

***Signatures on Following Page***

BORROWER:

MISSION COTTAGES, LP,  
a California limited partnership

By: Cottages Management, LLC,  
a California limited liability company,  
its Administrative General Partner

By: \_\_\_\_\_  
Steven P. Semingson  
Managing Member

By: AOF Mission Trails LLC,  
a California limited liability company,  
its Managing General Partner

By: AOF/Pacific Affordable Housing  
Corporation, a California nonprofit public  
benefit corporation,  
its Sole Member and Manager

By: \_\_\_\_\_  
Philip J. Kennedy  
President

**[SIGNATURE PAGE TO LMIHAF PROMISSORY NOTE]**

**[PAGE 1 OF 1]**

EXHIBIT F

FORM OF ASSIGNMENT OF PLANS, REPORTS AND DATA



## ASSIGNMENT OF PLANS, REPORTS AND DATA

FOR VALUE RECEIVED, MISSION COTTAGES LP, a California limited partnership (“Developer”), does hereby assign, pledge, transfer and set over to the CITY OF LAKE ELSINORE, a municipal corporation (the “City”), all of its rights, title and interest in and to the following (collectively, the “Plans, Reports and Data”): any and all plans, drawings, studies, reports and related documents concerning the Property, and all amendments, modifications, supplements, general conditions and addenda thereto, including, without limitation, Environmental Reports, all architectural and engineering plans, any architect’s agreement entered into hereafter (“Architect’s Agreement”) by and between Developer and any architect engaged to perform services with respect to the Property (“Architect”) and those certain plans and specifications referred to therein, and all amendments, modifications, supplements, general conditions and addenda thereto (collectively, “Architectural Plans”) prepared by Architect, any engineering agreement entered into hereafter (“Engineering Agreement”) by and between Developer and any engineer engaged to perform services with respect to the Property (“Engineer”) and those certain plans and specifications referred to therein, and all amendments, modifications, supplements, general conditions and addenda thereto (collectively, “Engineering Plans”) prepared by Engineer for the account of Developer in connection with the development of certain real property located in the City of Lake Elsinore, County of Riverside, State of California more particularly described on Exhibit “A” attached hereto (the “Property”). The Plans, Reports and Data, including, without limitation, the Architect’s Agreement, the Architectural Plans, the Engineering Agreement and the Engineering Plans are hereby assigned as consideration for the City’s loans to Developer pursuant to that certain Disposition, Development and Loan Agreement dated as of March 28, 2019 entered into between Developer and the City (the “Agreement”). All capitalized terms not defined herein shall have the meaning set forth in the Agreement. For purposes hereof, “Environmental Reports” means any “Phase I” and/or “Phase II” investigations of the Property, and all final reports and test results (not including drafts) provided by Developer’s environmental consultant.

Upon the occurrence and during the continuance of a default under the Agreement, the City shall have the right, but not the obligation, at any time, in its own name or in the name of Developer, or otherwise, to take such action as the City may at any time or from time to time determine to be necessary or desirable in order to cure any default by Developer under the Architect’s Agreement or Engineering Agreement, including, without limitation, the protection of Developer’s rights with respect to the Architectural Plans or Engineering Plans or to protect the rights of Developer thereunder. The City shall not incur any liability if any action taken by the City or on its behalf in good faith, pursuant to the foregoing sentence, shall prove to be, in whole or in part inadequate or invalid, and Developer hereby indemnifies and agrees to hold the City harmless from and against any and all loss, claim, demand, cost, liability, damage or expense, including, without limitation, attorneys’ fees and expenses in connection with any such action or actions. Developer agrees to have each Architect and Engineer engaged to perform services in connection with the Property execute a Consent in the form attached hereto.

Upon a default under the Agreement, the City may exercise its rights hereunder and take possession of and title to the Plans, Reports and Data. Developer shall deliver possession of and title to the Plans, Reports and Data to the City within two (2) business days after Developer's receipt of the City's written request.

Developer, Engineer and Architect, by executing the Consent to this assignment, agree that the City does not assume any of Developer's obligations or duties concerning the Architect's Agreement, the Architectural Plans, the Engineering Agreement or the Engineering Plans, including, but not limited to, the obligation to pay for the preparation of the Architect's Agreement the Architectural Plans, the Engineering Agreement or the Engineering Plans, until and unless the City shall exercise its rights hereunder.

Developer hereby represents and warrants to the City that, except for an assignment to City pursuant to that certain Predevelopment Loan Agreement dated August 31, 2017 entered into between City and Civic Partners Elsinore LLC and Disposition, Development and Loan Agreement dated March 28, 2019, entered into between City and Mission Cottages LP, a California limited partnership and for any assignments to Senior Lenders, no previous assignment of its interest in the Plans, Reports and Data, including, without limitation, the Architect's Agreement, the Architectural Plans, the Engineering Agreement or the Engineering Plans, has been made, and Developer agrees not to assign, sell, pledge, transfer, mortgage or otherwise encumber its interest in the Plans, Reports and Data, including, without limitation, the Architect's Agreement, the Architectural Plans, the Engineering Agreement or the Engineering Plans, so long as this Assignment is in effect.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, or successors in interest of the Developer and the City.

[signature page follows]

IN WITNESS WHEREOF, Developer has caused this Assignment of Plans, Reports and Data to be executed as of March \_\_\_\_, 2019.

**DEVELOPER:**

MISSION COTTAGES, LP,  
a California limited partnership

By: Cottages Management, LLC,  
a California limited liability company,  
its Administrative General Partner

By: \_\_\_\_\_  
Steven P. Semingson  
Managing Member

By: AOF Mission Trails LLC,  
a California limited liability company,  
its Managing General Partner

By: AOF/Pacific Affordable Housing  
Corporation, a California nonprofit public  
benefit corporation,  
its Sole Member and Manager

By: \_\_\_\_\_  
Philip J. Kennedy  
President

**[SIGNATURE PAGE TO ASSIGNMENT]**

**[PAGE 1 OF 1]**

## CONSENT

The undersigned has prepared the Architectural Plans, and hereby consents to the above Assignment. The undersigned also agrees that in the event of a breach by Developer of any of the terms and conditions of the Architect's Agreement or any other agreement entered into with the undersigned in connection with the Architectural Plans, that so long as Developer's interest in the Plans is assigned to the City it will give written notice to the City of such breach. The City shall have sixty (60) days from the receipt of such notice of default to remedy or cure said default; however, nothing herein shall require the City to cure said default, but only gives it the option to do so.

The undersigned also agrees that in the event of default by Developer under any of the documents or instruments entered into in connection with said Agreement, the undersigned, at the City's request, shall continue performance under the Architect's Agreement in accordance with the terms hereof, provided that the undersigned shall be reimbursed in accordance with the Architect's Agreement for all services rendered on the City's behalf.

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

ARCHITECT:

\_\_\_\_\_

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

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

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

## CONSENT

The undersigned has prepared the Engineering Plans, and hereby consents to the above Assignment. The undersigned also agrees that in the event of a breach by Developer of any of the terms and conditions of the Engineer's Agreement or any other agreement entered into with the undersigned in connection with the Engineering Plans, that so long as Developer's interest in the Plans is assigned to the City it will give written notice to the City of such breach. The City shall have sixty (60) days from the receipt of such notice of default to remedy or cure said default; however, nothing herein shall require the City to cure said default, but only gives it the option to do so.

The undersigned also agrees that in the event of default by Developer under any of the documents or instruments entered into in connection with said Agreement, the undersigned, at the City's request, shall continue performance under the Engineering Agreement in accordance with the terms hereof, provided that the undersigned shall be reimbursed in accordance with the Engineering Agreement for all services rendered on the City's behalf.

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

ENGINEER:

\_\_\_\_\_

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

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

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

EXHIBIT "A"

**DESCRIPTION OF THE PROPERTY**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LAKE ELSINORE, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 15, THE SOUTHEAST QUARTER OF SECTION 16; AND THE NORTHEAST QUARTER OF SECTION 21, ALL OF TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 12, IN BLOCK "G" OF RANCHO LA LAGUNA,  
AS SHOWN BY MAP ON FILE IN BOOK 6 PAGE 296 OF MAPS, SAN DIEGO COUNTY RECORDS;

THENCE SOUTH 15°15' EAST ON THE EASTERLY LINE OF SAID RANCHO, 990 FEET, TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 15°15' EAST, ALONG SAID RANCHO LINE 165 FEET;

THENCE NORTH 74°45' EAST, 1313 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY LINE OF MISSION TRAIL HIGHWAY;

THENCE NORTHERLY ON THE WESTERLY LINE OF SAID MISSION TRAIL HIGHWAY 167 FEET, MORE OR LESS TO A POINT WHICH BEARS NORTH 74°45' EAST FROM THE TRUE POINT OF BEGINNING;

THENCE SOUTH 74°45'20" WEST 1281 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING;

SAID LAND ALSO DESCRIBED AS ALL OF LOTS 1282, 1254, 1226, 1191, 1163, 1123, 1098, 1053, 1031, 980 AND THE NORTHWESTERLY HALF OF LOTS 1281, 1255, 1192, 1124, 1097, 1054, 1162, 1225, 1030 AND 981 AS SHOWN ON ASSESSOR'S MAP NO. 48, RIVERSIDE COUNTY RECORDS.

ALSO THAT PORTION OF THE ABANDONED RIGHT OF WAY TO ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY ADJACENT THERETO.

PARCEL 2:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 15; THE SOUTHEAST QUARTER OF SECTION 16; AND THE NORTHEAST QUARTER OF SECTION 21, ALL IN TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 12 IN BLOCK G OF RANCHO LA LAGUNA AS PER MAP RECORDED IN BOOK 6, PAGE 296 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, CALIFORNIA;

THENCE SOUTH 15°15' EAST ON THE EASTERLY LINE OF SAID RANCHO, A DISTANCE OF 1155 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 15°15' EAST ALONG SAID RANCHO LINE, A DISTANCE OF 165 FEET;

THENCE NORTH 74°45' EAST A DISTANCE OF 1344.95 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY LINE OF MISSION LINE OF MISSION TRAIL HIGHWAY, WHICH IS ALSO THE NORTHEASTERLY CORNER OF THAT PROPERTY CONVEYED TO ALEXANDER DEUTCH, AS RECORDED IN BOOK 2573, PAGE 519, OFFICIAL RECORDS;

THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID MISSION TRAIL HIGHWAY, A DISTANCE OF 169 FEET, MORE OR LESS, TO THE SOUTHEASTERLY CORNER OF THE PROPERTY CONVEYED TO G. E. ORR, ET AL., AS RECORDED IN BOOK 3193, PAGE 166, OFFICIAL RECORDS;

THENCE SOUTH 74°45' WEST, ALONG THE SOUTHERLY LINE OF SAID G.E. ORR PROPERTY TO THE POINT OF BEGINNING.

SAID LAND BEING ALSO DESCRIBED AS LOTS 982, 1029, 1055, 1096, 1125, 1161, 1193, 1224, 1256, 1280 AND THE SOUTHERLY HALF OF LOTS 981, 1030, 1054, 1097, 1124, 1162, 1192, 1225, 1255, 1281 AND THE NORTHERLY HALF OF LOT 1298, AS SHOWN ON ASSESSORS MAP NO. 48, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY.

ALSO THAT PORTION OF THE ABANDONED RIGHT OF WAY TO ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY ADJACENT THERETO.

PARCEL 3:

PARCEL NO. 2, AS SHOWN ON RECORD OF SURVEY ON FILE IN BOOK 56, PAGE 69 OF RECORDS OF SURVEY, RIVERSIDE COUNTY, RECORDS, BEING A PORTION OF SECTIONS 15 AND 16, TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN.

EXCEPTING THEREFROM ALL MINERALS, OIL, GAS, OR HYDROCARBON SUBSTANCES, IN, UPON OR UNDER SAID LAND.

APN: 365-030-005, 006, 007, et.al.

Exhibit "A"

EXHIBIT G

FORM OF MEMORANDUM OF DDLA



EXHIBIT G

FORM OF MEMORANDUM OF DDLA

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Lake Elsinore  
130 South Main Street  
Lake Elsinore, CA 92530  
Attention: City Manager

No fee for recording pursuant  
To Government Code Section 27383

---

APN: 365-030-005, 006, 007, et al.

SPACE ABOVE FOR RECORDER'S USE ONLY

**MEMORANDUM OF  
DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT**

THIS MEMORANDUM OF DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT (the "Memorandum of DDLA") is made as of March 28, 2019, by and between the City of Lake Elsinore, a municipal corporation (the "City"), and Mission Cottages LP, a California limited partnership (the "Developer"), to confirm that the City and the Developer have entered into that certain Disposition, Development and Loan Agreement dated as of March 28, 2019 (the "DDLA"). The DDLA imposes certain conditions (including, but not limited to, construction requirements, operating covenants, and transfer restrictions) on the real property described in Exhibit A attached hereto and incorporated herein (the "Property"). The DDLA is a public document and may be reviewed at the principal office of the City.

IN WITNESS WHEREOF, the parties have caused this Memorandum of DDLA to be duly executed as of the date first above written.

[SIGNATURES ON NEXT PAGE]

CITY:

CITY OF LAKE ELSINORE, a municipal  
corporation

By: \_\_\_\_\_  
Grant Yates, City Manager

ATTEST:

By: \_\_\_\_\_  
Mark Mahan, Deputy City Clerk

APPROVED AS TO FORM:  
LEIBOLD McCLENDON & MANN, P.C.

By: \_\_\_\_\_  
Barbara Leibold, City Attorney

[SIGNATURE PAGE 1 OF 2]  
[MEMORANDUM OF DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT]

DEVELOPER:

MISSION COTTAGES, LP,  
a California limited partnership

By: Cottages Management, LLC,  
a California limited liability company,  
its Administrative General Partner

By: \_\_\_\_\_  
Steven P. Semingson  
Managing Member

By: AOF Mission Trails LLC,  
a California limited liability company,  
its Managing General Partner

By: AOF/Pacific Affordable Housing  
Corporation, a California nonprofit  
public benefit corporation,  
its Sole Member and Manager

By: \_\_\_\_\_  
Philip J. Kennedy  
President

***Signatures Must Be Notarized***

[SIGNATURE PAGE 2 OF 2]  
[MEMORANDUM OF DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT]

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

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Name: \_\_\_\_\_  
Notary Public

(seal)

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

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Name: \_\_\_\_\_  
Notary Public

(seal)

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

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Name: \_\_\_\_\_  
Notary Public

(seal)

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LAKE ELSINORE, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

**PARCEL 1:**

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 15, THE SOUTHEAST QUARTER OF SECTION 16; AND THE NORTHEAST QUARTER OF SECTION 21, ALL OF TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 12, IN BLOCK "G" OF RANCHO LA LAGUNA, AS SHOWN BY MAP ON FILE IN BOOK 6 PAGE 296 OF MAPS, SAN DIEGO COUNTY RECORDS;

THENCE SOUTH 15°15' EAST ON THE EASTERLY LINE OF SAID RANCHO, 990 FEET, TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 15°15' EAST, ALONG SAID RANCHO LINE 165 FEET;

THENCE NORTH 74°45' EAST, 1313 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY LINE OF MISSION TRAIL HIGHWAY;

THENCE NORTHERLY ON THE WESTERLY LINE OF SAID MISSION TRAIL HIGHWAY 167 FEET, MORE OR LESS TO A POINT WHICH BEARS NORTH 74°45' EAST FROM THE TRUE POINT OF BEGINNING;

THENCE SOUTH 74°45'20" WEST 1281 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING;

SAID LAND ALSO DESCRIBED AS ALL OF LOTS 1282, 1254, 1226, 1191, 1163, 1123, 1098, 1053, 1031, 980 AND THE NORTHWESTERLY HALF OF LOTS 1281, 1255, 1192, 1124, 1097, 1054, 1162, 1225, 1030 AND 981 AS SHOWN ON ASSESSOR'S MAP NO. 48, RIVERSIDE COUNTY RECORDS.

ALSO THAT PORTION OF THE ABANDONED RIGHT OF WAY TO ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY ADJACENT THERETO.

**PARCEL 2:**

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 15; THE SOUTHEAST QUARTER OF SECTION 16; AND THE NORTHEAST QUARTER OF SECTION 21, ALL IN TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 12 IN BLOCK G OF RANCHO LA LAGUNA AS PER MAP RECORDED IN BOOK 6, PAGE 296 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, CALIFORNIA;

THENCE SOUTH 15°15' EAST ON THE EASTERLY LINE OF SAID RANCHO, A DISTANCE OF 1155 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 15°15' EAST ALONG SAID RANCHO LINE, A DISTANCE OF 165 FEET;

THENCE NORTH 74°45' EAST A DISTANCE OF 1344.95 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY LINE OF MISSION LINE OF MISSION TRAIL HIGHWAY, WHICH IS ALSO THE NORTHEASTERLY CORNER OF THAT PROPERTY CONVEYED TO ALEXANDER DEUTCH, AS RECORDED IN BOOK 2573, PAGE 519, OFFICIAL RECORDS;

THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID MISSION TRAIL HIGHWAY, A DISTANCE OF 169 FEET, MORE OR LESS, TO THE SOUTHEASTERLY CORNER OF THE PROPERTY CONVEYED TO G. E. ORR, ET AL., AS RECORDED IN BOOK 3193, PAGE 166, OFFICIAL RECORDS;

THENCE SOUTH 74°45' WEST, ALONG THE SOUTHERLY LINE OF SAID G.E. ORR PROPERTY TO THE POINT OF BEGINNING.

SAID LAND BEING ALSO DESCRIBED AS LOTS 982, 1029, 1055, 1096, 1125, 1161, 1193, 1224, 1256, 1280 AND THE SOUTHERLY HALF OF LOTS 981, 1030, 1054, 1097, 1124, 1162, 1192, 1225, 1255, 1281 AND THE NORTHERLY HALF OF LOT 1298, AS SHOWN ON ASSESSORS MAP NO. 48, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY.

ALSO THAT PORTION OF THE ABANDONED RIGHT OF WAY TO ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY ADJACENT THERETO.

PARCEL 3:

PARCEL NO. 2, AS SHOWN ON RECORD OF SURVEY ON FILE IN BOOK 56, PAGE 69 OF RECORDS OF SURVEY, RIVERSIDE COUNTY, RECORDS, BEING A PORTION OF SECTIONS 15 AND 16, TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN.

EXCEPTING THEREFROM ALL MINERALS, OIL, GAS, OR HYDROCARBON SUBSTANCES, IN, UPON OR UNDER SAID LAND.

APN: 365-030-005, 006, 007, et.al.



EXHIBIT H

SCHEDULE OF PERFORMANCE

## EXHIBIT H

### SCHEDULE OF PERFORMANCE

- |  |   |
|--|---|
| 1. <u>Submittal - Management Agreement.</u> Developer shall submit to the City for approval the proposed Management Agreement.   | The Parties acknowledge and agree that this section is satisfied.   |
| 2. <u>Approval – Management Agreement.</u> The City shall approve or disapprove the Management Agreement.  | Not later than five (5) days after the City’s receipt of each such submittal of the Management Agreement. |
| 3. <u>Supplemental Financing.</u> The Developer shall submit drafts of the Evidence of Supplemental Financing from other lenders and the Investor, a draft construction contract and any corresponding changes to the Financing Plan, in such form as is reasonably acceptable to City.          | The Parties acknowledge and agree that this section is satisfied.   |
| 4. <u>Submittal – Evidence of Insurance.</u> Developer shall submit to the City evidence of insurance, other than property insurance and contractor's insurance, as required in Section 6.11.  | The Parties acknowledge and agree that this section is satisfied.   |
| 5. <u>Apply - Building Permit.</u> Developer shall submit plans to the City for plan check in connection prior to or in connection with its application for the building permit for the Development.   | The Parties acknowledge and agree that this section is satisfied.   |
| 6. <u>Ready to Issue Building Permit; Applicable Land Use Approvals.</u> Developer shall provide evidence to City that the Developer has obtained all Applicable Land Use Approvals and is entitled to issuance of a building permit for the Development upon payment of applicable permit fees. | Not later than the Closing.   |
| 7. <u>Closing.</u> All conditions precedent to the Closing shall have been satisfied. The Developer shall close concurrently on the Approved Financing, the purchase of the Property pursuant to the DDLA, the City LMIHAF Loan and the City Fund 106 Loan.                                      | Not later than April 1, 2019.   |

- |  |   |
|--|---|
| <p>8. <u>Commencement of Construction.</u> The Developer shall commence construction of the Improvements on the Site.</p>  | <p>Not later than thirty (30) days after the Closing, but in no event later than the date set forth in the Tax Credit Reservation.</p>  |
| <p>9. <u>Submittal – Management Plan.</u> Developer shall submit to the City for approval the proposed Management Plan.</p>  | <p>Prior to initial leasing of any units in the Development.</p>  |
| <p>10. <u>Approval of Management Plan.</u> The City shall approve or disapprove the Management Plan.</p>   | <p>Not later than thirty (30) days after the City's receipt of each such submittal of Management Plan.</p>  |
| <p>11. <u>Leasing.</u> Developer shall obtain City approval of its marketing plan and submit evidence of compliance with the Loan Agreement concerning the selection of tenants, household income requirements, affordable rents in compliance with the Regulatory Agreement and so forth.</p>   | <p>Prior to the initial leasing of Affordable Units.</p>  |
| <p>12. <u>Completion of Construction.</u> The Developer shall complete construction of the Improvements on the Site.</p>   | <p>Not later than twenty-four (24) months after commencement of construction.</p>   |
| <p>13. <u>Occupancy of Units.</u> The Developer shall obtain initial occupancy of substantially all the residential units in the Development.</p>  | <p>Within 90 days after completion of construction.</p>   |
| <p>14. <u>Conversion to Permanent Financing.</u> The construction loan shall either be repaid completely or paid down and the balance converted to a permanent loan, the balance of the Tax Credit Funds shall be funded, the Permanent Loan shall fund, the City LMIHAF Loan and City Fund 106 Loan shall convert to permanent loans, and all documents required to be recorded in connection therewith shall be executed and recorded in the Official Records.</p> | <p>Upon satisfaction of the conditions set forth in the Loan Agreement, but in no event later than May 1, 2022, or such later date as may be agreed to in a writing signed by Construction Lender, provided that commitments for the Tax Credit Funds and Permanent Loan remain in full force and effect.</p> |

15. Submittal – Residual Receipts Calculation and Payments; Financial Statements and Related Reports; Monitoring Fee. Developer shall submit payments to the City on the City Loans, if any, payment of the annual Monitoring Fee, calculation of Residual Receipts, reserve reports, and audited financial statement for the Development for the immediately preceding calendar year.

On or before June 30 of each year following completion of construction of the Improvements.

NOTES:

1. Deadlines set forth in this Schedule of Performance are subject to the enforced delay provisions of Section 10.3 and the provisions of Section 10.14 of the Agreement.
2. Extensions may be approved in writing pursuant to Section 10.15 of the Agreement.
3. Descriptions of items of performance and deadlines in this Schedule of Performance are not intended to supersede more complete descriptions in the text of the Agreement; and in the event of any conflict between the text of the Agreement and this Schedule, the text of the Agreement shall govern.

EXHIBIT I

ENVIRONMENTAL INDEMNITY

## ENVIRONMENTAL INDEMNITY

THIS ENVIRONMENTAL INDEMNITY (this “**Indemnity**”), dated as of March 28, 2019 is made by MISSION COTTAGES LP, a California limited partnership, whose address for purposes of giving notice is 7777 Center Avenue, Ste 300, Huntington Beach, CA 92647; Attn: Chief Executive Officer (“**Developer**”), in favor of the CITY OF LAKE ELSINORE, a municipal corporation, whose address for purposes of giving notices is 130 South Main Street, Lake Elsinore, CA 92530 (the “**City**”).

### WITNESSETH

WHEREAS, Developer is the owner of the real property in the City of Lake Elsinore, as more particularly described on Exhibit A attached hereto and made a part hereof, and the real property improvements thereon (collectively referred to as the “**Property**”);

WHEREAS, Developer and City have entered into that certain Disposition, Development and Loan Agreement dated as of March 28, 2019 (the “**DDLA**”). Pursuant to the DDLA, the City made one or more loans to Developer (collectively, the “**City Loans**”) for the purposes of acquiring the Property and constructing an affordable housing project thereon consisting of one hundred forty three (143) units, one hundred forty two (142) of which shall be restricted for affordable housing in accordance with the DDLA (the DDLA, and the documents and instruments referred to therein which are being executed by Developer concurrently herewith are referred to collectively as the “**City Documents**”). All capitalized terms not defined herein shall have the meaning ascribed to them in the DDLA;

WHEREAS, Developer has agreed to execute and deliver to the City this Indemnity to induce the City to enter into the DDLA and make the City Loans to Developer.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual agreements hereinafter set forth, Developer hereby agrees with the City as follows:

### Section I. DEFINITIONS

For the purpose of this Indemnity, “**Hazardous Materials**” or “**Hazardous Substances**” shall include, but not be limited to, substances defined as “extremely hazardous substances,” “hazardous substances,” “hazardous materials,” “hazardous waste” or “toxic substances” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 11001-11050; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; and those substances defined as “hazardous waste” in Section 25117 of the California Health and Safety Code, as “infectious waste” in Section 25117.5 of the California Health and Safety Code, or as “hazardous substances” in Section 25316 of the California Health and Safety Code or “hazardous materials” as defined in Section 353 of the California Vehicle Code; and in the regulations adopted and publications promulgated pursuant to said laws.

## ENVIRONMENTAL INDEMNITY

## Section II. COVENANTS AND INDEMNITY

The following covenants, and indemnities are hereby given and made by Developer:

### 2.1 Covenants.

(a) Developer covenants that it shall comply with any and all laws, regulations, and/or orders which may be promulgated, from time to time, with respect to the discharge and/or removal of Hazardous Materials, to pay immediately when due the costs of the removal of, or any other action required by law with respect to, any such Hazardous Materials, and to keep the Property free of any lien imposed pursuant to any such laws, regulations, or orders.

(b) Developer covenants that the Property will not, while Developer is the owner thereof, be used for any activities involving, directly or indirectly, the use, generation, treatment, storage, release, or disposal of any Hazardous Materials, except for de minimis quantities used at the Property in compliance with all applicable environmental laws and required in connection with the development of the Units, routine operation and maintenance of the Property and routine household use by tenants of the Property.

(c) Developer further agrees that Developer shall not release or dispose of any Hazardous Materials at the Property without the express written approval of the City except for de minimis quantities used at the Property in compliance with all applicable environmental laws and required in connection with the development of the Units, routine operation and maintenance of the Property and routine household use by tenants of the Property and that any such release or disposal shall be effected in strict compliance with all applicable laws and all conditions, if any, established by the City.

(d) The City shall have the right, at any time, to conduct an environmental audit of the Property at the City's expense, unless Hazardous Materials are found, then at Developer's sole cost and expense, and Developer shall cooperate in the conduct of any such environmental audit but in no event shall such audit be conducted unless the City believes that such audit is warranted. Other than in an emergency, such audit shall be conducted only after prior notice has been given to Developer and only in the presence of a representative of Developer. If Developer is reasonably requested to remove or mitigate a Hazardous Material and fails to do so in a reasonable time, Developer shall give the City, its agents and employees access to the Property to remove, or otherwise mitigate against the effects of Hazardous Materials.

(e) Developer shall not install, or permit to be installed, on the Property friable asbestos or any substance containing asbestos and deemed hazardous by federal or state regulations respecting such material, and, with respect to any such material currently present in the Property, Developer shall promptly either (i) remove or cause to be removed any material that such regulations deem hazardous and require to be removed, or (ii) otherwise comply with such federal and state regulations, at Developer's sole cost and expense. If Developer shall fail to perform the aforementioned within the cure period permitted under applicable law, regulation, or order, the City

## ENVIRONMENTAL INDEMNITY

may do whatever is necessary to eliminate said substances from the premises or to otherwise comply with the applicable law, regulation, or order, and the costs thereof shall be added to the Obligations (as hereinafter defined) of Developer under this Section 2.

(f) Developer shall immediately advise the City in writing of any of the following: (i) any pending or threatened environmental claim against the Property, (ii) any condition or occurrence on the Property that (A) results in noncompliance by Developer with any applicable environmental law, (B) could reasonably be anticipated to cause the Property to be subject to any restrictions on the ownership, occupancy, use or transferability of the Property under any environmental law, or (C) could reasonably be anticipated to form the basis of an environmental claim against the Property or Developer.

2.2 Indemnity. Developer shall indemnify, protect, and hold harmless the City, its employees, officers, agents and consultants from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements, or expenses (including, without limitation, attorneys' and experts' fees and disbursements) of any kind or of any nature whatsoever (collectively, the Obligations) suffered or incurred as a result of a third party claim against the City, its employees, officers, agents or consultants and arising in connection with, from or out of:

- (a) The presence of any Hazardous Materials on, in, under, or affecting all or any portion of the Property while Developer owns the Property, except to the extent such Hazardous Materials were (i) present on, in, under or affecting all or any portion of the Property prior to Developer's acquisition of the Property; (ii) caused by the City or its employees, officers, agents or consultants or (iii) caused by the underground migration from a surrounding property where the source of such Hazardous Materials originated;
- (b) The breach of any covenant made by Developer in Section 2.1 hereof; or
- (c) The enforcement by the City of any of the provisions of this Section 2.2 or the assertion by Developer of any defense to its obligations hereunder.

### Section III. DEVELOPER'S UNCONDITIONAL OBLIGATIONS

3.1 Unconditional Obligations. Developer hereby agrees that the Obligations will be paid and performed strictly in accordance with the terms of this Indemnity, regardless of any law, regulation, or order now or hereafter in effect in any jurisdiction affecting any of the City Documents or affecting any of the rights of the City with respect thereto. The obligations of Developer hereunder shall be absolute and unconditional irrespective of:

- (a) The validity, regularity, or enforceability of the City Documents or any other instrument or document executed or delivered in connection therewith;

### ENVIRONMENTAL INDEMNITY



- (b) Any alteration, amendment, modification, release, termination, or cancellation of any of the City Documents, or any change in the time, manner, or place of payment or performance of, or in any other term in respect of, all or any of the obligations of Developer contained in any of the City Documents;
- (c) Any exculpatory provision in any of the City Documents limiting the City's recourse to property encumbered by the Deeds of Trust securing Developer's obligations under the City Documents, or to any other security, or limiting the City's rights to a deficiency judgment against Developer;
- (d) The insolvency or bankruptcy of Developer, or of any indemnitor or guarantor under any other indemnity or guarantee given in respect of the Obligations; or
- (e) Any other circumstance that might otherwise constitute a defense available to, or a discharge of Developer, or any other indemnitor or guarantor with respect to any or all of the Obligations.

3.2 Continuation. This Indemnity (a) is a continuing indemnity and shall remain in full force and effect until the satisfaction in full of all of the Obligations (notwithstanding the release or other extinguishment of the Deeds of Trust securing Developer's obligations under the City Documents); and (b) shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the City upon the insolvency, bankruptcy, or reorganization of Developer, all as though such payment had not been made.

3.3 Termination. Notwithstanding the payment (and performance) in full of all of the Obligations and the payment (or performance) in full of all of Developer's obligations under the City Documents, this Indemnity shall not terminate if any of the following shall have occurred:

- (a) Except for the City's ownership of the Property prior to conveying the Property to the Developer, the City has at any time or in any manner participated in the management or control of, taken possession of (whether personally, by agent or by appointment of a receiver), or taken title to the Property or any portion thereof, whether by foreclosure, deed in lieu of foreclosure, sale under power of sale or otherwise; or
- (b) There has been a change, between the date hereof and the date on which all of the Obligations are paid and performed in full, in any Hazardous Materials laws, the effect of which may be to make a lender or mortgagee liable in respect of any of the Obligations, notwithstanding the fact that no event, circumstance, or condition of the nature described in paragraph (a) above ever occurred.

#### Section IV. WAIVER

Developer hereby waives the following:

#### ENVIRONMENTAL INDEMNITY

- (a) Notice of acceptance and notice of the incurrence of any obligation by Developer;
- (b) Notice of any action taken by the City, or any other interested party under any City Document, except as required by the City Document, or under any other agreement or instrument relating thereto;
- (c) All other notices, demands, and protests, and all other formalities of every kind, in connection with the enforcement of the Obligations, the omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Developer of its Obligations hereunder;
- (d) Any requirement that the City protect, secure, perfect, or insure any security interest or lien in or on any property subject thereto;
- (e) Any requirement that the City exhaust any right or take any action against Developer or any other person or collateral; and
- (f) Any defense that may arise by reason of:
  - (1) The incapacity, lack of authority, death or disability of, or revocation hereof by, any person or persons;
  - (2) The failure of the City to file or enforce any claim against the estate (in probate, bankruptcy, or any other proceedings) of any person or persons; or
  - (3) Any defense based upon an election of remedies by the City, including, without limitation, an election to proceed by nonjudicial foreclosure or which destroys or otherwise impairs the subrogation rights of City or any other right of City to proceed against Developer.

## Section V. NOTICES

Any notice, demand, statement, request, or consent made hereunder shall be in writing and shall be personally served or mailed by first-class registered mail, return receipt requested, to the address set forth in the first paragraph of this Indemnity above, with confirmations mailed by first class registered mail, return receipt requested to the address set forth above, of the party to whom such notice is to be given (or to such other address as the parties hereto, shall designate in writing):

Any notice that is transmitted by electronic transmission followed by delivery of a “hard” copy, shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

## ENVIRONMENTAL INDEMNITY

## Section VI. MISCELLANEOUS

6.1 Developer shall make any payment required to be made hereunder in lawful money of the United States of America, and in same day funds, to the City at its address specified in the first paragraph hereof.

6.2 No amendment of any provision of this Indemnity shall be effective unless it is in writing and signed by Developer and the City. No waiver of any provision of this Indemnity, nor consent to any departure by Developer from any provision of this Indemnity, shall be effective unless it is in writing and signed by the City, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

6.3 No failure on the part of the City to exercise, and no delay in exercising, any right hereunder or under any other City Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the City provided herein and in the other City Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the City under any City Document against any party thereto are not conditional or contingent on any attempt by the City to exercise any of its rights under any other City Document against such party or against any other person or collateral.

6.4 Any provision of this Indemnity that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof and without affecting the validity or enforceability of such provision in any other jurisdiction.

6.5 This Indemnity shall (a) be binding upon Developer, and Developer's successors and assigns; and (b) inure, together with all rights and remedies of the City hereunder, to the benefit of the City, its respective directors, officers, employees, consultants and agents, any successors to the City's interest in the Property, any other person who acquires any portion of the Property at a foreclosure sale or otherwise through the exercise of the City's rights and remedies under the City Documents, any successors to any such person, and all directors, officers, employees, and agents of all of the aforementioned parties. Without limiting the generality of clause (b) of the immediately preceding sentence, the City may, subject to, and in accordance with, the provisions of the City Documents, assign or otherwise transfer all or any portion of its rights and obligations under any other City Document, to any other person, and such other person shall thereupon become vested with all of the rights and obligations in respect thereof that were granted to the City herein or otherwise. None of the rights or obligations of Developer hereunder may be assigned or otherwise transferred without the prior written consent of the City.

6.6 Developer hereby (a) irrevocably submits to the jurisdiction of any California or federal court sitting, in each instance, in Riverside County in any action or proceeding arising out of or relating to this Indemnity, (b) waives any defense based on doctrines of venue or forum non convenient or similar rules or doctrines, and (c) irrevocably agrees that all claims in respect of any

### ENVIRONMENTAL INDEMNITY

such action or proceeding may be heard and determined in such California or federal court. Developer irrevocably consents to the service of any and all process which may be required or permitted in any such action or proceeding to the address specified in the first paragraph of this Indemnity, above. Developer agrees that a final judgment in any such action or proceeding shall be inclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

6.7 The title of this document and the captions used herein are inserted only as a matter of convenience and for reference and shall in no way define, limit, or describe the scope or the intent of this Indemnity or any of the provisions hereof.

6.8 This Indemnity shall be governed by, and construed and interpreted in accordance with, the laws of the State of California applicable to contracts made and to be performed therein, except to the extent that the laws of the United States preempt the laws of the State of California.

6.9 This Indemnity may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one agreement.

[signature page follows]

## ENVIRONMENTAL INDEMNITY

IN WITNESS WHEREOF, Developer has duly executed this Indemnity as of the date first set forth above.

MISSION COTTAGES, LP,  
a California limited partnership

By: Cottages Management, LLC,  
a California limited liability company,  
its Administrative General Partner

By: \_\_\_\_\_  
Steven P. Semingson  
Managing Member

By: AOF Mission Trails LLC,  
a California limited liability company,  
its Managing General Partner

By: AOF/Pacific Affordable Housing  
Corporation, a California nonprofit public  
benefit corporation,  
its Sole Member and Manager

By: \_\_\_\_\_  
Philip J. Kennedy  
President

**[SIGNATURE PAGE 1 OF 1]**

ENVIRONMENTAL INDEMNITY

## EXHIBIT "A"

### LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LAKE ELSINORE, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

#### PARCEL 1:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 15, THE SOUTHEAST QUARTER OF SECTION 16; AND THE NORTHEAST QUARTER OF SECTION 21, ALL OF TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 12, IN BLOCK "G" OF RANCHO LA LAGUNA, AS SHOWN BY MAP ON FILE IN BOOK 6 PAGE 296 OF MAPS, SAN DIEGO COUNTY RECORDS;

THENCE SOUTH 15°15' EAST ON THE EASTERLY LINE OF SAID RANCHO, 990 FEET, TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 15°15' EAST, ALONG SAID RANCHO LINE 165 FEET;

THENCE NORTH 74°45' EAST, 1313 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY LINE OF MISSION TRAIL HIGHWAY;

THENCE NORTHERLY ON THE WESTERLY LINE OF SAID MISSION TRAIL HIGHWAY 167 FEET, MORE OR LESS TO A POINT WHICH BEARS NORTH 74°45' EAST FROM THE TRUE POINT OF BEGINNING;

THENCE SOUTH 74°45'20" WEST 1281 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING;

SAID LAND ALSO DESCRIBED AS ALL OF LOTS 1282, 1254, 1226, 1191, 1163, 1123, 1098, 1053, 1031, 980 AND THE NORTHWESTERLY HALF OF LOTS 1281, 1255, 1192, 1124, 1097, 1054, 1162, 1225, 1030 AND 981 AS SHOWN ON ASSESSOR'S MAP NO. 48, RIVERSIDE COUNTY RECORDS.

ALSO THAT PORTION OF THE ABANDONED RIGHT OF WAY TO ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY ADJACENT THERETO.

#### PARCEL 2:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 15; THE SOUTHEAST QUARTER OF SECTION 16; AND THE NORTHEAST QUARTER OF SECTION 21, ALL IN TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

### ENVIRONMENTAL INDEMNITY

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 12 IN BLOCK G OF RANCHO LA LAGUNA AS PER MAP RECORDED IN BOOK 6, PAGE 296 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, CALIFORNIA;

THENCE SOUTH 15°15' EAST ON THE EASTERLY LINE OF SAID RANCHO, A DISTANCE OF 1155 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 15°15' EAST ALONG SAID RANCHO LINE, A DISTANCE OF 165 FEET;

THENCE NORTH 74°45' EAST A DISTANCE OF 1344.95 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY LINE OF MISSION LINE OF MISSION TRAIL HIGHWAY, WHICH IS ALSO THE NORTHEASTERLY CORNER OF THAT PROPERTY CONVEYED TO ALEXANDER DEUTCH, AS RECORDED IN BOOK 2573, PAGE 519, OFFICIAL RECORDS;

THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID MISSION TRAIL HIGHWAY, A DISTANCE OF 169 FEET, MORE OR LESS, TO THE SOUTHEASTERLY CORNER OF THE PROPERTY CONVEYED TO G. E. ORR, ET AL., AS RECORDED IN BOOK 3193, PAGE 166, OFFICIAL RECORDS;

THENCE SOUTH 74°45' WEST, ALONG THE SOUTHERLY LINE OF SAID G.E. ORR PROPERTY TO THE POINT OF BEGINNING.

SAID LAND BEING ALSO DESCRIBED AS LOTS 982, 1029, 1055, 1096, 1125, 1161, 1193, 1224, 1256, 1280 AND THE SOUTHERLY HALF OF LOTS 981, 1030, 1054, 1097, 1124, 1162, 1192, 1225, 1255, 1281 AND THE NORTHERLY HALF OF LOT 1298, AS SHOWN ON ASSESSORS MAP NO. 48, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY.

ALSO THAT PORTION OF THE ABANDONED RIGHT OF WAY TO ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY ADJACENT THERETO.

PARCEL 3:

PARCEL NO. 2, AS SHOWN ON RECORD OF SURVEY ON FILE IN BOOK 56, PAGE 69 OF RECORDS OF SURVEY, RIVERSIDE COUNTY, RECORDS, BEING A PORTION OF SECTIONS 15 AND 16, TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN.

EXCEPTING THEREFROM ALL MINERALS, OIL, GAS, OR HYDROCARBON SUBSTANCES, IN, UPON OR UNDER SAID LAND.

APN: 365-030-005, 006, 007, et.al.

#### ENVIRONMENTAL INDEMNITY

EXHIBIT J

SCOPE OF DEVELOPMENT



## CONDITIONS OF APPROVAL


<b>RESOLUTIONS:</b>	City Council Resolutions 2017-116, 117, 118 & 119
<b>PROJECT:</b>	PA 2017-37 (RDR 2017-14 and TTM 2017-03)
<b>PROJECT LOCATION:</b>	APNs) 365-030-004 through -007, -016 through -023, and -027 through -037
<b>APPROVAL DATE:</b>	October 24, 2017
<b>EFFECTIVE DATE:</b>	October 24, 2017
<b>EXPIRATION DATE:</b>	October 24, 2019

## GENERAL CONDITIONS

1. PA 2017-37 (RDR 2017-14 and TTM 2017-03), herein referred to as the project is approved to build 143 unit affordable multifamily development with associated features and facilities including 333 resident/visitor parking, a leasing/management office, a community center, onsite laundry facility and active and passive open spaces located on 23 Tracts totaling 19.43 acre. TTM 37393 is also a part of the project, which proposes to consolidate the 23 Tracts into one Tract and reconfigure the adjacent right of way. The 19.43-acre project site is generally located on vacant land north of Corydon Road, east of Grand Avenue, west of Mission Trail, and south of Stoneham Street and is more specifically referred to as Assessor's Tract Numbers (APNs) 365-030-004 through -007, -016 through -023, and -027 through -037; and
2. The applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City, its Officials, Officers, Employees, Agents, and Consultants agents (collectively referred to individually and collectively as "Indemnities") from any claim, action, or proceeding to attack, set aside, void, or annul an approval by Indemnitees concerning approval of the project, or any of the proceedings, acts or determinations taken, done, or made prior to the decision, or to determine the reasonableness, legality or validity of any condition attached thereto. The Applicant's indemnification is intended to include, but not be limited to, damages, fees and/or costs awarded against or incurred by Indemnities and costs of suit, claim or litigation, including without limitation attorneys' fees, penalties and other costs, liabilities and expenses incurred by Indemnities in connection with such proceeding. The City will promptly notify the applicant of any such claim, action, or proceeding against the City. If the project is challenged in court, the City and the applicant shall enter into formal defense and indemnity agreement, consistent with this condition.
3. Within 30 days of project approval, the applicant shall sign and complete an "Acknowledgment of Conditions" and shall return the executed original to the Community Development Department for inclusion in the case records.
4. The applicant shall submit a check in the amount of \$2,266.25 for the Fish & Game MND fee and for County Clerk filing fee made payable to the County of Riverside for the filing of a Notice of Determination. The check shall be submitted to the Planning Division for processing within 48 hours of the project's approval.

## FEES

5. The applicant shall pay school fees to the Lake Elsinore Unified School District prior to issuance of each building permit.

Applicants Initials: 



6. The developer shall pay all Development Impact Fees, Plan Check and Permit fees (LEMC 16.34). Applicable Development Impact Fees include: Railroad Canyon Road Benefit District, Stephens Kangaroo Habitat Fee (K-Rat), Traffic Infrastructure Fee (TIF), Transportation Uniform Mitigation Fee (TUMF) (If applicable), and Area Drainage Fee.
7. Mitigation Fees will be assessed at the prevalent rate at time of payment in full.

**MITIGATION MONITORING AND REPORTING PROGRAM**

8. All mitigation measures as identified in the Mitigated Negative Declaration Addendum #1 are hereby adopted and made conditions of approval for this project, and shall be implemented as set forth in the Mitigation Monitoring and Reporting Program

**PLANNING DIVISION**

9. Tentative Parcel Map No. 37393 will expire two years from date of approval unless within that period of time a Final Map has been filed with the County Recorder, or an extension of time is granted by the City of Lake Elsinore City Council in accordance with the State of California Subdivision Map Act and applicable requirements of the Lake Elsinore Municipal Code.
10. Tentative Parcel Map No. 37393 shall comply with the State of California Subdivision Map Act and applicable requirements contained in the Lake Elsinore Municipal Code (LEMC), unless modified by approved Conditions of Approval.
11. Residential Design Review No. 2017-14 will lapse and be void unless a building permit is issued within two (2) years of the approval date and construction commenced and diligently pursued to completion. The Community Development Director may grant an extension of time for up to one (1) year prior to the expiration of the initial Design Review. An application for a time extension and required fee shall be submitted a minimum of one (1) month prior to the expiration date.
12. The applicant shall provide all project-related on-site and off-site improvements as required by these Conditions of Approval.
13. All Conditions of Approval shall be reproduced on page one of building plans prior to their acceptance by the Building and Safety Division, Community Development Department. All Conditions of Approval shall be met prior to the issuance of a Certificate of Occupancy.
14. All future development proposals shall be reviewed by the City on a project by project basis. If determined necessary by the Community Development Director or designee, additional environmental analysis will be required.
15. Any proposed minor revisions to approved plans shall be reviewed and approved by the Community Development Director or designee. Any proposed substantial revisions to the approved plans shall be reviewed according to the provisions of the Municipal Code in a similar manner as a new application.



16. For multiple-family development, laundry facilities shall be provided as required by the Lake Elsinore Municipal Code.
17. For multiple-family development, provide exterior lockable storage space as required by the California Green Building Code.
18. If any of the conditions of approval set forth herein fail to occur, or if they are, by their terms, to be implemented and maintained over time, if any of such conditions fail to be so implemented and maintained according to their terms, the City shall have the right to revoke or modify all approvals herein granted, deny or further condition issuance of all future building permits, deny revoke, or further condition all certificates of occupancy issued under the authority of approvals herein granted; record a notice of violation on the property title; institute and prosecute litigation to compel their compliance with said conditions or seek damages for their violation.
19. Project shall participate in the City of Lake Elsinore's Crime Free Multi-Housing Program.
20. To the maximum extent permitted by law and provided that the applicants meet standard applicant screening standards for the Development: (a) Borrower shall also give a preference in the rental of any Units to residents of, or persons employed or that have been offered employment in, the City and/or County. The preferences stated in this Section apply to the rentals of Units throughout the Term. Notwithstanding anything to the contrary herein, nothing in this Section shall require that the preference be based on a minimum duration for residency or employment. To the extent the preferences required under this Section are in conflict with the requirements of applicable fair housing laws or Section 42 of the Internal Revenue Code and implementing guidelines, the requirements of fair housing laws and Section 42 will supersede.

**Prior to Issuance of Grading Permits/Building Permits**

21. Submit a photometric plan of the proposed project for review and approval.
22. Prior to the issuance of a grading permit, the project applicant shall obtain all necessary State and Federal permits, approvals, or other entitlements, including obtaining the necessary authorizations from the regulatory agencies for proposed impacts to jurisdictional waters. Authorizations may include a Section 404 Permit from the U.S. Army Corps of Engineers, a Section 1602 Streambed Alteration Agreement from the California Department of Fish and Wildlife, and a Section 401 Water Quality Certification/Waste Discharge Requirement from the Regional Water Quality Control Board.
23. Signs are not part of this project approval. All signage shall be subject to Planning Division or Planning Commission review and approval prior to installation.
24. Provisions of the City's Noise Ordinance (LEMC Chapter 17.176) shall be satisfied during all site preparation and construction activity. The applicant shall place a weatherproof 3' X 3' sign at the entrance to the project site identifying the approved days and hours of construction activity. Site preparation activity and construction shall not commence before 7:00 AM and shall cease no later than 5:00 PM, Monday through Friday and ~~Only finish work and similar interior construction may be conducted on Saturdays and may commence no earlier than 8:00 am and shall cease no later than 4:00 p.m.~~ Construction



activity shall not take place on Sunday, or any Legal Holidays. The sign shall identify the name and phone number of the development manager to address any complaints. (Modified by Planning Commission action on 6/6/17).

25. Construction phasing shall be implemented in accordance with the approved Phasing Plan which avoids construction traffic from entering occupied neighborhoods within the tract.
26. A cash bond shall be required for any construction trailers used during construction. Bonds will be released after removal of trailers, subject to the approval of the Community Development Director or designee.
27. The project shall connect to water and sewer and meet all requirements of the Elsinore Valley Municipal Water District (EVMWD). The applicant shall submit water and sewer plans to the EVMWD and shall incorporate all district conditions and standards.
28. All mechanical and electrical equipment associated with the residences shall be ground mounted. All outdoor ground or wall mounted utility equipment shall be consolidated in a central location and architecturally screened behind fence returns, subject to the approval of the Community Development Director, prior to issuance of building permit.
29. All landscaped areas shall include automatic (manual or electric) irrigation systems to provide 100 percent planting coverage using a combination of drip and conventional irrigation methods. Construction Landscape & Irrigation drawings shall be prepared, reviewed and approved by the Community Development Director or designee. A Cost Estimate for materials and labor shall also be submitted for review and approval.
  - The applicant shall replace any street trees harmed during construction, in conformance with the City's Street Tree List, at a maximum of 30 feet apart and at least 24-inch box in size.
  - Perimeter walls shall be protected by shrubs and other plantings that discourage graffiti.
  - The applicant shall ensure a clear line of sight at ingress/egress points by providing plantings within 15 feet of ingress/egress points whose height does not exceed two (2) feet and whose canopy does not fall below six feet.
  - The landscape plan shall provide for California native drought-tolerant ground cover, shrubs, and trees. Special attention shall be given to use of Xeriscape or drought resistant plantings with combination drip irrigation system to prevent excessive watering.
  - No front-yard grass turf landscaping will be installed.
  - All landscape improvements shall be bonded with a ten percent (10%) Faithful Performance Bond of the approved estimated labor and materials cost for all planting. The bond shall remain in effect for one year from Certificate of Occupancy.



- All landscaping and irrigation shall be installed within an affected portion of any phase at the time a certificate of occupancy is requested for any building.
  - All Model Homes shall be Xeriscaped and signage provided identifying Xeriscape landscaping. Xeriscape is a method of landscape design that minimizes water use by:
    - 1) Implementing hydrozones;
    - 2) Eliminating high and medium water-use plant material as identified by Water Use Classifications of Landscape Species (WUCOLS) (such as turf) and incorporates low to very low water-efficient ("drought-tolerant" / climate-appropriate) plants;
    - 3) Requires an efficient irrigation system that includes:
      - a. ET-Based ("Smart irrigation") controller(s) with weather-sensing, automatic shut-off and seasonal adjustment capabilities;
      - b. Efficient irrigation water application through use of:
        - i. Low-volume point-source irrigation (such as drip irrigation and bubblers) for all shrub planter areas (maximum of 3:1 slope) with a minimum irrigation efficiency of 0.90 ; and/or
        - ii. Rotor-type nozzles for areas greater than ten (10) feet wide, for slopes 3:1 and greater, AND with a minimum irrigation efficiency of 0.71.
    - 4) Improvement of soil structure for better water retention; and
    - 5) Application of mulch to hinder evaporation.
  - The Final landscape plan shall be consistent with any approved site and/or plot plan.
  - The Final landscape plan shall include planting and irrigation details.
  - All exposed slopes in excess of three feet in height within the subject tract and within private lots shall have a permanent irrigation system and erosion control vegetation installed, as approved by the Planning Division, prior to issuance of certificate of occupancy.
  - All landscaping and irrigation shall comply with the water-efficient landscaping requirements set forth in LEMC Chapter 19.08 (Water Efficient Landscape Requirements), as adopted and any amendments thereto.
30. Perimeter landscaping shall be provided around the perimeter and on the slopes of the water quality basin.
31. The water quality basin shall be fenced.

## **BUILDING DIVISION**

### **General Conditions**

Applicants Initials: 



32. Final Building and Safety Conditions. Final Building and Safety Conditions will be addressed when building construction plans are submitted to Building and Safety for review. These conditions will be based on occupancy, use, the California Building Code (CBC), and related codes which are enforced at the time of building plan submittal.
33. Compliance with Code. All design components shall comply with applicable provisions of the 2016 edition of the California Building, Plumbing and Mechanical Codes; 2016 California Electrical Code; California Administrative Code, 2016 California Energy Codes, 2016 California Green Building Standards, California Title 24 Disabled Access Regulations, and Lake Elsinore Municipal Code.
34. Green Measures. The application shall provide 10% voluntary green measures on the project, as stipulated by the 2013 California Green Building Standards.
35. Disabled Access. Applicant shall provide details of all applicable disabled access provisions and building setbacks on plans to include:
  - a. All ground floor units to be adaptable.
  - b. Disabled access from the public way to the entrance of the building.
  - c. Van accessible parking located as close as possible to the main entry.
  - d. Path of accessibility from parking to furthest point of improvement.
  - e. Path of travel from public right-of-way to all public areas on site, such as club house, trash enclosure tot lots and picnic areas.
36. Street Addressing. Applicant must obtain street addressing for all proposed buildings by requesting street addressing and submitting a site plan for commercial or multi-family residential projects or a recorded final map for single- family residential projects.
37. Clearance from LEUSD. A receipt or clearance letter from the Lake Elsinore School District shall be submitted to the Building and Safety Department to ensure the payment or exemption from School Mitigation Fees.
38. Obtain Approvals Prior to Construction. Applicant must obtain all building plans and permit approvals prior to commencement of any construction work.
39. Obtaining Separate Approvals and Permits. Trash enclosures, patio covers, light standards, and any block walls will require separate approvals and permits.
40. Sewer and Water Plan Approvals. On-site sewer and water plans will require separate approvals and permits.
41. House Electrical Meter. Applicant shall provide a house electrical meter to provide power for the operation of exterior lighting, irrigation pedestals and fire alarm systems for each building on the site. Developments with single user buildings shall clearly show on the plans how the operation of exterior lighting and fire alarm systems when a house meter is not specifically proposed.

**At Plan Review Submittal**



42. **Submitting Plans and Calculations.** Applicant must submit to Building and Safety four (4) complete sets of plans and two (2) sets of supporting calculations for review and approval including:
- a. An electrical plan including load calculations and panel schedule, plumbing schematic, and mechanical plan applicable to scope of work.
  - b. A Sound Transmission Control Study in accordance with the provisions of the Section 1207, of the 2016 edition of the California Building Code.
  - c. A precise grading plan to verify accessibility for the persons with disabilities.
  - d. Truss calculations that have been stamped by the engineer of record of the building and the truss manufacturer engineer.

**Prior to Issuance of Grading Permit (s)**

43. **Onsite Water and Sewer Plans.** Onsite water and sewer plans, submitted separately from the building plans, shall be submitted to Building and Safety for review and approval.
44. **Demolition Permits.** A demolition permit shall be obtained if there is an existing structure to be removed as part of the project.

**Prior to Issuance of Building Permit (s)**

45. **Plans Require Stamp of Registered Professional.** Applicant shall provide appropriate stamp of a registered professional with original signature on the plans.

**Prior to Beginning of Construction**

46. **Pre-Construction Meeting.** A pre-construction meeting is required with the building inspector prior to the start of the building construction.

**ENGINEERING DIVISION**

**General:**

47. All slopes and landscaping within public right-of-way shall be maintained by the property owner or property owner's association or another maintenance entity approved by the City Council.
48. All open space, landscaping and slopes except for public parks, schools and flood control district facilities, outside the public right-of-way shall be owned and maintained by property owner or property owner's association.
49. In accordance with the City's Franchise Agreement for waste disposal & recycling, the developer shall be required to contract with CR&R Inc. for removal and disposal of all waste material, debris, vegetation and other rubbish generated during cleaning, demolition, clear and grubbing or all other phases of construction.
50. Developer shall implement the improvements identified in the drainage study required by Condition 84. These improvements shall prevent any flooding and/or erosion downstream



caused by development of the site and or diversion of drainage.

51. All required soils, geology, hydrology and hydraulic, and seismic reports shall be prepared by a Registered Civil Engineer.

## **FLOOD PLAIN**

52. Project lies within a FEMA mapped special flood hazard zone and within the Floodplain Management area as defined at LEMC 15.68.
53. Meet all requirements of LEMC 15.68 regarding floodplain management. Finish floor elevation of all existing non-permitted (buildings put in place subsequent to the original CUP) and future buildings shall be a minimum of 1267 ft. Any fill placed in the 100-year flood plain for the purposes of elevating the building floor out of the flood plain shall require a CLOMR/CLOMR-F and LOMR/LOMR-F to be processed with FEMA.
54. No improvement shall be made upon all lands below the 1265 ft elevation level in the FEMA mapped Lake Elsinore flood plain southeasterly of the Lake levee and no artificial change in the topography in the surface of said lands shall be made (except terracing and soil conservation measures) without first complying with all applicable local, State and Federal laws, rules and regulations and Section 404 of the Clean Water Act. LEMC 15.68.052
55. Projects proposed in the back basin (elevation below 1260 ft) that the developer deems non-jurisdictional shall receive a non-jurisdictional confirmation from the U.S. Army Corps of Engineers prior to any commencement of work.
56. Meet all requirements of LEMC 15.64 regarding flood hazard regulations.

Projects in the back basin shall comply with the special conditions to Permit No. 88-00215-00-RRS (Lake Elsinore Management Project)

## **STORM WATER MANAGEMENT / POLLUTION PREVENTION / NPDES**

### **Design:**

57. The project is responsible for complying with the Santa Ana Region NPDES Permits as warranted based on the nature of development and/or activity. These Permits include:
- a. General Permit -Construction
  - b. Deminimus Discharges
  - c. MS4
58. The project shall complete and submit for plan check review and approval to the Engineering Division BOTH a preliminary and final WQMP, incorporating Stormwater BMPs.
59. The applicant shall use the Water Quality Management Plan for the Santa Ana Region of Riverside County guidance document and template for WQMP preparation.



60. Prior to or concurrent with any submittal for land use (i.e. Final Map, Design Review, Grading Permit, etc.), the applicant shall have prepared and submitted to the City Engineering Department for review and approval a Preliminary Water Quality Management Plan (PWQMP). The PWQMP shall be prepared and designed in accordance with the requirements in effect at the time of its submittal. Approval of the PWQMP shall be required prior to scheduling the land use application for action by Planning Commission.
61. Water Quality Facilities that service more than one parcel shall be placed in an easement to provide for maintenance and prevent obstruction.
62. WQMP – The Water Quality Management Plan (WQMP) specifically identifying Best Management Practices (BMPs) that will be used onsite to control identified pollutants of concern. The applicant shall utilize the MS4 Permittee Drainage Area Management Plan (DAMP), Model WQMP, and LID Guidance Manual for reference, and the MS4 Permittee's WQMP template for submittal. This WQMP shall include the following:
- Detailed site and project description
  - Potential stormwater pollutants
  - Post-development drainage characteristics
  - Low Impact Development (LID) BMP selection and analysis
  - Structural and Non-Structural source control BMPs
  - Site design and drainage plan (BMP Exhibit)
  - Vector issues are addressed in the BMP design, operation and maintenance.
  - GIS coordinates for all LID and Treatment Control BMPs
  - HCOC - demonstrate that discharge flow rates, velocities, duration and volume for the post construction condition from a 2 year and 10 year 24 hour rainfall event will not cause significant adverse impacts on downstream erosion and receiving waters, or measures are implemented to mitigate significant adverse impacts to downstream public facilities and water bodies. Design goal to replicate pre-development hydrologic regime.
63. The project qualifies for the "highest and best use exemption" in the 2010 SAR MS4 Permit. The project is required to treat the pollutants of concern identified to a medium to high removal level prior to discharge to the MS4. The project shall also implement where feasible the following: (Section XII.E.2, XII.E.3, and XII.E.7)
- Preventative measures (these are mostly non-structural measures, e.g., preservation of natural features to a level consistent with the MEP standard; minimization of Urban Runoff through clustering, reducing impervious areas, etc.)
  - The Project shall 'bio-treat the 85<sup>th</sup> percentile storm event also known as the Design Capture Volume (DCV prior to discharge in accordance with the requirements set forth in Section XII.G.
  - The Project shall consider a properly engineered and maintained bio-treatment system only if infiltration, harvesting and use and evapotranspiration cannot be feasibly implemented at the project site.
64. Parking lot landscaping shall be designed with concave landscape grading and provide for treatment of runoff



65. Project hardscape areas shall be designed and constructed to provide for drainage into adjacent landscape and permeable surfaces in low traffic roads and parking lots.
66. Trash enclosures shall be covered, bermed and plumbed to provide drainage to the sewer system.
67. Hydromodification / Hydraulic Conditions of Concern – The project shall identify potential Hydraulic Conditions of Concern (HCOC) and implement measures to limit disturbance of natural water bodies and drainage systems; conserve natural areas; protect slopes, channels and minimize significant impacts from urban runoff.
68. The project shall use either volume-based and/or flow-based criteria for sizing BMPs in accordance with NPDES Permit Provision XII.D.4.
69. CEQA – If CEQA identifies resources requiring Clean Water Act Section 401 Permitting, the applicant shall obtain certification through the Santa Ana Regional Water Quality Control Board and provide a copy to the Engineering Division.

**Construction:**

70. A Stormwater Pollution Prevention Plan (SWPPP) is required for this project. A copy of the current SWPPP shall be kept at the project site and be available for review upon request.
71. The project NOI and WDID shall be provided as proof of compliance with the General Construction Permit prior to ANY permit issuance.
72. **The Final WQMP shall be approved by the City prior to issuance of ANY permit for construction.**
73. Erosion & Sediment Control - **Prior to the issuance of any grading or building permit**, the applicant shall submit for review and approval by the City Engineer, an Erosion and Sediment Control Plan as a separate sheet of the grading plan submittal to demonstrate compliance with the City's NPDES Program, California Building Code, and state water quality regulations for grading and construction activities.

**Post Construction:**

74. Using either the City provided form or the project CC&R's, compile an Operation and Maintenance (O&M) Plan that (1) describes the long-term operation and maintenance requirements for BMPs identified in the BMP Exhibit; (2) identifies the entity that will be responsible for long-term operation and maintenance of the referenced BMPs; (3) describes the mechanism for funding the long-term operation and maintenance of the referenced BMPs, and (4) provides for annual certification of water quality facilities by a registered civil engineer and/or the City for a fee if the service is available.
75. All storm drain inlet facilities shall be appropriately marked "Only Rain in the Storm Drain" using the City authorized marker to prevent illegal dumping in the drain system.



76. All catch basins receiving runoff from the project shall be equipped with a State and City approved trash full capture device.
77. Prior to the issuance of a certificate of use and/or occupancy, the applicant shall demonstrate compliance with applicable NPDES permits. to include:
- Provide a signed certification from the engineer of work (using City form) to demonstrate that all structural Best Management Practices (BMP's) described in the BMP Exhibit from the project's approved WQMP have been constructed pursuant to plan and are operational. Any deviations from the approved plan shall be as built and the FWQMP updated.
  - Demonstrate that the project has complied with all non-structural BMPs described in the project's WQMP.
  - Demonstrate that copies of the project's approved WQMP (with recorded O&M Plan attached) are available for each of the initial occupants (commercial/industrial) or Owner's Association as appropriate.
  - Agree to pay for a Special Investigation from the City of Lake Elsinore for a date twelve (12) months after the issuance of a Certificate of Use and/or Occupancy for the project to verify compliance with the approved WQMP and O&M Plan. A signed/sealed certification from the engineer of work dated 12 months after C of O will be considered in lieu of a Special Investigation by the City.
  - Provide a recorded copy of one of the following:
    1. CC&R's (they must include the approved WQMP and O&M Plan) for the project's Owners Association.
    2. The final approved Water Quality Management Plan and Operations and Maintenance Plan.

#### UTILITIES

78. All arrangements for relocation of utility company facilities (power poles, vaults, etc.) out of the roadway shall be the responsibility of the property owner or his agent.
79. All overhead utilities shall be undergrounded in accordance with Chapter 12.16 of the Lake Elsinore Municipal Code (LEMC)
80. Underground water rights shall be dedicated to the City pursuant to the provisions of Section 16.52.030 (LEMC), and consistent with the City's agreement with the Elsinore Valley Municipal Water District.
81. The developer shall apply for, obtain and submit to the City Engineering Division a letter from Southern California Edison (SCE) indicating that the construction activity will not interfere with existing SCE facilities (aka SCE NIL).
82. The developer shall submit a copy of the "Will Serve" letter to the City Engineering Division from the applicable water agency stating that water and sewer arrangements have been made for this project and specify the technical data for the water service at the location, such as water pressure and volume etc.



## **IMPROVEMENTS**

### **Design:**

83. Sight distance into and out of the project location shall comply with CALTRANS Standards.
84. The developer shall install permanent bench marks per City of Lake Elsinore Standards at the intersection of the centerline of Mission Trail and the project entrance.
85. The developer shall coordinate with Riverside Transit Authority for location and installation of bus transit facilities.
86. 10-year storm runoff shall be contained within the curb and the 100-year storm runoff shall be contained within the street right-of-way. When either of these criteria are exceeded, drainage facilities shall be provided.
87. All drainage facilities in this project shall be constructed to Riverside County Flood Control District Standards. The Improvement Plans for the 60" pipe and associated appurtenances shall be approved by the Riverside County Flood Control District. An agreement with RCFCD will be obtained for the future maintenance. (Modified by Planning Commission action on 6/6/17). (Modified by Planning Commission action on 6/6/17).
88. A drainage study shall be provided prior to grading permit issuance to the Engineering Department. The study shall identify the following: identify storm water runoff from and upstream of the site; show existing and proposed off-site and onsite drainage facilities; and include a capacity analysis verifying the adequacy of the facilities. The drainage system shall be designed to ensure that runoff from a 10-yr storm of 6 hours or 24 hours duration under developed condition is equal or less than the runoff under existing conditions of the same storm frequency. Both 6-hour and 24-hour storm duration shall be analyzed to determine the detention basin capacities necessary to accomplish the desired results.
89. All natural drainage traversing the site shall be conveyed through the site, or shall be collected and conveyed by a method approved by the City Engineer. All off-site drainage, if different from historic flow, shall be conveyed to a public facility, accepted by adjacent property owners by a letter of drainage acceptance, or conveyed to a drainage easement.
90. Roof drains shall not be allowed to outlet directly through coring in the street curb. Roofs should drain to a landscaped area.
91. The site shall be planned and developed to keep surface water from entering buildings (California Green Building Standards Code 4.106.3).
92. All Public Works requirements shall be complied with as a condition of development as specified in the Lake Elsinore Municipal Code (LEMC) and Lake Elsinore Public Works Standard Plans.



93. The developer shall construct half width street improvements and dedicate right-of-way on Mission Trail such that the ultimate right-of-way width conforms to General Plan and East Lake Specific Plan right-of-way cross sections. The cross section of roadway improvements with a raised median (developer shall pay cash-in-lieu of construction of  $\frac{1}{2}$  the raised median), parkway, and street lights, shall be consistent with other development on Mission Trail, as recommended by the City. The road improvements for Mission Trail shall be consistent with the Traffic Analysis dated September 20, 2017, and the General Plan Circulation Plan.
94. Street improvement plans shall be prepared by a Registered Civil Engineer and the plans shall include curb and gutter, sidewalk, parkway, ac pavement, street lighting, signal modification, median, and drainage improvements. Plans shall be approved by Caltrans, and a Caltrans encroachment permit obtained.
95. The developer shall provide signing and striping plans for the required improvements of this project. The plans shall also incorporate traffic calming measures on local streets.
96. If existing improvements are to be modified, the existing improvement plans on file shall be modified accordingly and approved by the City Engineer **prior to issuance of building permit.**

**Permitting/Construction:**

97. An Encroachment Permit shall be obtained prior to any work on City and/or State right-of-way. The developer shall submit the permit application, required fees and executed agreements, security and other required documentation prior to issuance.
98. A Grading Permit is required for ANY project related soil disturbance to include stockpiles.
99. All compaction reports, grade certifications, monument certifications (with tie notes delineated on 8  $\frac{1}{2}$ " x 11" Mylar) shall be submitted to the Engineering Division before final inspection of public works improvements will be scheduled and approved.
100. The developer shall be responsible for acquiring right-of-ways in which the developer or the City has no legal title or interest.
101. All streets shall be constructed per Lake Elsinore City Standards and/or applicable specific plan. Any deviation from City standards shall be approved by the City Engineer.

**Acceptance of Improvements:**

102. The developer shall submit a written request for acceptance to the City Engineer. The written request shall be accompanied by all required documentation.
103. As-built plans shall be completed and signed by the City Engineer.



## **GRADING**

### **Design:**

104. Prior to grading permit issuance, compliance with IS/MND Mitigation Measures shall be achieved, with confirmation received in writing from the Planning Department/Project Planner. This approval shall identify and clear all proposed grading activity anticipated for this project.
105. A grading plan signed and stamped by a California Registered Civil Engineer shall be submitted for City review and approval for all addition and/or movement of soil (grading) on the site. The plan shall include separate sheets for erosion control, haul route and traffic control. The grading submittal shall include all supporting documentation and be prepared using City standard title block, standard drawings and design manual (available at [www.lake-elsinore.org](http://www.lake-elsinore.org)).
106. All grading plan contours shall extend to minimum of 50-feet beyond property lines to indicate existing drainage pattern.
107. The grading plan shall show that no structures, landscaping, or equipment are located near the project entrances that could reduce sight distance.
108. If the grading plan identifies alterations in the existing drainage patterns as they exit the site, a Hydrology and Hydraulic Report for review and approval by City Engineer shall be required prior to issuance of grading permits. All grading that modifies the existing flow patterns and/or topography shall be approved by the City Engineer.
109. The developer shall obtain all necessary off-site easements and/or permits for off-site grading and the applicant shall accept drainage from the adjacent property owners.

### **Permit/Construction:**

110. A FEMA approved CLOMR-F is required prior to ANY grading permit.
111. Developer shall execute and submit grading and erosion control agreement, post grading security and pay permit fees as a condition of grading permit issuance.
112. A preconstruction meeting with the City Public Works Inspector (Engineering Division) is required prior to commencement of ANY grading activity.
113. Prior to commencement of grading operations, developer is to provide to the City with a map of all proposed haul routes to be used for movement of export material. All such routes shall be subject to the review and approval of the City Engineer. Haul route shall be submitted prior to issuance of a grading permit. Hauling in excess of 5,000 cy shall be approved by City Council. (LEMC 15.72.065)
114. Export sites located within the Lake Elsinore City limits must have an active grading permit.



- 115. Applicant to provide to the City a video record of the condition of all proposed public City haul roads. In the event of damage to such roads, applicant shall pay full cost of restoring public roads to the baseline condition. A bond may be required to ensure payment of damages to the public right-of-way, subject to the approval of the City Engineer.
- 116. All grading shall be done under the supervision of a geotechnical engineer. Slopes steeper than 2 to 1 shall be evaluated for stability and proper erosion control and approved by the City.
- 117. Approval of the project Water Quality Management Plan (WQMP) for post construction shall be received prior to issuance of a grading permit.

**PRIOR TO ISSUANCE OF BUILDING PERMIT**

- 118. Provide final soils, geology and seismic report, including recommendations for parameters for seismic design of buildings, and walls prior to building permit.
- 119. Approval of a letter of map revision (LOMR) or letter of map revision based on fill (LOMR-F) must be received from FEMA.
- 120. All required public right-of-way dedications and easements shall be prepared by the developer or his agent and shall be submitted to the Engineering Division for review and approval prior to issuance of building permit.
- 121. All street improvement plans, traffic signal modification plans, signing and striping plans shall be completed and approved by the City Engineer.
- 122. The developer shall pay all Capital Improvement TIF and Master Drainage Fees and Plan Check fees (LEMC 16.34).

**PRIOR TO OCCUPANCY**

- 123. All signing and striping and traffic control devices for the required improvements of this development shall be installed.
- 124. All public improvements shall be completed in accordance with the approved plans or as condition of this development to the satisfaction of the City Engineer.
- 125. All water and sewer improvements shall be completed in accordance with Water District requirements.
- 126. Proof of acceptance of maintenance responsibility of slopes, open spaces, landscape areas, and drainage facilities shall be provided.
- 127. As-built plans for all approved plan sets shall be submitted for review and approval by the City. The developer/developer/owner is responsible for revising the original mylar plans.
- 128. In the event of damage to City roads from hauling or other construction related activity,



applicant shall pay full cost of restoring public roads to the baseline condition.

129. All final studies and reports, grade certifications, monument certifications (with tie notes delineated on 8 ½ x 11" mylar) shall be submitted in .tif format on a CD/DVD. Studies and reports include, Soils, Seismic, Hydrology, Hydraulics, Grading, WQMP, etc.
130. All plan sets and recorded maps shall be digitized and provided on CD/DVD as follows:
- Final Map(s) - GIS Shape files\* and .tif of recorded map.
  - Improvement Plans – GIS Shape files\* and .tif of approved as built mylar.
  - Grading Plans - .tif of approved as built mylar.
  - \*GIS Shape files must be in projected Coordinate System: NAD 83 State Plane California Zone VI U.S. Fleet.
131. Developer shall provide FEMA elevation certificates for all buildings (includes trailers and storage facilities) prior to final approvals. If a LOMR-F has been processed and approved by FEMA, the letter of determination and certification may be in the form of a letter signed and sealed by a licensed civil engineer.
132. All required public right-of-way dedications, easements, dedications and vacations and easement agreement(s) not processed on the final map for ingress and egress through adjacent property(ies) shall be recorded with a recorded copy provided to the City prior to first certificate of occupancy.
133. Final soil report showing compliance with recommendations, compaction reports, grade certifications, monument certifications (with tie notes delineated on 8 ½ x 11" mylar) shall be submitted in .tif format on CD to the Engineering Division before final inspection will be scheduled.
134. All required public right-of-way dedications shall be recorded with a recorded copy provided to the City.

#### **CITY OF LAKE ELSINORE FIRE MARSHAL**

##### **General Conditions**

135. **Lake Elsinore Fire Protection Planning Office Responsibility-** It is the responsibility of the recipient of these Fire Department conditions to forward them to all interested parties. The permit number (**as it is noted above**) is required on all correspondence.

Questions should be directed to the Riverside County Fire Department, Lake Elsinore Fire Protection Planning Division at 130 S. Main St., Lake Elsinore, CA 92530. Phone: (951) 674-3124 Ext. 225. The following fire department conditions shall be implemented in accordance with the Lake Elsinore Municipal Code and the adopted codes at the time of project building plan submittal, these conditions are in addition to the adopted code requirements.



- 136. Blue Dot Reflectors** - Blue retro-reflective pavement markers shall be mounted on private streets, public streets and driveways to indicate location of fire hydrants. Prior to installation, placement of markers must be approved by the Riverside County Fire Dept.
- 137. Minimum Hydrant Fire Flow** - Minimum required fire flow shall be 1,500 GPM for 2 hours duration at 20 PSI residual operating pressure, which must be available before any combustible material is placed on the job site. Average spacing between hydrants 500' and 250' maximum distance from any point on the street or road frontage to hydrant.
- 138. Standard Fire Hydrants**- Super fire hydrants (6" x 4" x 2-2 1/2"), shall be located not less than 25 feet or more than 250 feet from any portion of the building as measured along approved vehicular travel ways. The required fire flow shall be available from any adjacent hydrant (s) in the system.
- 139. Minimum Access Standards**- The following access requirements are required to be implemented to ensure fire department and emergency vehicular access. All roadways shall conform to the City of Lake Elsinore approved roadway standards but in no case shall the minimum fire department vehicular access be less the following provisions:
1. Twenty-four feet (24') clear width. Where parking is to be provided, each parking side shall be provided with eight (8') additional feet on each side of the fire department access. **Where buildings exceed thirty feet (30') in height Fire Department access shall be increased to thirty feet (30') in unobstructed width along the building or as otherwise approved by the Fire Marshal.**
  2. The required all weather vehicular access shall be able to support no less than 75,000 lbs. over 2 axles.
  3. Roadway gradient shall not exceed 15% on any access road, driveways, and perimeter roads.
  4. Turning Radius shall be 24' inside and 48' outside for all access roads.
- 140. Automatic / Manual Gates**- Gate entrances shall be at least two feet wider than the width of the traffic lane (s) serving that gate and no less than 20 feet wide. Any gate providing access from a road to a driveway shall be located at least 35 feet from the roadway and shall open to allow vehicle to stop without obstructing traffic on the road. Where a one-way road with a single traffic lane provides access to a gate entrance, a 40 foot turning radius shall be used. Gate access shall be equipped with a rapid entry system. Plans shall be submitted to the Fire Department for approval prior to installation. Automatic/manual gate pins shall be rated with shear pin force, not to exceed 30 foot pounds. Automatic gates shall be equipped with emergency backup power. Gates activated by the rapid entry system shall remain open until closed by the rapid entry system. Contact the Fire Planning office for current plan check fees system. Contact the Fire Planning office for current plan check fees.

#### Prior to Building Permit Issuance

- 141. Plan Check Fee**- Building plan check fees shall be made payable to the "City of Lake Elsinore", and shall be submitted to the Fire Department at the time of plan submittal.



- 142. Water System Plans-** Applicant and/or developer shall submit 2 sets of water system plans to the Fire Department for review. The plans must be signed by a registered Civil Engineer and/or water purveyor prior to Fire Department review and approval. Mylars will be signed by the Fire Department after review and approval. Two (2) copies of the signed and approved water plans shall be returned to the Fire Department before release of a building permit.
- 143. Prior to Building Construction Verification-** This project shall be inspected and approved by the Fire Marshal or designee prior to bringing combustible materials on site. During said inspection all permanent road signs shall be in place, all hydrants shall be operating and approved for use by the water purveyor, and all permanent road surfaces shall be completed including primary and secondary access circulation.

**Prior to Building Final Inspection**

- 144. Residential Fire Sprinkler Systems for Single-family/Duplex 13D-** Install a complete fire sprinkler system designed in accordance with California Residential Code, California Fire Code and adopted standards. A C-16 licensed contractor must submit plans, along with the current fee, to the Fire Department for review and approval prior to installation.
- 145. Designated Fire Lanes-** The applicant shall prepare and submit to the Fire Department for approval, a site plan designating required fire lanes with appropriate lane painting and/ or signs.
- 146. Display Boards-** Display Boards will be as follows: Each complex shall have an illuminated diagrammatic representation of the actual layout which shows name of complex, all streets, building designators, unit numbers, and fire hydrant locations within dimension and located next to roadway access.

**DEPARTMENT OF ADMINISTRATIVE SERVICES**

**Annex into CFD 2015-1 (Safety) Law Enforcement, Fire and Paramedic Services CFD**

- 147.** Prior to approval of the Final Map, Parcel Map, Residential Design Review, or Conditional Use Permit (as applicable), the applicant shall annex into Community Facilities District No. 2015-1 (Safety) the Law Enforcement, Fire and Paramedic Services Mello-Roos Community Facilities District to offset the annual negative fiscal impacts of the project on public safety operations and maintenance issues in the City. Alternatively, the applicant may propose alternative financing mechanisms to fund the annual negative fiscal impacts of the project with respect to Public Safety services. Applicant shall make a seven thousand five hundred dollar (\$7,500) non-refundable deposit to cover the cost of the annexation, formation or other mitigation process, as applicable.

**Annex into the City of Lake Elsinore Community Facilities District No. 2015-2 (Maintenance Services)**

- 148.** Prior to approval of the Final Map, Parcel Map, Residential Design Review, Conditional Use Permit or building permit (as applicable), the applicant shall annex into the



Community Facilities District No. 2015-2 (Maintenance Services) to fund the on-going operation and maintenance of the public right-of-way landscaped areas and neighborhood parks to be maintained by the City and for street lights in the public right-of-way for which the City will pay for electricity and a maintenance fee to Southern California Edison, including parkways, open space and public storm drains constructed within the development and federal NPDES requirements to offset the annual negative fiscal impacts of the project. Alternatively, the applicant may propose alternative financing mechanisms to fund the annual negative fiscal impacts of the project with respect to Maintenance Services. Applicant shall make a seven thousand five hundred dollar (\$7,500) non-refundable deposit to cover the cost of the annexation, formation or other mitigation process, as applicable.

I hereby state that I acknowledge receipt of the approved Conditions of Approval for the above named project and do hereby agree to accept and abide by all Conditions of Approval as approved by the City of Lake Elsinore. I also acknowledge that all Conditions shall be met as indicated.

Date:

4/20/18

Applicant's Signature:

*[Signature]*  
Jeffrey C. Pomeron

Print Name:

Address:

7777 Center Suite 230  
Huntington Beach, CA 92647  
(714) 230-8000

Phone Number:

EXHIBIT K

FORM OF REGULATORY AGREEMENT

EXHIBIT K

FORM OF LMIHAF REGULATORY AGREEMENT

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Lake Elsinore  
130 South Main Street  
Lake Elsinore, CA 92530  
Attn: City Manager

No fee document pursuant to  
Government Code Section 27383

---

**REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**  
(Low and Moderate Income Housing Asset Funds)

This Regulatory Agreement and Declaration of Restrictive Covenants (LMIHAF) (this “Agreement”) is made and entered into as of March 28, 2019 (the “Effective Date”), by and between the City of Lake Elsinore, a municipal corporation (the “City”), and Mission Cottages LP, a California limited partnership (the “Developer”).

RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. The City has adopted a Housing Element to its General Plan pursuant to Government Code § 65580, *et seq.*, which sets forth the City’s policies, goals and objectives to provide housing to all economic segments of the community, including the preservation and development of rental housing affordable to very low, low and moderate income households. In furtherance of the City’s affordable housing goals and activities, concurrently herewith City and Developer are entering into a Disposition, Development and Loan Agreement (Cottages at Mission Trail) (the “DDLA”), pursuant to which the City agrees to convey certain real property to the Developer, provide the Fund 106 Loan and LMIHAF Loan to Developer in consideration of development and operation of an affordable housing project by Developer. The Property owned by the Developer and subject to this Agreement is more particularly described in Exhibit A.

C. In accordance with the DDLA, the Developer shall use the proceeds of the Fund 106 Loan, LMIHAF Loan and other financing obtained by the Developer, for the acquisition and development of Property. The Fund 106 Loan is being funded by the City with Fund 106 Funds, which the City owns in its own right and not as the successor agency to the housing assets of the former Redevelopment Agency of the City of Lake Elsinore. Upon the satisfaction of certain conditions, City anticipates making a loan to Developer from Fund 106 Funds of \$646,974 (the “City Fund 106 Loan”).

D. Concurrently herewith, in accordance with the DDLA, the City agrees to make a loan to Developer from LMIHAF of \$5,074,276 (the “LMIHAF Loan”). The covenants and restrictions set forth herein are given in consideration of the City LMIHAF Loan and the conditions imposed upon the use of Low and Moderate Income Housing Asset Fund (LMIHAF) monies by applicable law.

E. In accordance with the DDLA, the Developer shall use the proceeds of the City LMIHAF Loan for development of the Property. The LMIHAF Loan is being funded with Low and Moderate Income Housing Asset Funds held by the City in its capacity as the successor agency to the housing assets of the former Redevelopment Agency of the City of Lake Elsinore.

F. The City has agreed to provide the LMIHAF Loan to Developer on the condition that the Development be maintained and operated in accordance with California Health and Safety Code Sections 33334.2 et seq., and in accordance with additional restrictions concerning affordability, operation, and maintenance of the Improvements, as specified in this Agreement.

G. In consideration of receipt of the conveyance of the Property, the LMIHAF Loan proceeds, deferred repayment terms and substantially below market rate interest, the Developer has agreed to observe all the terms and conditions set forth herein.

H. To ensure that the Property will be used and operated in accordance with all applicable conditions and restrictions, the City and Developer wish to enter into this Agreement.

THEREFORE, the City and Developer (each a “Party”, and, collectively, the “Parties”) hereby agree as follows:

## ARTICLE 1. DEFINITIONS

1.1 Definitions. When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1. Capitalized terms not defined herein shall have the meaning set forth in the DDLA.

(a) “Actual Household Size” shall mean the actual number of persons in the applicable household.

(b) “Adjusted Income” shall mean the total anticipated annual income of all persons in a household, as calculated in accordance with 25 California Code of Regulations Section 6914 or pursuant to a successor State housing program that utilizes a reasonably similar

method of calculation of adjusted income. In the event that no such program exists, the City shall provide the Developer with a reasonably similar method of calculation of adjusted income as provided in said Section 6914.

(c) “Agreement” shall mean this Regulatory Agreement and Declaration of Restrictive Covenants (LMIHAF).

(d) “Assumed Household Size” shall have the meaning set forth in Section 2.2.

(e) “City” shall mean the City of Lake Elsinore, a municipal corporation.

(f) “City Indemnities” means the City and its officers, agents, employees, representatives, contractors, subcontractors, elected and appointed boards and officials.

(g) “City Loans” shall mean the Fund 106 Loan and the LMIHAF Loan made to Developer pursuant to the DDLA.

(h) “City Notes” shall mean the promissory notes from the Developer to the City evidencing all or any part of the City Loans.

(i) “Closing” shall have the meaning set forth in the DDLA.

(j) “DDLA” shall mean the Disposition, Development and Loan Agreement entered into between Developer and City of even date herewith, as may be amended or implemented from time to time.

(k) “Deeds of Trust” shall mean the deeds of trust in favor of the City recorded against the Property which secure repayment of the City Loans.

(l) “Developer” shall mean Mission Cottages LP, a California limited partnership, and its successors and assigns as permitted by this Agreement.

(m) “Development” shall mean the Property and the Improvements.

(n) “Fund 106 Loan” shall mean a loan made from Fund 106 monies pursuant to the DDLA in the amount of \$646,974.

(o) “HCD” shall mean the State of California Department of Housing and Community Development.

(p) “HUD” shall mean the U.S. Department of Housing and Urban Development.

(q) “Improvements” shall mean the improvements to be developed by the Developer on the Property, including the Units, and appurtenant landscaping and improvements.

(r) “LMIHAF Deed of Trust” shall mean the deed of trust in favor of the City recorded against the property which secures repayment of the LMIHAF Loan and performance of this Agreement.

(s) “LMIHAF Loan” shall mean the loan made from LMIHAF monies pursuant to the DDLA in the amount of \$5,074,276.

(t) “Low Income Household” shall mean a household with an Adjusted Income less than sixty percent (60%) of Median Income as determined in accordance with Health and Safety Code Section 34176.1(a)(3)(A), adjusted for Actual Household Size.

(u) “Low Income Rent” shall mean the maximum allowable rent for a Low Income Unit pursuant to Section 2.2 below.

(v) “Low Income Unit” shall mean at least one hundred twenty two (122) Units which, pursuant to Section 2.1 below, are required to be occupied by Low Income Households.

(w) “Management Agent” shall mean the professional property management company retained by the Developer, in accordance with this Agreement and the DDLA, for the day-to-day operation of the Development. \_\_\_\_\_ is hereby approved as the initial Management Agent.

(x) “Median Income” shall mean the median gross yearly income adjusted for Actual Household Size or Assumed Household Size, as specified herein, in the County of Riverside, California, as published from time to time by HCD. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the City shall provide the Developer with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HCD.

(y) “Operating Budget” is defined in Section 4.6.

(z) “Property” shall mean the real property located on Mission Trail Road and legally described in Exhibit A attached hereto and incorporated herein.

(aa) “Rent” shall mean the total of monthly payments by the Tenant of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Developer which are required of all Tenants, other than security deposits; the cost of an adequate level of service for utilities paid by the Tenant (as established by the City of Lake Elsinore, or such other appropriate agency), including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not cable or telephone service; any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Developer, and paid by the Tenant.

(bb) “Restricted Units” shall mean the Low Income Units and the Very Low Income Units restricted under this Agreement.



(cc) “Senior Lender” shall mean a lender whose loan to the Developer for the Development is secured by a deed of trust recorded against the Property in a lien position senior to the LMIHAF Deed of Trust, or is made senior to the lien of the LMIHAF Deed of Trust pursuant to a subordination agreement executed by City and Senior Lender and recorded against the Property.

(dd) “TCAC” means the California Tax Credit Allocation Committee.

(ee) “TCAC Regulatory Agreement” shall mean the regulatory agreement to be entered into by and between the Developer and TCAC restricting the use and occupancy of the Development.

(ff) “Tenant” shall mean a household occupying a Unit.

(gg) “Term” shall mean the term of this Agreement, which shall commence on the Effective Date, and shall continue until the later of: (i) the fifty-fifth (55th) anniversary of the City’s recordation of a Notice of Completion for the construction of the Development; or (ii) December 31, 2076.

(hh) “Units” shall mean the one hundred forty three (143) rental units, including one (1) manager unit, to be developed by the Developer on the Property.

(ii) “Very Low Income Household” shall mean a household with an Adjusted Income that does not exceed fifty percent (50%) of Median Income, adjusted for Actual Household Size, as determined in accordance with Health and Safety Code Section 50105.

(jj) “Very Low Income Rent” shall mean the maximum allowable rent for a Very Low Income Unit pursuant to Section 2.2 below.

(kk) “Very Low Income Unit” shall mean at least twenty (20) units which, pursuant to Section 2.1 below, are required to be occupied by Very Low Income Households.

## ARTICLE 2. AFFORDABILITY COVENANTS

2.1 Occupancy Requirements. In consideration of the City LMIHAF Loan, Developer covenants and agrees, that at all times during the Term, the Restricted Units shall be rented to and occupied by or, if vacant, held available for occupancy by, Very Low Income Households and Low Income Households, in the minimum number of Units as follows:

	<u>Low Income Units</u>	<u>Very Low Income Units</u>
Two Bedroom Unit	—	—
Three Bedroom Unit	—	—
Total	122	20

2.2 Allowable Rent. Monthly rent, including a reasonable utility allowance, shall not exceed the lesser of the maximum allowable rent to be charged by Developer pursuant to any applicable Tax Credit Regulatory Agreement or the following calculations, as applicable:

(a) Low Income Rent. Subject to Section 2.3 below, the Rent charged to Tenants of the Low Income Units shall not exceed one-twelfth (1/12th) of thirty percent (30%) of sixty percent (60%) of Median Income, adjusted for Assumed Household Size.

(b) Very Low Income Rent. Subject to Section 2.3 below, the Rent charged to Tenants of Very Low Income Units shall not exceed one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of fifty percent (50%) of Median Income, adjusted for Assumed Household Size.

(c) Assumed Household Size. In calculating the Allowable Rent for the Restricted Units, the following Assumed Household Sizes shall be utilized:

<u>Number of Bedrooms</u>	<u>Assumed Household Size</u>
One	2
Two	3
Three	4

provided, however, during any period in which the TCAC Regulatory Agreement encumbers the Property, the Developer may utilize the assumed household size determined by, or utilized by, TCAC, as permitted by Health & Safety Code Section 50052.5(h).

(d) City Approval of Rents. Initial rents for all Restricted Units shall be approved by the City prior to occupancy. The Developer shall provide the City an annual written report setting forth the proposed annual rent increase, if any, for the subsequent year on such date mutually acceptable to the parties. The City shall have fifteen (15) days following the receipt of such report to either approve or disapprove of such rent increase. The City shall approve such rent increase if such increase complies with the requirements of this Agreement. The City's failure to either approve or disapprove of such proposed rent increase within such fifteen (15) days shall be deemed approval.

(e) Relationship to Other Restrictions. In the event a Restricted Unit is subject to restrictions set forth in a Tax Credit Regulatory Agreement recorded against the Property, Developer shall be required to comply with both the TCAC Regulatory Agreement and this Agreement as to the Restricted Units. As to all Units other than the Restricted Units,

Developer covenants and agrees that such Units shall be restricted to occupancy by households meeting the requirements of the TCAC Regulatory Agreement at all times during the Term.

(f) Sample Calculation of Allowable Rent. The parties agree that for purposes hereof, Allowable Rent shall be calculated for the Restricted Units that are also subject to a TCAC Regulatory Agreement in accordance with the methodology set forth in Exhibit C hereto.

### 2.3 Increased Income of Tenants.

(a) Above Very Low Income Household. If, upon recertification of a Tenant's income, the Developer determines that a former Very Low Income Household's Adjusted Income has increased and exceeds the qualifying income for a Very Low Income Household set forth above, then, upon expiration of the Tenant's lease:

(1) Such Tenant's Unit shall be considered a Unit occupied by a Low Income Household;

(2) Subject to any lower rent required by any TCAC Regulatory Agreement or other program applicable to the Development, such Tenant's Rent may be increased, upon sixty (60) days written notice to the Tenant, to a Rent not to exceed one-twelfth (1/12th) of thirty percent (30%) of sixty percent (60%) of Median Income, adjusted for Assumed Household size; and

(3) The Developer shall rent the next available Unit to a Very Low Income Household, at Rent not exceeding the maximum Rent specified in Section 2.2, as applicable, to comply with the requirements of Section 2.1 and Section 2.2 above.

(b) Above Low Income Household. If, upon recertification of a Tenant's income, the Developer determines that a former Low Income Household's Adjusted Income has increased and exceeds the qualifying income for a Low Income Household set forth in above, then, upon expiration of the Tenant's lease:

(1) Such Tenant's Unit shall continue to be considered a Unit occupied by a Low Income Household;

(2) Subject to any lower rent required by any TCAC Regulatory Agreement or other program applicable to the Development, such Tenant's Rent may be increased, upon sixty (60) days written notice to the Tenant, to a Rent not to exceed, the lesser of: (i) the market rate rent for a similar unit of comparable quality to the Unit, or (ii) one-twelfth (1/12th) of thirty percent (30%) of one hundred ten percent (110%) of Median Income, adjusted for Assumed Household Size if the Household's Adjusted Income does not exceed one hundred twenty percent (120%) of Median Income, adjusted for Assumed Household Size, or thirty percent (30%) of the Household's Actual Income if the Household's Adjusted Income does exceed one hundred twenty percent (120%) of Median Income, adjusted for Assumed Household Size; and

(3) The Developer shall rent the next available Unit to a Low Income Household, at Rent not exceeding the maximum Rent specified in Section 2.2, as applicable, to comply with the requirements of Section 2.1 and Section 2.2 above.

(c) Termination of Occupancy. Upon termination of occupancy of a Unit by a Tenant, such Unit shall be deemed to be continuously occupied by a household of the same income level (e.g., a Low Income Household or Very Low Income Household) as the initial income level of the vacating Tenant, until such Unit is reoccupied, at which time the income character of the Unit (e.g., a Low Income Household or Very Low Income Household) shall be redetermined based on the Adjusted Income of the tenant, adjusted for Actual Household Size.

## 2.4 Tenant Selection.

(a) Marketing Plan. Before leasing any vacant Units in the Development, the Developer must provide the City for its review and approval the Developer's written marketing and Tenant selection plan.

(b) Nondiscrimination. Developer covenants and agrees for itself and any successors and assigns to the Developer or the Property that 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 sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of any Unit or the Property or the construction or development thereof nor shall the Developer, or any person claiming under or through him or her, 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, contractors, subcontractors, or vendees of any Unit or the Property or in connection with the employment of persons for the construction, operation and management of the Property.

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph 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 the foregoing paragraph 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 the foregoing paragraph.

All deeds, rental agreements, leases, subcontracts or contracts made or entered into by the Developer as to the Units, the Project or the Property or any portion thereof, shall contain and be subject to the following nondiscrimination and nonsegregation clauses:

(1) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that 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 sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph 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 the foregoing paragraph 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 the foregoing paragraph.

(2) In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of 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 premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, 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 premises herein leased.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph 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 the foregoing paragraph 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 the foregoing paragraph.

(3) In contracts: “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 connection with the performance of this contract nor shall the contracting party himself or herself, or any person claiming under or through him or her, 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, contractors, subcontractors or vendees with respect to the premises.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph 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 the

foregoing paragraph 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 the foregoing paragraph.

The covenants established in this Regulatory Agreement shall, without regard to technical classification and designation, be binding on Developer and any successor in interest to Developer or the Property, or any part thereof, for the benefit and in favor of City and its successors and assigns. The covenants against discrimination shall run with the land and remain in effect in perpetuity.

(c) Source of Income. The Developer shall not discriminate on the basis of source of income or rent payment (for example, TANF or SSI) or poor credit history if a prospective Tenant's previous rent history of at least one (1) year provides evidence of Tenant's ability to pay the applicable Rent (ability to pay shall be demonstrated if the prospective Tenant can show that the Tenant has paid the same percentage or more of the Tenant's income for Rent as the Tenant would be required to pay for the Rent applicable to the Unit to be occupied).

(d) Section 8 Certificate Holders. The Developer will accept as Tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Developer shall not apply selection criteria to Section 8 certificate or voucher holders that is more burdensome than criteria applied to all other prospective tenants, nor shall the Developer apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of Units by such prospective Tenants.

(e) General Public. All of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible. The Developer shall not give preference to any particular class or group of persons in renting the Units, except to the extent that the Restricted Units are required to be leased to a Very Low Income Household or Low Income Household. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, source of income, disability, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor shall Developer or any person claiming under or through the 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 of any Unit or in connection with the employment of persons for the operation and management of the Development. All deeds, leases or contracts made or entered into by Developer as to the Units or the Development or portion thereof, shall contain covenants concerning discrimination as prescribed by the DDLA.

(f) Minimum Household Size. The Developer shall not refuse to rent to any prospective Tenant on the basis of household size so long as such household size is not smaller than the minimum household size set forth below:

Number of Bedrooms    Minimum Household Size

One	1
Two	2
Three	4
Four	5

(g) To the maximum extent permitted by law and provided that the applicants meet standard applicant screening standards for the Development; (a) Developer shall also give a preference in the rental of any Units to residents of, or persons employed or that have been offered employment in, the City and/or County. The preferences stated in this Section apply to the rentals of Units throughout the Term. Notwithstanding anything to the contrary herein, nothing in this Section shall require that the preference be based on a minimum duration for residency or employment. To the extent the preferences required under this Section are in conflict with the requirements of applicable fair housing laws or Section 42 of the internal Revenue Code and implementing guidelines, the requirements of fair housing laws and Section 42 will supersede.

2.5 Tenant Protections.

(a) Lease Provisions. Developer shall include in leases for all Restricted Units provisions which authorize Developer to immediately terminate the tenancy of any household one or more of whose members misrepresented any fact material to the household's qualification as a Low Income Household. Each lease or rental agreement shall also provide that the household is subject to annual certification in accordance with Section 3.1 below, and that, if the household's income increases above the applicable limits such household's Rent may be subject to increase.

(b) Rental Agreement/Lease. The Developer shall execute or cause to be executed a written rental agreement/lease with each Household occupying a Restricted Unit identifying by name all permitted occupants. The rental agreement/lease must be in a form approved by the City and must be for not less than one year. The standard rental agreement/lease shall state that occupation of the Restricted Units is subject to the income restrictions described herein. The standard lease agreement shall not be amended without prior City approval.

(c) Prohibited Rental Agreement/Lease Terms. The rental agreement/lease shall not contain any of the following provisions:

(1) Agreement to be Sued. Agreement by the Tenant to be sued, to admit guilt, or to a judgment in favor of the Developer in a lawsuit brought in connection with the lease;

(2) Treatment of Property. Agreement by Tenant that the Developer may take, hold, or sell personal property of household members without notice to the Tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the Tenant concerning disposition of personal property remaining in the Unit after

the Tenant has moved out of the Unit. The Developer may dispose of this personal property in accordance with state law;

(3) Excusing Developer from Responsibility. Agreement by the Tenant not to hold Developer or Developer's agents legally responsible for any action or failure to act, whether intentional or negligent;

(4) Waiver of Notice. Agreement of the Tenant that the Developer may institute a lawsuit without notice to the Tenant;

(5) Waiver of Legal Proceedings. Agreement by the Tenant that the Developer may evict the Tenant or household members without instituting a civil court proceeding in which the Tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

(6) Waiver of a Jury Trial. Agreement by the Tenant to waive any right to a trial by jury;

(7) Waiver of Right to Appeal Court Decision. Agreement by the Tenant to waive the Tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

(8) Tenant Chargeable with Cost of Legal Actions Regardless of Outcome. Agreement by the Tenant to pay attorneys' fees or other legal costs even if the Tenant wins in a court proceeding by the owner against the Tenant. The Tenant, however, may be obligated to pay attorneys' fees and other legal costs if the Tenant loses.

(d) Background Checks. In connection with its tenant selection process, Developer agrees to obtain criminal background checks on all applicants in accordance with all applicable Governmental Regulations. Developer shall determine, in accordance with all applicable Governmental Regulations, whether or not the applicant's arrest and/or conviction record, if any, warrants denial of such applicant's application. Developer shall maintain or destroy the results of such criminal background checks in accordance with all applicable Governmental Regulations.

2.6 Termination of Tenancy. Except as set forth above, any termination or refusal to renew must be preceded by not less than thirty (30) days written notice or such longer notice period as required by any applicable Governmental Regulations.

2.7 Condominium Conversion. The Developer shall not convert the Development's Units to condominium or cooperative ownership or sell condominium or cooperative conversion rights to the Property during the Term of this Agreement.

2.8 Relocation to Different Unit Based on Household Size. To ensure that the Units are not overcrowded or underutilized, the Developer shall maintain the minimum occupancy standards set forth in Section 2.4(b)(4) by obtaining an annual certification of each Tenant's household size to be included with the Tenant's income certification provided in accordance with Section 3.1. Upon such annual recertification the Developer shall require a Tenant to relocate to



a larger or smaller Unit, as applicable, depending on the increase or reduction in the Tenant's household size. The number of occupants of any Unit shall not exceed the maximum permitted by law.

2.9 Waiting List. The Developer shall maintain a separate waiting list of potential applicants for each income category and shall update the waiting list at least once per year.

### ARTICLE 3. INCOME CERTIFICATION AND REPORTING

3.1 Income Certification. The Developer will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income and household size certifications from each Tenant renting any of the Restricted Units. The Developer shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain three (3) pay stubs for the most recent pay periods; (2) obtain an income tax return for the most recent tax year; (3) conduct a credit agency or similar search; (4) obtain an income verification form from the applicant's current employer; (5) obtain three (3) most recent bank statements for all savings and checking accounts; (6) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (7) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of Tenant income certifications shall be available to the City upon request. Compliance by the Developer with the income certification requirements of the TCAC Regulatory Agreement, or any other lender's requirements, shall be deemed to be compliance with the requirements of this Section 3.1. City relies upon the information contained in such certifications to satisfy its reporting and record keeping requirements pursuant to applicable requirements of the Community Redevelopment Law. In the event the Developer fails to submit to City all of the documentation required by this Agreement, upon receipt of written notice of failure to provide such documentation from City and failure by the Developer to cure such default within forty-five (45) days after written notice from City, Developer shall be in default of this Agreement and City may seek all available remedies as set forth in this Agreement.

3.2 Annual Reports to City. The Developer shall submit to the City (a) not later than June 30<sup>th</sup> of each calendar year for the previous calendar year, or such other dates as may be requested by the City, a statistical report, including income and rent data for all Restricted Units, and vacancy history, setting forth the information called for therein and verified by the signatures of appropriate officers of Developer, and (b) within fifteen (15) days after receipt of a written request, any other information or completed forms requested by the City.

3.3 Additional Information. Developer shall provide any additional information reasonably requested by the City. The City shall have the right to examine and make copies of all books, records or other documents of Developer which pertain to any Unit.

3.4 Records. Developer shall maintain complete, accurate and current records pertaining to the Development, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income and household size of Tenants during

normal business hours upon no less than seventy-two (72) hours prior notice. All Tenant lists, applications and waiting lists relating to the Development shall at all times be kept separate and identifiable from any other business of the Developer and shall be maintained as required by the City, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City upon no less than seventy-two (72) hours' prior notice. The Developer shall retain copies of all materials obtained or produced with respect to occupancy of the Restricted Units for a period of at least ten (10) years, including:

- (a) Initial and annual Tenant income certifications;
- (b) Records which demonstrate compliance with the Tenant protections as specified in this Agreement;
- (c) Records which verify that the Development continues to meet Restricted Unit affordability requirements as provided herein; and
- (d) Any other records reasonably required by City to verify that Developer is in compliance with the provisions of this Agreement.

3.5 On-Site Inspection. The City shall have the right to perform an on-site inspection of the Development at least one time per year, during normal business hours upon ten (10) business days' notice. The Developer agrees to cooperate in such inspection, without charges or fees to the City, so long as City representatives comply with all safety rules, and so long as, upon Developer's request, representatives of Developer are permitted to accompany the City representative. In the event of an emergency, a City representative may immediately enter upon the Property.

#### ARTICLE 4. OPERATION OF THE DEVELOPMENT

4.1 Residential Use. The Development shall be used only for rental residential use. No part of the Development shall be used for transient housing.

4.2 Taxes and Assessments. Developer shall pay all real and personal property taxes, assessments, if any, and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Developer exercises its right to contest any tax, assessment, or charge against it, Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

4.3 Women and Minority Business Requirements. Developer shall comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), and the City's Women and Minority Business Enterprise Program with regard to equal employment opportunities.

4.4 No Nuisance. During the Term, Developer shall not maintain, cause to be maintained, and shall use commercially reasonable efforts to not allow to be maintained on or about the Property any public or private nuisance, including, without limitation, the conduct of criminal activities set forth in the nuisance abatement provisions of the Uniform Controlled Substances Act (Health and Safety Code § 11570, *et seq.*) as currently exists or as may be amended from time to time, or the Street Terrorism Enforcement and Prevention Act (Penal Code § 186.22, *et seq.*), as currently exists or as may be amended from time to time.

4.5 Hazardous Materials. During the Term, Developer shall comply with all provisions of the DDLA related to Hazardous Materials.

4.6 Operating Budget. During the Term, Developer shall annually submit to City for its reasonable and timely approval a budget for the operation of the Development (the “**Operating Budget**”). The initial approved Operating Budget is included in the development proforma attached hereto as Exhibit B. The Operating Budget shall contain a line item for each component of gross income and operating expenses. Except as otherwise agreed to in writing by City, the Operating Budget submitted annually shall conform to the Operating Budget attached hereto. The fees and payments budgeted to be paid to Management Agent shall not exceed prevailing market rates for the services performed. During the calendar year covered by the approved Operating Budget, Developer shall not disburse any expenses of operating the Development (individually or in the aggregate) in excess of the Operating Expenses approved by City pursuant to the Operating Budget submitted by Developer pursuant to this Section, except in the case of emergency repairs. The annual Operating Budget shall have attached a schedule of proposed monthly rents for the coming year calculated in accordance with the Rents permitted under this Agreement. All subsequent rent schedules shall be submitted to City in substantially the form set forth in the Operating Budget. The Developer shall make available its books and records to the City for inspection and copying, upon reasonable advance notice during its normal hours of business.

4.7 Costs of Operations. All costs of operating the Development, including the Restricted Units, shall be the sole responsibility of Developer, including without limitation, the following costs and expenses:

(a) All costs in connection with utilities, real estate taxes and assessments, and liability, fire, and hazard insurance;

(b) Payments of interest and principal, fees and charges in accordance with construction or permanent financing evidenced by deeds of trust senior to the City Loan and any payments required thereby or any other loans made to Developer; and

(c) All other expenses and operating costs incurred, including without limitation estimated expenses and funding of reserves.

4.8 Financial Reports, Books and Records. The books and accounts of the Restricted Units shall be kept in conformity with modified accrual basis accounting principles consistently applied in multifamily apartment communities with Restricted Units. The fiscal year for the Restricted Units shall be from January 1 to December 31.

(a) Financial Statements; Organizational Documents. Unless otherwise agreed to in writing by City and Developer, during the Term, Developer shall annually prepare, and on or before June 30 of each year, shall submit to City copies of such entity's annual financial statements for the immediately preceding calendar year and revised organizational and/or governing corporate documents if any changes to such documents were effected during the fiscal year.

(b) Other Reports. No later than June 30 of each calendar year, Developer shall file with City the following reports for the previous calendar year in a form satisfactory to City and verified by the signatures of appropriate officers of Developer:

(1) A statement of the fiscal condition of the Development, including a financial statement indicating surpluses or deficits in operating accounts, a listing of income and expenses, and amounts of any reserves;

(2) A report on the actual operating expenses for the prior year indicating, for each reserve account, the amount of any reserves disbursed, and the remaining balance;

(3) A certification, signed by the appropriate officers of Developer, that Developer is not in violation or default under this Agreement.

(c) Calculation of Residual Receipts. No later than June 30 of each calendar year, Developer shall file with City a calculation of Residual Receipts and any payments due on the City Loans for the previous calendar year in a form satisfactory to City and attested to by the signatures of appropriate officers of Developer. Such calculation shall be required even if the calculation does not result in any payment of Residual Receipts being required to be made to City.

(d) Audit Rights of City. Developer shall maintain accurate records with respect to all operations of the Restricted Units in accordance with the terms of this Agreement. City may, upon no less than thirty (30) days prior written notice to Developer and not more than once each twelve (12) month period, cause an independent Certified Public Accountant to inspect the records of the Development during normal business hours reasonably related to the requirements of this Agreement. The fees and expenses charged by such Certified Public Accountant in connection with such inspection shall be paid by City unless the calculations made by Developer are determined to be less than ninety five percent (95%) of the amount reported to City on a report required to be prepared or a calculation required to be made pursuant to this Agreement in any consecutive twelve (12) month period, in which case the Developer shall be responsible for the payment of the reasonable fees and expenses for such inspection.

4.9 Damage and Destruction; Developer's Duty to Rebuild. If all or any portion of the Development is damaged or destroyed by fire or other casualty, it shall be the duty of the Developer to rebuild, repair or construct said portion of the Development in a timely manner which will restore it to Lake Elsinore Municipal or Building Code compliance condition as approved by the City to the extent insurance proceeds are available and the Senior Lender and any Investor agree to such reconstruction.

In furtherance of the requirements of this Section, Developer shall keep the improvements on the Property insured by carriers at all times as required by the DDLA. In the event of loss, Developer shall give prompt notice to the insurance carrier and City.

If the Property is abandoned by the Developer, or if Developer fails to respond to insurance carrier offers to settle a claim for insurance benefits, City, subject to the rights of any Senior Lender, is authorized to collect and apply the insurance proceeds at its option either to restoration or repair of the Property or to the sums secured by LMIHAF Deed of Trust.

Upon damage to the Property or the improvements thereon, the Developer shall be obligated to (i) proceed with all due diligence hereunder and commence reconstruction within six (6) months after the damage occurs and complete reconstruction with due diligence, or (ii) if appropriate, to demolish and vacate the Property, unless prevented by causes beyond its reasonable control.

4.10 Replacement Reserve Requirements. In the first year or portion thereof following conversion and each year thereafter, Developer shall deposit, or shall cause the Management Agent to, annually deposited into the Replacement Reserve Forty Two Thousand Nine Hundred Dollars (\$42,900), which amount shall be increased by three percent (3%) per annum each year. Funds in the Replacement Reserve shall be used for capital replacements to the Development, such as structural and equipment repairs and replacements for fixtures and equipment which are normally capitalized under generally accepted accounting principles, and shall exclude ordinary maintenance items such as interior paint. Except for emergency expenditures, any expenditure by Developer from the Replacement Reserve in excess of Five Thousand Dollars (\$5,000) over any individual amount set forth in the approved Operating Budget must be approved in writing by City prior to its expenditure which shall be deemed approved within ten (10) working days of submission to City if not disapproved within that time period. Budgeted expenditures of Five Thousand Dollars (\$5,000) or more must be documented by paid invoices and submitted to City within thirty (30) days of disbursement from the Replacement Reserve. The non-availability of funds in the Replacement Reserve shall not in any manner relieve the Developer of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Development in the manner prescribed herein. Not less than once per year, Developer, at its expense, shall submit to City an accounting for the Replacement Reserve. The adequacy of deposits into the Replacement Reserve shall be reviewed annually by Developer and City (but only every five (5) years during such time as the Investor continues to hold an interest in Developer), and the amount of such deposits and the limit on expenditures without prior City approval may be adjusted at that time in writing by City in its reasonable discretion based upon an analysis of the reserves and the condition of the Development and any improvements thereon, but subject to (i) the approval, if applicable, of TCAC and Senior Lender, and (ii) consideration of the cash flow of the Development at that time.

4.11 Operating Reserve. Upon conversion to the permanent financing for the Development after completion of construction of the Development, Developer shall deposit, or shall cause the Management Agent to, deposit One Million Dollars (\$1,000,000) or such greater amount required by TCAC or any Senior Lender or Investor, into a separate interest-bearing trust account (the “**Operating Reserve**”) to be used solely for the Development. Thereafter, the Developer shall, or shall cause the Management Agent to, annually (but only every five (5) years

during such time as the Investor continues to hold an interest in Developer) set aside such amount as may be required by City (in its reasonable discretion), TCAC, or other Senior Lender or investor, into the Operating Reserve, but subject to (i) the approval, if applicable, of TCAC, Senior Lender and Investor if Investor continues to hold an interest in the Developer, and (ii) consideration of the cash flow of the Development at that time. During such time as the Investor holds an interest in Developer, operating deficits shall be funded in accordance with the Developer's agreement of limited partnership. Funds in the Operating Reserve shall be used to cover shortfalls between Development income and actual Development operating expenses or such other Development related expenses as may be approved by City. Except for emergency expenditures, any expenditure by Developer from the Operating Reserve in excess of Five Thousand Dollars (\$5,000) over any individual amount set forth in the approved Operating Budget must be approved in writing by City prior to its expenditure, which shall be deemed approved within ten (10) working days of submission to City if not disapproved within that time period. Budgeted expenditures of Five Thousand Dollars (\$5,000) or more must be documented by paid invoices and submitted to City within thirty (30) days of disbursement from the Operating Reserve. The non-availability of funds in the Operating Reserve does not in any manner relieve the Developer of the obligation to operate and maintain the Development in the manner prescribed herein. Not less than once per year, Developer, at its expense, shall submit to City an accounting for the Operating Reserve.

4.12 Reserve Fund Account Statements. The Replacement Reserve and Operating Reserve funds described in this Section shall be maintained in separate accounts in an FDIC-insured financial institution. The accounts maintained for the reserve funds shall accrue interest at the highest rate available for accounts of similar size, and the terms must allow for withdrawal of funds and accrued interest as required. All interest or other income earned by each of the reserve accounts shall be applied only to the purpose of that particular reserve account as specified herein. Developer shall maintain records for the reserve accounts in accordance with generally accepted accounting principles. All reserve fund account statements shall be reviewed annually by City and at such other times as the City may reasonably request.

4.13 Other Uses for Reserve Funds. If Developer and City mutually determine that any or all of the reserve funds are no longer required, and Developer obtains such determination from City in writing, Developer may, subject to obtaining any approvals required by any Senior Lender or Investor, cease to make deposits into the reserve fund accounts and may use the funds remaining in one or more of the reserve fund accounts as follows:

- (a) Payments for expenses for reasonable operating costs incurred, including maintenance and repair costs;
- (b) Regularly scheduled debt service payments in times of financial stress, but not to accelerate the repayment of any Senior Loan without the prior written consent of City;
- (c) Payment of reasonable operating costs of Developer as necessary to preserve the security of the City Loan;
- (d) Prepayment of the Fund 106 Loan or LMIHAF Loan;

- (e) Prepayment of other loan amounts;
- (f) Payment of accrued but unpaid City-approved management fees; and
- (g) Payment to Developer upon the prior written consent of City.

Developer agrees to promptly resume deposits into the reserve fund accounts upon the written request of City.

City agrees to reasonably consider that, if one of the general partners in the Developer partnership or its affiliate exercises its rights to purchase the Development or the Investor's rights in the Developer Partnership upon the end of the tax credit compliance period, then to the extent permitted in the Developer's agreement of limited partnership, the remaining reserves will transfer to such entity and the Developer shall ensure that such entity will return the remaining reserves to the Development upon that entity's purchase of the Development or the Investor's rights in the Development partnership.

4.14 No Prepayment of Junior Debt. Developer covenants and agrees that, unless and until all principal and interest outstanding under the City LMIHAF Loan is paid in full, except for payments on the Fund 106 Loan as set forth in the DDLA, Developer shall not make any prepayment of amounts due on any debt secured by a lien junior in position to the LMIHAF Deed of Trust.

4.15 City Monitoring Fees. Developer covenants and agrees that, commencing on the June 30 subsequent to the issuance of a Certificate of Occupancy for the Development, and each June 30 thereafter during the Term, Developer shall pay to City the City Monitoring Fees in an annual amount of Sixty Dollars (\$60) per Restricted Unit for the previous calendar year or portion thereof, as such amount shall be increased by three percent (3.0%) per year. Such amount shall be submitted on June 30 of each year with submission of the various annual reports due on June 30 required to be submitted to City hereunder.

4.16 Management Fees. Developer covenants and agrees that any general partner management fees paid from the operation of the Development shall not exceed \$35,000 per year, as such amount may be increased by 3% per annum, and shall be paid only after debt service payments are made. Any unpaid fees shall not bear interest and shall not accrue for later payment in the event there are insufficient funds to pay the general partner management fee in any given year. Further, Developer covenants and agrees that any limited partner asset management or other fees shall not exceed \$7,500 in the first year of operation of the Development, as such amount may be increased by 3% per annum thereafter, and shall be paid only after debt service payments are made. No other fees may be paid to partners of Developer except the general partner management fee and the limited partner asset management fee without the prior written consent of City.

## ARTICLE 5. PROPERTY MANAGEMENT AND MAINTENANCE

5.1 Management Responsibilities. The Developer shall be responsible for all management functions with respect to the Development, including without limitation the

selection of Tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no direct, or indirect, responsibility over management of the Development; however, the Developer shall operate the Development in accordance with this Agreement and the DDLA in a manner acceptable to the City. At all times during the Term, the Developer shall retain the Management Agent approved by the City in its reasonable discretion to perform its management duties hereunder. A resident manager shall also be required in accordance with applicable law.

The Development shall at all times be managed by an experienced management agent reasonably acceptable to the City, with demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing. The Developer shall submit for the City's approval the identity of any replacement management agent. The Developer shall also submit such additional information about the background, experience and financial condition of any proposed management agent as is reasonably necessary for the City to determine whether the proposed management agent meets the standard for a qualified management agent set forth above. If the proposed management agent meets the standard for a qualified management agent set forth above, the City shall approve the proposed management agent by notifying the Developer in writing. Unless the proposed management agent is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. If the proposed management agent is disapproved by the City for failing to meet the standard for a qualified management agent set forth above, the Developer shall submit for the City's approval a new proposed management agent within thirty (30) days following the City's disapproval. The Developer shall continue to submit proposed management agents for City approval until the City approves a proposed management agent.

5.2 Periodic Performance Review. The City reserves the right to conduct an annual (or more frequently, if deemed reasonably necessary by the City) review of the management practices and financial status of the Development (including, but not limited to, a review of the Management Agent's performance). The purpose of each periodic review will be to enable the City to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. The Developer shall cooperate with the City in such reviews.

5.3 Replacement of Management Agent. If, as a result of a periodic review, the City determines, in its reasonable judgment, that the Development is not being operated and managed in accordance with any of the material requirements and standards of this Agreement and the DDLA, the City shall deliver notice to Developer of its intention to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days after receipt by Developer of such written notice, City staff and the Developer shall meet in good faith to consider methods for improving the financial and operating status of the Development. If after a reasonable period as determined by the City (not to exceed sixty (60) days), the City determines that the Developer is not operating and managing the Development in accordance with the material requirements and standards of this Agreement and the DDLA, the City may require replacement of the Management Agent in accordance with the DDLA and this Agreement.



If, after the above procedure, the City requires in writing the replacement of the Management Agent, Developer shall promptly dismiss the then Management Agent, and shall appoint as the replacement management agent a person or entity meeting the standards for a management agent set forth above and approved by the City, and in accordance with the DDLA.

Any contract for the operation or management of the Development entered into by Developer shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute a Developer Event of Default under this Agreement and the DDLA.

5.4 Approval of Management Plans and Policies. Prior to the initial leasing of any of the Units at the Property, following the completion of the construction, and annually thereafter to the extent of any amendments thereto, the Developer shall submit its written management plan and policies with respect to the Development to the City for its review and approval (the "Management Plan"). If the Developer's proposed Management Plan sets forth the Developer's commitment and ability to operate the Development in accordance with this Agreement, the DDLA and applicable laws, the City shall approve the proposed Management Plan by notifying the Developer in writing. Unless the proposed Management Plan is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. If the proposed Management Plan is disapproved by the City, the Developer shall submit for the City's approval a new proposed Management Plan, which addresses the inadequacies set forth in the City's notice, within thirty (30) days following the City's disapproval. The Developer's failure to obtain the City's approval of a Management Plan (which approval shall not be withheld unreasonably), within one hundred twenty (120) days from the date of the Developer's submission of the proposed Management Plan shall constitute a Developer Event of Default under this Agreement and the DDLA.

5.5 Maintenance and Replacement. Developer shall maintain the Development, including the Restricted Units, in good condition and in compliance with the DDLA and all applicable Governmental Requirements, including without limitation, the City of Lake Elsinore Municipal Code, at its sole cost and expense, as follows:

(a) Interior Maintenance. Developer shall maintain the interior of buildings, including carpet, drapes and paint, in clean and habitable condition.

(b) Exterior Building Maintenance. Developer shall maintain the Development in a clean and attractive condition at all times, including the immediately surrounding area to the curb line, and including keeping the Development and any balcony or patio adjacent to the Development free from graffiti and from an accumulation of belongings or of any debris or waste materials consistent with community standards, the DDLA and all applicable Governmental Regulations.

(c) Landscaping. Developer shall maintain all landscaping within the Development in a good condition.

The Restricted Units shall be maintained in the same condition and manner as any other Units. All services made available to occupants of the Units included in their rental

payments shall be made available to the Restricted Units at no additional cost to the occupants of the Restricted Units. Developer shall not permit any temporary structures to be constructed on the Property, except in connection with the construction of the Development.

Developer shall, at its sole cost and expense, from time to time make all necessary and proper repairs, renewals and replacements to keep the Units, common areas, walkways, driveways, parking areas and landscaping within the Development in good condition and in a safe, decent and sanitary condition. Developer shall manage and maintain the Development in accordance with all applicable housing quality standards and local code requirements, concerning marketing, operation, maintenance, repair, security, rental policy and method of selection of Tenants.

5.6 Right To Enter To Cure. If at any time the Developer fails to maintain the Property in accordance with this Agreement and such condition is not corrected within (i) five (5) business days after written notice from City with respect to graffiti, debris, waste material, broken windows, and general maintenance, or (ii) thirty (30) days after written notice from City with respect to landscaping and building improvements, then City, in addition to whatever remedies it may have at law or at equity, shall have the right to enter upon the Development and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien upon the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by City and/or costs of such cure, including a ten percent (10%) administrative charge, which amount shall be promptly paid by the Developer upon demand.

## ARTICLE 6. MISCELLANEOUS

6.1 Term. The provisions of this Agreement shall apply to the Property and the Development for the entire Term even if the LMIHAF Loan is paid in full prior to the end of the Term. This Agreement shall bind any successor, heir or assign of Developer, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the City. The City makes the LMIHAF Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

6.2 Insurance. During the development of the Development, Developer shall provide evidence to City of its maintenance of insurance in accordance with the requirements set forth in the DDLA and incorporated by reference herein. Upon completion of the Development and annually throughout the Term, Developer shall provide evidence to the City of its maintenance of insurance in such amounts and of such nature as is required by the DDLA.

6.3 Compliance with Other Programs. Developer, or any successor in interest, shall comply with all of the terms, conditions, obligations and other requirements of any other program from which funds used to finance the development, operation and maintenance of the Development.

6.4 Compliance with the DDLA. The Developer's actions with respect to the Property shall at all times be in full conformity with: (i) all requirements of the DDLA; and (ii)

all applicable requirements imposed on projects pursuant to California Health and Safety Code Section 33334.2 et seq. (but only during such time as such laws remain in effect).

6.5 Covenants to Run With the Land. The City and Developer hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases such conveyed portion of the Property from the requirements of this Agreement.

6.6 Restrictions on Transfer. The identity and qualifications of Developer as an experienced developer and operator/manager of multifamily housing are of particular concern to City. It is because of this identity and these qualifications that City has entered into this Agreement with the Developer. Prior to the expiration of the Term, except as expressly set forth in the DDLA, without the prior approval of City, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement by assignment, change of control, operation of law or otherwise, nor shall Developer make any total or partial sale, transfer, conveyance, encumbrance to secure financing (including, without limitation, the grant of a deed of trust to secure funds necessary for construction and permanent financing of the Development), distribution, assignment or lease of the whole or any part of the Property (except residential leases in accordance with the terms of this Agreement) or any material change in the management or control of Developer (including, without limitation, a change in the identity of the Developer, or a change in the management or control of Developer). Any purported transfer, voluntary or by operation of law, in violation of this Section shall constitute a default hereunder and shall be void and City shall have the cumulative options to seek all remedies available at law or equity, including acceleration of the LMIHAF Loan.

All of the terms, covenants and conditions of this Agreement shall be binding upon Developer and the permitted successors and assigns of Developer.

6.7 Developer Default; Enforcement by the City. If Developer fails to perform any obligation under this Agreement, and fails to cure the default within forty-five (45) days after the City has notified the Developer in writing of the default or, if the default cannot be cured within forty-five (45) days, failed to commence to cure within forty-five (45) days and thereafter diligently pursue such cure (in no event to exceed one hundred twenty (120) days from the date of the City's initial notice), the City shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

(a) Acceleration of the City Loans. The City may declare a default under the LMIHAF Note and/or the Fund 106 Note, accelerate the indebtedness evidenced thereby, and proceed with foreclosure under the Deeds of Trust securing the City Loans.

(b) Action to Compel Performance or for Damages. The City may bring an action at law or in equity to compel Developer's performance of its obligations under this Agreement, and/or for damages.

(c) Remedies Provided Under the DDLA. The City may exercise any other remedy provided under the DDLA.

6.8 Recording and Filing. The City and Developer shall cause this Agreement, and all amendments and supplements to it, to be recorded against the Property in the Official Records of the County of Riverside.

6.9 Rights of the City. This Agreement does not in any way infringe on the right or duties of the City to enforce any of the provisions of the Municipal Code including, but not limited to, the abatement of dangerous buildings. In addition to the general rights of enforcement, the City shall have the right, through its agents and employees, to enter upon any part of the Property for the purpose of enforcing the Vehicle Code, and the ordinances and other regulations of the City, and for maintenance and/or repair of any or all publicly owned utilities.

6.10 Hold Harmless. Developer agrees to defend, indemnify and hold the City Indemnitees harmless from liability for damage or claims for any type of damage including, but not limited to, personal injury and claims for property damage, which may arise from or in connection with the activities of Developer or those of Developer's contractors, subcontractors, agents, employees or other persons acting on Developer's behalf which relate to the Development, including without limitation any performance of or failure to perform the obligations of Developer set forth in this Agreement. Notwithstanding the foregoing, Developer shall not be required to indemnify City Indemnities or any other person identified in this Section for active negligence or misconduct by such City Indemnities or person.

6.11 Third Party Beneficiaries. Except for the City in its capacity as housing successor and the Successor Agency to the former Redevelopment Agency of the City of Lake Elsinore, which are expressly made third party beneficiaries hereof as provided herein below, this Agreement is made and entered into for the sole protection and benefit of City, its successors and assigns, and Developer, its permitted successors and assigns, and no other person or persons shall have any right of action hereon.

Notwithstanding the foregoing, City in its capacity as housing successor, Successor Agency and their respective successors and assigns are expressly made third party beneficiaries to this Agreement and the conditions, covenants and restrictions contained herein governing the use, operation and maintenance of the Property as affordable housing to ensure that the Restricted Units qualify as affordable housing units pursuant to Sections 33334.2 and 33413 of the Community Redevelopment Law. The City in its capacity as housing successor and Successor Agency have the right to enforce all of the provisions of this Agreement and any amendment to this Agreement shall require the written consent of City. Except as expressly set forth herein, no other person or persons shall have any right of action on this Agreement.

6.12 Governing Law. This Agreement shall be governed by the laws of the State of California.

6.13 Attorneys' Fees. In any action to interpret or enforce any provision of this Agreement, the prevailing party shall be entitled to its costs and reasonable attorneys' fees and costs. As used herein, the terms "attorneys' fees" or "attorneys' fees and costs" means the fees and expenses of counsel to the parties hereto (including, without limitation, in-house or other counsel employed by City or Developer) which may include printing, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred.

6.14 Amendments. This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the Official Records of the County of Riverside.

6.15 Notice. All notices given or certificates delivered under this Agreement shall be in writing and be deemed received on the delivery or refusal date shown on the delivery receipt, if: (i) personally delivered by a commercial service which furnishes signed receipts of delivery or (ii) mailed by certified mail, return receipt requested, postage prepaid, addressed as set forth below:

City: City of Lake Elsinore  
130 South Main Street  
Lake Elsinore, CA 92530  
Attention: City Manager

Developer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Any of the parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or communications shall be sent.

6.16 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

6.17 Provision Not Merged with City Grant Deed. None of the provisions of this Agreement are intended to or shall be merged by the grant deed transferring title to any real

property from City to Developer or any successor in interest, and any such grant deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

6.18 Time of the Essence. In all matters under this Agreement, the Parties agree that time is of the essence.

6.19 Legal Actions. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the venue for such action shall be the Superior Court of the County of Riverside.

6.20 Complete Understanding of the Parties. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the matters set forth in this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. The Parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (including but not limited to Civil Code Section 1654 as may be amended from time to time) shall not apply to the interpretation of this Agreement.

6.21 City Approval. Whenever this Agreement calls for City approval, consent, or waiver, the written approval, consent, or waiver of the City Manager, or his or her designee as designated in writing, shall constitute the approval, consent, or waiver of the City, without further authorization required from the City Council. The City hereby authorizes the City Manager, or his or her designee as designated in writing, to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the City. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies. The City Manager, or his or her designee as designated in writing, is also hereby authorized to approve, on behalf of the City, requests by the Developer for reasonable extensions of time deadlines set forth in this Agreement. The City shall not unreasonably delay in reviewing and approving or disapproving any proposal by the Developer made in connection with this Agreement.

6.22 State Law Requirements.

(a) Enforcements by Certain Third Parties. Pursuant to Health and Safety Code Section 33334.3(f)(7) a default under this Agreement, including the rental of a Restricted Unit by the Developer to a household not eligible under this Agreement, may be enforceable by the City, a residents' association, a resident of another affordable unit, a former resident of a Unit, a person on an affordable housing waiting list, and others who are listed in any applicable state law. The Parties agree and acknowledge that such rights shall only exist during such time that the Property is subject to the requirements of Health and Safety Code Section 33334.3(f)(7), or any successor statute.

(b) Developer Obligations Prior to Expiration of Term. At least six (6) months prior to the expiration of the Term, Developer shall provide by first-class mail, postage prepaid, a notice to all Tenants in the Restricted Units containing: (1) the anticipated date of the

expiration of the Term, (2) any anticipated Rent increase upon the expiration of the Term, (3) a statement that a copy of such notice will be sent to the City, and (4) a statement that a public hearing may be held by the City on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. Developer shall also file a copy of the above-described notice with the City Manager. In addition, Developer shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11, to the extent applicable.

6.23 Multiple Originals; Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

***Remainder of Page Left Intentionally Blank***

IN WITNESS WHEREOF, the City and Developer have executed this Agreement by duly authorized representatives as of the Effective Date.

**CITY:**

**CITY OF LAKE ELSINORE**, a California municipal corporation

By: \_\_\_\_\_  
Grant Yates, City Manager

ATTEST:

By: \_\_\_\_\_  
Mark Mahan, Deputy City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Barbara Leibold, City Attorney

[SIGNATURE PAGE 1 OF 3]  
[LMIHAF REGULATORY AGREEMENT]



**DEVELOPER:**

MISSION COTTAGES, LP,  
a California limited partnership

By: Cottages Management, LLC,  
a California limited liability company,  
its Administrative General Partner

By: \_\_\_\_\_  
Steven P. Semingson  
Managing Member

By: AOF Mission Trails LLC,  
a California limited liability company,  
its Managing General Partner

By: AOF/Pacific Affordable Housing  
Corporation, a California nonprofit public  
benefit corporation,  
its Sole Member and Manager

By: \_\_\_\_\_  
Philip J. Kennedy  
President

[SIGNATURE PAGE 2 OF 3]  
[LMIHAF REGULATORY AGREEMENT]

AGP

Cottages Management, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Steven P. Semingson  
Managing Member

MGP

AOF Mission Trails LLC,  
a California limited liability company

By: AOF/Pacific Affordable Housing Corporation,  
a California nonprofit public benefit corporation,  
its Sole Member and Manager

By: \_\_\_\_\_  
Philip J. Kennedy  
President

[SIGNATURE PAGE 3 OF 3]  
[LMIHAF REGULATORY AGREEMENT]

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

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Name: \_\_\_\_\_  
Notary Public

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

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Name: \_\_\_\_\_  
Notary Public

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

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Name: \_\_\_\_\_  
Notary Public

EXHIBIT A

PROPERTY DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LAKE ELSINORE, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 15, THE SOUTHEAST QUARTER OF SECTION 16; AND THE NORTHEAST QUARTER OF SECTION 21, ALL OF TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 12, IN BLOCK "G" OF RANCHO LA LAGUNA, AS SHOWN BY MAP ON FILE IN BOOK 6 PAGE 296 OF MAPS, SAN DIEGO COUNTY RECORDS;

THENCE SOUTH 15°15' EAST ON THE EASTERLY LINE OF SAID RANCHO, 990 FEET, TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 15°15' EAST, ALONG SAID RANCHO LINE 165 FEET;

THENCE NORTH 74°45' EAST, 1313 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY LINE OF MISSION TRAIL HIGHWAY;

THENCE NORTHERLY ON THE WESTERLY LINE OF SAID MISSION TRAIL HIGHWAY 167 FEET, MORE OR LESS TO A POINT WHICH BEARS NORTH 74°45' EAST FROM THE TRUE POINT OF BEGINNING;

THENCE SOUTH 74°45'20" WEST 1281 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING;

SAID LAND ALSO DESCRIBED AS ALL OF LOTS 1282, 1254, 1226, 1191, 1163, 1123, 1098, 1053, 1031, 980 AND THE NORTHWESTERLY HALF OF LOTS 1281, 1255, 1192, 1124, 1097, 1054, 1162, 1225, 1030 AND 981 AS SHOWN ON ASSESSOR'S MAP NO. 48, RIVERSIDE COUNTY RECORDS.

ALSO THAT PORTION OF THE ABANDONED RIGHT OF WAY TO ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY ADJACENT THERETO.

PARCEL 2:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 15; THE SOUTHEAST QUARTER OF SECTION 16; AND THE NORTHEAST QUARTER OF SECTION 21, ALL IN TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 12 IN BLOCK G OF RANCHO LA LAGUNA AS PER MAP RECORDED IN BOOK 6, PAGE 296 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, CALIFORNIA;

THENCE SOUTH 15°15' EAST ON THE EASTERLY LINE OF SAID RANCHO, A DISTANCE OF 1155 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 15°15' EAST ALONG SAID RANCHO LINE, A DISTANCE OF 165 FEET;

THENCE NORTH 74°45' EAST A DISTANCE OF 1344.95 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY LINE OF MISSION LINE OF MISSION TRAIL HIGHWAY, WHICH IS ALSO THE NORTHEASTERLY CORNER OF THAT PROPERTY CONVEYED TO ALEXANDER DEUTCH, AS RECORDED IN BOOK 2573, PAGE 519, OFFICIAL RECORDS;

THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID MISSION TRAIL HIGHWAY, A DISTANCE OF 169 FEET, MORE OR LESS, TO THE SOUTHEASTERLY CORNER OF THE PROPERTY CONVEYED TO G. E. ORR, ET AL., AS RECORDED IN BOOK 3193, PAGE 166, OFFICIAL RECORDS;

THENCE SOUTH 74°45' WEST, ALONG THE SOUTHERLY LINE OF SAID G.E. ORR PROPERTY TO THE POINT OF BEGINNING.

SAID LAND BEING ALSO DESCRIBED AS LOTS 982, 1029, 1055, 1096, 1125, 1161, 1193, 1224, 1256, 1280 AND THE SOUTHERLY HALF OF LOTS 981, 1030, 1054, 1097, 1124, 1162, 1192, 1225, 1255, 1281 AND THE NORTHERLY HALF OF LOT 1298, AS SHOWN ON ASSESSORS MAP NO. 48, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY.

ALSO THAT PORTION OF THE ABANDONED RIGHT OF WAY TO ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY ADJACENT THERETO.

PARCEL 3:

PARCEL NO. 2, AS SHOWN ON RECORD OF SURVEY ON FILE IN BOOK 56, PAGE 69 OF RECORDS OF SURVEY, RIVERSIDE COUNTY, RECORDS, BEING A PORTION OF SECTIONS 15 AND 16, TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN.

EXCEPTING THEREFROM ALL MINERALS, OIL, GAS, OR HYDROCARBON SUBSTANCES, IN, UPON OR UNDER SAID LAND.

APN: 365-030-005, 006, 007, et.al.

EXHIBIT B

OPERATING BUDGET

[TO BE INSERTED PRIOR TO CLOSING]



## EXHIBIT C

### CALCULATION OF ALLOWABLE RENT

The parties desire to clarify the calculation of Allowable Rent as set forth herein. Accordingly, the parties acknowledge and agree that in determining Allowable Rent for the Restricted Units, Allowable Rent shall be calculated annually using the methodology described herein. The parties further acknowledge and agree that the methodology for calculating Allowable Rent on the Restricted Units on an annual basis is as follows:

- (i) determine maximum allowable rent in accordance with any Tax Credit Regulatory Agreement applicable to the Restricted Unit;
- (ii) determine Health & Safety Code (H&SC) maximum Allowable Rent to be charged for Very Low Income Units and Low Income Units;
- (iii) determine maximum allowable rent pursuant to any applicable regulations for any other source of financing secured for, and/or continued to be secured by, the Development, including, if applicable, any effective Section 8 Program regulations as to any Restricted Unit designated as a project-based Section 8 unit or otherwise occupied by a holder of a Rental Voucher or Rental Certificate evidencing participation in the Section 8 Program; and then
- (iv) compare the maximum allowable rents calculated pursuant to clause (i), (ii) and (iii) above and apply the lowest of the foregoing.

Per this Agreement, “Allowable Rent” is defined as an amount (including utilities) equal to 1/12 of (i) for a Very Low Income Household, an amount not to exceed the product of 30% times 50% of Median Income, adjusted for Assumed Household Size; or (ii) for a Low Income Household, an amount not to exceed the product of 30% times 60% of Median Income, adjusted for Assumed Household Size. During any period in which the TCAC Regulatory Agreement encumbers the Property, “adjusted for Assumed Household Size” shall mean the number of bedrooms times 1.5.

Per this Agreement, during the Term, the Restricted Units shall consist of one hundred forty two (142) Units, which are to be leased or held vacant for occupancy by Very Low Income Households and Low Income Households at an Allowable Rent as specified herein.

---

\* “Median Income” means area median income published by HCD for a family of four in Riverside County. The 2018 area median income published by HCD for a family of four in Riverside County is \$65,800.

### **SAMPLE CALCULATION OF ALLOWABLE RENT FOR 2019:**

Allowable Rent calculations for the Restricted Units which are also subject to TCAC restrictions are as follows:

<u>Rent Restriction</u>		<u>2-Bedrooms*</u>	<u>3-Bedrooms*</u>
<u>H&amp;SC Very Low Income/TCAC @ 50% AMI</u>			
1/12 x (30% x 50% Median Income)		\$758.75	\$822.50
TCAC @ 50% Median		\$808.00	\$969.00
<u>Allowable Rents:</u>		<b>\$758.75</b>	<b>\$822.50</b>
<u>H&amp;SC Low Income/TCAC @ 60% AMI</u>			
1/12 x (30% x 60% Median Income)		\$888.00	\$987.00
TCAC @ 60% Median		\$933.00	\$1,120.00
<u>Allowable Rents:</u>		<b>\$888.00</b>	<b>\$987.00</b>

**Highlighted Rents are 2018 Allowable Rents calculated in accordance with this Agreement.**

---

\* Applicable maximum rents exclude tenant utility allowance of \$104 per month for a two bedroom unit, and \$129 per month for a three bedroom unit. Tenants shall pay only for electric basic, electric cooking and electric heating. Developer shall pay all other utilities.

**SAMPLE MAXIMUM QUALIFYING INCOMES:**

Maximum Adjusted Income for households in each income category based on 2018 income numbers are set forth below.

**2018 TCAC Maximum Adjusted Income:**

Family Size	50% Median	60% Median
1 Person	\$23,600	\$28,320
2 Persons	\$27,000	\$32,400
3 Persons	\$30,350	\$36,420
4 Persons	\$33,700	\$40,440
5 Persons	\$36,400	\$43,680
6 Persons	\$39,100	\$46,920
7 Persons	\$41,800	\$50,160
8 Persons	\$44,500	\$53,400

**2018 LMIHAF Maximum Adjusted Income:**

Family Size	Low/60% Median Income	Very Low/50% Median Income
1 Person	\$27,630	\$23,025
2 Persons	\$31,590	\$26,325
3 Persons	\$35,520	\$29,600
4 Persons	\$39,480	\$32,900
5 Persons	\$42,630	\$35,525
6 Persons	\$45,810	\$38,175

\*\* 2018 area median income published by HCD for a family of four in Riverside County is \$65,800

EXHIBIT L

FORM OF NOTICE OF AFFORDABILITY RESTRICTIONS

## EXHIBIT L

### FORM OF NOTICE OF AFFORDABILITY RESTRICTIONS

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Lake Elsinore  
130 South Main Street  
Lake Elsinore, California 92530  
Attn: City Manager

No fee for recording pursuant to  
Government Code Section 27383

---

*(Space above for Recorder's Use)*

### **NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY**

**NOTICE IS HEREBY GIVEN**, that the City of Lake Elsinore (the “City”), to carry out certain obligations under the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.), has required MISSION COTTAGES LP, a California limited partnership (the “Owner”), to enter into certain affordability covenants and restrictions entitled Regulatory Agreement and Declaration of Restrictive Covenants (Low and Moderate Income Housing Asset Fund) (the “Restrictions”), with reference to a housing development (the “Development”) situated on that certain real property (the “Property”), located on Mission Trail Road, City of Lake Elsinore, County of Riverside, Assessor’s Parcel Nos. 365-030-005, 006, 007, et al., further described in Exhibit A, incorporated herein by reference.

The affordability covenants and restrictions contained in the Restrictions include, without limitation, and as further described in the Restrictions:

1. Twenty (20) of the units in the Development are restricted for occupancy by households with an adjusted gross income that does not exceed fifty percent (50%) of area median income, at rents affordable to very low income households.

2. One hundred twenty two (122) of the units in the Development are restricted for occupancy by households with an adjusted gross income that does not exceed sixty percent (60%) of area median income, at rents affordable to low income households.

3. Additional requirements concerning operation, management, and maintenance of the Development are also imposed by the Restrictions.

In the event of any conflict between this Notice of Affordability Restrictions on Transfer of Property (the “Notice”) and the Restrictions, the terms of the Restrictions shall prevail.

The Restrictions were recorded concurrently herewith, and shall remain in effect until the later of the date fifty-five (55) years after the City’s issuance of the final certificate of occupancy for the construction of the Development or December 31, 2077.

This Notice is being recorded and filed by the City in compliance with Health and Safety Code Sections 33334.3(f)(3) and (4) and/or Section 33413(c)(5), as amended effective this date, and shall be indexed against the City and the Owner.

This Notice may be executed in counterparts, and multiple originals, each of which shall be deemed to be an original and shall constitute one and the same agreement.

**SIGNATURES ON FOLLOWING PAGE**

IN WITNESS WHEREOF, the parties have executed this Notice of Affordability Restrictions on Transfer of Property on or as of March 28, 2019.

**CITY:**

CITY OF LAKE ELSINORE, a municipal corporation

By: \_\_\_\_\_  
Name: Grant Yates  
Title: City Manager

**ATTEST:**

By: \_\_\_\_\_  
Mark Mahan, Deputy City Clerk

**APPROVED AS TO FORM:**

LEIBOLD McCLENDON & MANN, P.C.

By: \_\_\_\_\_  
Barbara Leibold, City Attorney

[SIGNATURE PAGE 1 OF 1]  
[NOTICE OF AFFORDABILITY RESTRICTIONS]

**DEVELOPER:**

MISSION COTTAGES, LP,  
a California limited partnership

By: Cottages Management, LLC,  
a California limited liability company,  
its Administrative General Partner

By: \_\_\_\_\_  
Steven P. Semingson  
Managing Member

By: AOF Mission Trails LLC,  
a California limited liability company,  
its Managing General Partner

By: AOF/Pacific Affordable  
Housing Corporation, a  
California nonprofit public  
benefit corporation,  
its Sole Member and Manager

By: \_\_\_\_\_  
Philip J. Kennedy  
President

[SIGNATURE PAGE 2 OF 2]  
[NOTICE OF AFFORDABILITY RESTRICTIONS]



STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

Name: \_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

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

Name: \_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

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

Name: \_\_\_\_\_  
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LAKE ELSINORE, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 15, THE SOUTHEAST QUARTER OF SECTION 16; AND THE NORTHEAST QUARTER OF SECTION 21, ALL OF TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 12, IN BLOCK "G" OF RANCHO LA LAGUNA, AS SHOWN BY MAP ON FILE IN BOOK 6 PAGE 296 OF MAPS, SAN DIEGO COUNTY RECORDS;

THENCE SOUTH 15°15' EAST ON THE EASTERLY LINE OF SAID RANCHO, 990 FEET, TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 15°15' EAST, ALONG SAID RANCHO LINE 165 FEET;

THENCE NORTH 74°45' EAST, 1313 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY LINE OF MISSION TRAIL HIGHWAY;

THENCE NORTHERLY ON THE WESTERLY LINE OF SAID MISSION TRAIL HIGHWAY 167 FEET, MORE OR LESS TO A POINT WHICH BEARS NORTH 74°45' EAST FROM THE TRUE POINT OF BEGINNING;

THENCE SOUTH 74°45'20" WEST 1281 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING;

SAID LAND ALSO DESCRIBED AS ALL OF LOTS 1282, 1254, 1226, 1191, 1163, 1123, 1098, 1053, 1031, 980 AND THE NORTHWESTERLY HALF OF LOTS 1281, 1255, 1192, 1124, 1097, 1054, 1162, 1225, 1030 AND 981 AS SHOWN ON ASSESSOR'S MAP NO. 48, RIVERSIDE COUNTY RECORDS.

ALSO THAT PORTION OF THE ABANDONED RIGHT OF WAY TO ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY ADJACENT THERETO.

PARCEL 2:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 15; THE SOUTHEAST QUARTER OF SECTION 16; AND THE NORTHEAST QUARTER OF SECTION 21, ALL IN TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 12 IN BLOCK G OF RANCHO LA LAGUNA AS PER MAP RECORDED IN BOOK 6, PAGE 296 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, CALIFORNIA;

THENCE SOUTH 15°15' EAST ON THE EASTERLY LINE OF SAID RANCHO, A DISTANCE OF 1155 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 15°15' EAST ALONG SAID RANCHO LINE, A DISTANCE OF 165 FEET;

THENCE NORTH 74°45' EAST A DISTANCE OF 1344.95 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY LINE OF MISSION LINE OF MISSION TRAIL HIGHWAY, WHICH IS ALSO THE NORTHEASTERLY CORNER OF THAT PROPERTY CONVEYED TO ALEXANDER DEUTCH, AS RECORDED IN BOOK 2573, PAGE 519, OFFICIAL RECORDS;

THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID MISSION TRAIL HIGHWAY, A DISTANCE OF 169 FEET, MORE OR LESS, TO THE SOUTHEASTERLY CORNER OF THE PROPERTY CONVEYED TO G. E. ORR, ET AL., AS RECORDED IN BOOK 3193, PAGE 166, OFFICIAL RECORDS;

THENCE SOUTH 74°45' WEST, ALONG THE SOUTHERLY LINE OF SAID G.E. ORR PROPERTY TO THE POINT OF BEGINNING.

SAID LAND BEING ALSO DESCRIBED AS LOTS 982, 1029, 1055, 1096, 1125, 1161, 1193, 1224, 1256, 1280 AND THE SOUTHERLY HALF OF LOTS 981, 1030, 1054, 1097, 1124, 1162, 1192, 1225, 1255, 1281 AND THE NORTHERLY HALF OF LOT 1298, AS SHOWN ON ASSESSORS MAP NO. 48, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY.

ALSO THAT PORTION OF THE ABANDONED RIGHT OF WAY TO ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY ADJACENT THERETO.

PARCEL 3:

PARCEL NO. 2, AS SHOWN ON RECORD OF SURVEY ON FILE IN BOOK 56, PAGE 69 OF RECORDS OF SURVEY, RIVERSIDE COUNTY, RECORDS, BEING A PORTION OF SECTIONS 15 AND 16, TOWNSHIP 6 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN.

EXCEPTING THEREFROM ALL MINERALS, OIL, GAS, OR HYDROCARBON SUBSTANCES, IN, UPON OR UNDER SAID LAND.

APN: 365-030-005, 006, 007, et.al.

EXHIBIT M  
CONSTRUCTION BUDGET

**The Cottages at Mission Trail**  
 Lake Elsinore, CA

**Budget Breakdown (Through PCCO#2)**

3/4/2019

CODE	DESCRIPTION	TOTAL	NOTES
2-100	DEMOLITION	\$ 34,965	Demo & haul of existing trees, concrete slabs, & CMU walls. Includes SWPPPS initial install.
2-050	OFFSITE IMPROVEMENTS	\$ 311,875	Includes traffic control, removal of existing AC, curb and gutter, sidewalk, curb ramps, cross gutter, 6" AC over 14" base, striping, signage, & manhole adjustment.
2-200	EARTHWORK	\$ 750,615	Rough grade, over ex per soil's report, w/ no contaminated/wet/undocumented fill soils/oversized rock/groundwater/etc. Balanced site. Also, includes keyway drains per Geotechnical Report.
2-500	ONSITE ASPHALT PAVING	\$ 276,072	Includes asphalt section per Civil construction note 5 (3.5" AC/4"), not per soil's report per accepted VE option. Also includes striping, wheel stops, etc. Includes asphalt paving and striping in lieu of concrete sports court with a section of 3.5"AC/4"CMB.
2-600	FENCING	\$ 92,125	Includes metal tube steel fencing and gate per plan. Includes 6' high chain link fencing around the detention basin. Includes 6' high chain link fence at the north and south property line in lieu of masonry shown on the drawings per the accepted VE.
2-700	EXTERIOR WET UTILITIES	\$ 1,445,680	Includes on-site storm drain, domestic water, and sanitary system per plan.
2-900	LANDSCAPING	\$ 604,350	Includes irrigation, controllers, planting, mulch, site furnishings, 30-day maintenance. Tot-lot equipment and basketball hoops FFE by Owner. Tot Lot included as sand play surface.
3-005	BUILDING CONCRETE & REBAR	\$ 1,457,169	Aggregate base subgrade, 15mil Stego, foundations, PT garage slabs, reinforced DU slabs.
3-008	ON SITE CONCRETE	\$ 672,176	Includes curb & gutter on native, 6" & 8" pcc unreinforced drive approaches on native, 4" reinforced (#3's in lieu of #4's per accepted VE option) walkways on native, 4" stoops/porches/patios reinforced (#3's in lieu of #4's per accepted VE option) on native, standard asphalt paving in lieu of concrete sports court. Excludes v-ditch at CMU wall per section B-B on sheet C.2 (not designed and assumed to be not required). Includes all patio's reduced by 25% per plan per accepted VE option.
4-001	MASONRY	\$ 76,123	Includes a 6' high masonry wall at Mission Trail with a 10' return on both sides per the Summerly Project details provided by Wison Mikami to include split face wall with precision cap and associated footing.
5-060	STRUCTURAL STEEL	\$ 75,095	Includes exterior handrails at ext stairs. Excludes bollards. Per accepted VE, all metal awnings are eliminated and replace with foam plant-ons.
6-000	ROUGH CARPENTRY	\$ 3,122,168	Includes all labor, lumber, EWP/Floors, trusses, hardware, and equipment. Includes railroad tie stair to detention basin.
6-100	DRYWALL	\$ 1,065,904	1/2" & 5/8" type x where indicated. Moisture resistant bd where indicated. Acoustical sealant. Orange peel finish.
6-200	FINISH CARPENTRY	\$ 79,014	Includes wood caps, wood handrails, wood base, wood shelves/poles per plan
6-400	MILLWORK	\$ 378,916	Slab door, thermo-fused material, standard colors, mdf drawers, white interiors, uppers/lowers per elevations.
6-410	COUNTERTOPS	\$ 54,406	Formica FX-2 in lieu of Granite or Cultured Stone in all units per accepted VE option.
7-100	WATERPROOFING	\$ 24,781	Includes deck metal, stair metal, door pans, & elastomeric coating at exterior stairs.
7-200	ROOFING	\$ 599,632	Includes asphalt dimensional roof shingles (by GAF or Malarkey), with 30# felt and O'hagins per plan
7-201	PLASTER	\$ 1,329,960	One coat plaster system over WRB. Includes bituthene waterproofing membrane at horizontals, as well as foam trim/shapes/shutters and clay gable end accents.
7-210	INSULATION	\$ 211,738	R30 in attics, R19 in exterior walls, R11 in party walls/tubs.
7-250	SHEET METAL	\$ 191,892	Includes general and misc flashings. Excludes gutters and downspouts per accepted VE option.
7-900	JOINT SEALANTS	\$ 4,298	Misc sealants, fire caulking, etc.
8-150	DOORS & HARDWARE	\$ 452,626	Included doors, frames, and hardware per base bid instructions in VE document.
8-400	GARAGE DOORS	\$ 97,381	Garage doors with operators, specification by PREMIER. <b>Garage door specification to include 8' x 7' Amarr 'Stratford' and/or 'Oak Summit' Models 1000 or equal. Non-insulated, 25gauge, no glass, panels with chain driven operators and remote controls.</b>
8-500	GLASS & GLAZING	\$ 467,720	Includes all windows and sliding doors with low E3 (UV rating .29 / SHGC .22) in white frame. Includes alternate self adhering flashing system. Includes changes made per VE Meeting on September 27, 2017. The breakdown of these changes are included in the Approved Value Engineering Qualifications section.
9-202	TILE	\$ 15,314	Rec Center finishes.
9-250	FLOORING	\$ 377,252	Carpet, vinyl plank and transitions per PREMIER qualifications. <b>Flooring specification to include vinyl plank 'Rewards Inspire' or 'Shaw Foundation' 6mil LVP glue down or equal. Carpet to be 'Dream Weaver' 25 oz. installed over 3/8" 5lb pad.</b> Excludes tile at apartment homes.
9-500	PAINTING	\$ 393,610	Prime and paint walls, ceilings, doors, trim/casing, handrail, fascia eaves, roof metals, etc. Excludes garage interiors.
10-010	BIKE RACKS	\$ -	By Owner
10-350	FIRE EXTINGUISHERS & KNOX BOXES	\$ -	By Owner
10-400	TOILET ACCESSORIES	\$ 56,537	Includes mirrors & toilet accessories
10-600	SIGNAGE	\$ 35,734	Signage Allowance
11-200	APPLIANCES	\$ 137,797	SS appliances per PREMIER specification. <b>Appliance specification to include GE Frigidaire Stainless Steel appliances or equal. Includes built-in dishwasher, 30" gas range, 1.6 CUFT microwaves in units (excludes refrigerators).</b> Excludes (4) stackable washer/dryers and refrigerator in rec center.
15-100	FIRE PROTECTION	\$ 426,796	NFPA 13D fire sprinkler system tied to domestic plumbing in units, includes semi recessed white heads.
15-200	INTERIOR PLUMBING	\$ 1,437,558	Plumbing per PREMIER specification. <b>Plumbing specification to include water heaters shall be Dura-Power Model#DEL-30 by AO Smith or equal, Rinnai tankless water heater or equal, Moen tub/shower trim or equal, American Standard toilet and Karlson WH seat or equal, American Standard sink or equal, Badgar disposal or equal.</b> Includes tankless water heaters, rough gas, rough water/sewer to 5', water closets, fiberglass tub / shower enclosures (no glass), tub/shower valves, trim, and drains, lavs, faucets, kitchen sinks, kitchen faucets, disposal, hose bibbs, condensates, etc.

**The Cottages at Mission Trail**  
Lake Elsinore, CA

**Budget Breakdown (Through PCCO#2)**

3/4/2019

15-300	HVAC	\$ 1,002,959	HVAC per PREMIER specification. HVAC specification to include Carrier Company furnaces and condensers or equal, Honeywell T-4 Pro digital night set back thermostats or equal. Includes split system fan coils and heat pumps, T-stats, flex duct throughout, with exhaust fans.
16-100	ELECTRICAL	\$ 1,293,763	Electrical per PREMIER specification. Electrical specification to include all NMC Romex wiring per NEC requirements. Kichler Surface mount fixtures or equal with Decora Rocker switching or equal in the homes. Latern Fixtures or equal and Astrol switches for exterior lighting. Includes all dwelling unit and rec center electrical. Pricing includes \$250k Allowance for site lighting (not yet designed). Additionally, pricing includes \$242k Allowance for site dry utility work (not yet designed-estimate per Moran). Includes changes made per VE Meeting on September 27, 2017. The breakdown of these changes are included in the Approved Value Engineering Qualifications section.
16-200	LOW VOLTAGE	\$ 161,295	Includes phone/data per plan. Excludes TV per owner.
<b>SUBTOTAL: \$ 19,215,295</b>			
01-010	PROJECT BONDS	\$ 220,000	Includes the payment and performance bond for the project.
01-020	GENERAL REQUIREMENTS	\$ 1,066,198	Surveying, site security, rough clean, final clean, temporary fencing, etc.
01-040	MATERIAL TESTING	\$ -	By Owner
01-050	GENERAL CONDITIONS	\$ 768,071	
01-999	FEE	\$ 691,255	
<b>PROJECT TOTAL (without approved VE): \$ 21,960,819</b>			



EXHIBIT N  
FINANCING PLAN



Cottages at Mission Trail  
32675 Mission Trail  
City of Lake Elsinore

Civic Partners

John McAlister  
(626) 263-9666  
[john.mcalister@huntcompanies.com](mailto:john.mcalister@huntcompanies.com)

Brett Flanders  
(626) 263-9664  
[brett.flanders@huntcompanies.com](mailto:brett.flanders@huntcompanies.com)

**Hunt Real Estate Capital**  
**488 E. Santa Clara Street, Suite 203**  
**Arcadia, CA 91006**  
Phone: (626) 446-6864  
Fax: (626) 226-5992  
[www.huntmortgagegroup.com](http://www.huntmortgagegroup.com)

Thursday, March 14, 2019

Property Name:	Cottages at Mission Trail
Property Address:	32675 Mission Trail
City:	City of Lake Elsinore
State:	CA
Total # of Units:	143

Type of Development:	New Construction
Tenant Type:	Family
Tax Credit Deal:	Yes
Type of Tax Credit Deal:	4%
DDA or QCT?:	QCT
Max. Fed. LIHTC:	\$ 14,688,214
Fed. LIHTC Price:	\$ 0.926
Acquisition Price:	\$ 3,918,362
Construction Budget:	\$ 42,058,943

1st Loan Amount:	\$ 11,534,444
Lender:	Red Stone - Ops Loan
Rate:	4.85%
MIP/Other Fees:	0.15%
Amo (months):	480
Term (months):	480
Total Hard Debt:	\$ 20,184,444
Stabilized DSCR:	1.16

## Construction Schedule & TC Equity Contributions

Date	Milestone	%	Equity Amount
1-Apr-19	Loan/Partnership Closing	20.0%	\$ 2,720,257
1-Apr-19	Construction Start	0.0%	-
1-Dec-19	50% Completion	11.0%	1,496,141
1-Apr-20	75% Completion	23.0%	3,128,296
1-Jul-20	100% Completion	10.0%	1,360,129
1-Jan-21	Stabilization	26.7%	3,627,463
1-Apr-21	8609s	9.3%	1,269,000
Totals:		100.0%	\$ 13,601,286

2nd Loan Amount:	\$ 8,650,000
Lender:	Red Stone - TIF Loan
Rate:	4.85%
Term (months):	240

Construction Loan Amount:	\$ 23,825,583
Lender:	Red Stone - Bonds A & B
Rate:	5.10%
Term (months):	36

**Property Information**

Property Name: Cottages at Mission Trail  
Property Address: 32675 Mission Trail  
City: City of Lake Elsinore  
County: Riverside  
State: CA  
Developer/Sponsor: Civic Partners  
Contact: Tina Alexander

**Construction Information**

Type of Development: New Construction  
Tenant Type: Family  
Occupied During Construction?: No  
Acquisition Price: \$ 3,918,362  
Construction Budget: \$ 42,058,943  
Total # of Units: 143  
LIHTC Units: 142  
Market Rate Units: 0  
Manager Units: 1  
# of Residential Buildings: 104

**Tax Credit Information**

Tax Credit Deal: Yes  
Type of Tax Credit Deal: 4%  
Acq. Credit Rate: 3.27%  
Rehab./NC Credit Rate: 3.27%  
DDA or QCT?: QCT  
Applicable Fraction: 100.0%  
Max. Fed. LIHTC: \$ 14,688,214  
Fed. LIHTC Price: \$ 0.926

**Partner Information**

Developer/Sponsor: Civic Partners  
Managing GP: AOF-Pacific  
Administrative GP: Cottages Mgmt  
Investor - Limited Partner: TBD  
Syndicator - Administrative Limited Partner: Riverside  
Property Manager: Aperto  
Issuer: CSCDA  
Other:

**Partnership Allocations**

Cash flow Allocation  
AOF-Pacific/Cottages Mgmt: 90.00%  
TBD/Riverside: 10.00%  
Sales Proceeds Allocation  
AOF-Pacific/Cottages Mgmt: 90.00%  
TBD/Riverside: 10.00%  
Tax Credit Allocation  
AOF-Pacific/Cottages Mgmt: 0.01%  
TBD/Riverside: 99.99%

**Other Information**

Vacancy: 5.0%  
Revenue Escalation: 2.5%  
Expense Escalation: 3.5%  
Tax Escalation: 2.0%  
Replacement Reserves Escalation: 3.0%  
Income Tax Rate: 21.0%

	<u>Construction</u>	<u>Permanent</u>	
<b>Sources</b>			
Construction Loan	\$ 23,825,583	\$ -	
Hard Debt	-	20,184,444	
Soft Debt	5,521,250	5,721,250	
Cash from Operations	113,198	254,695	
Grant	-	-	
Sponsor Equity/(Surplus)	100	100	
Tax Credit Equity	8,704,823	13,601,286	
Deferred Developer Fee	-	2,297,167	
<b>Total</b>	<b>\$ 38,164,954</b>	<b>\$ 42,058,943</b>	54.8%

	<u>Construction</u>	<u>Permanent</u>	
<b>Uses</b>			
Acquisition	\$ 3,918,362	\$ 3,918,362	
Hard Cost	21,960,817	21,960,817	
Contingency	1,148,041	1,148,041	
Finance Cost & Fees	4,113,362	3,620,212	
Soft Cost	6,018,608	6,159,858	
Reserves	57,044	1,057,044	
Developer Fee	948,721	4,194,609	
<b>Total</b>	<b>\$ 38,164,954</b>	<b>\$ 42,058,943</b>	

### Hard Developer Fee Payment

Total Fee:	\$ 4,194,609	100.0%
Total Hard Fee:	\$ 1,897,442	45.2%
DDF Interest Rate:	0.00%	

### Hard Developer Fee Payment Schedule

1-Apr-19	Closing	\$ 569,233	30.0%
1-Jul-20	Completion	379,488	20.0%
1-Jan-21	Stabilization	474,360	25.0%
1-Apr-21	8609s	474,360	25.0%
		<b>\$ 1,897,442</b>	<b>100.0%</b>

Construction Loan		Red Stone - Bonds A & B
Loan Amount:	\$	23,825,583
Rate:		5.10%
Term (months):		36

56.65%

First Mortgage Loan		Red Stone - Ops Loan
Loan Amount:	\$	11,534,444
Rate:		4.85%
Term (months):		480
Amortizes (months)?:	Yes	480
Mandatory Annual Payment?:	Yes	653,733
Required DSCR:		1.15
Commencement:		Stabilization
Available During Construction?:	No	100%

Second Loan		Red Stone - TIF Loan
Loan Amount:	\$	8,650,000
Rate:		4.85%
Term (months):		240
Amortizes (months)?:	Yes	240
Mandatory Annual Payment?:	Yes	676,462
Commencement:		Stabilization
Available During Construction?:	No	100%

Third Loan		TBD
Loan Amount:	\$	-
Rate:		0.00%
Term (months):		36
Amortizes (months)?:	Yes	36
Mandatory Annual Payment?:	Yes	-
Commencement:	-	Stabilization
Available During Construction?:	Yes	100%

Fourth Loan		City of Lake Elsinore
Loan Amount:	\$	5,721,250
Rate:		3.00%
Term (months):		660
Amortizes (months)?:	No	660
Mandatory Annual Payment?:	No	-
Commencement:		Closing
Available During Construction?:	Yes	97%

Fifth Loan		Loan
Loan Amount:	\$	-
Rate:		0.00%
Term (months):		660
Amortizes (months)?:	No	660
Mandatory Annual Payment?:	No	-
Commencement:		Stabilization
Available During Construction?:	Yes	100%

Other Funding		
Grant	\$	-
Available During Construction?:	No	0%
Grant	\$	-
Available During Construction?:	No	0%

Predevelopment Loan		City of Lake Elsinore
Loan Amount:	\$	771,500
Rate:		3.25%
Term (months):		12

Predevelopment loan to be repaid at Closing



## CONSTRUCTION BUDGET

Description									
Acquisition	Total	Acq. Basis	NC/Rehab Basis	Depr./Ineligible	Land Improvements	Personal Property	Amortize	Expense	
Land	3,545,602								
Land Lease - During Construction	-								
Subdivision Cost	2,500								
Land - Mitigation	370,260								
Pre-Development Cost	-								
Existing Buildings	-	-							
<b>Total</b>	<b>\$ 3,918,362</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>Construction</b>									
NC Hard Cost	15,699,039		14,970,277	-	728,762	-			
Rehab Hard Cost	-		-	-	-				
Site Work	3,736,254		-	-	3,736,254				
Other	-		-						
General Requirements	1,066,198		1,066,198						
GC Overhead	768,071		768,071						
GC Profit	691,255		691,255						
	<b>\$ 21,960,817</b>	<b>\$ -</b>	<b>\$ 17,495,801</b>	<b>\$ -</b>	<b>\$ 4,465,016</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>Contingency</b>									
Contingency	1,098,041		1,098,041						
Soft	50,000		50,000						
	<b>\$ 1,148,041</b>	<b>\$ -</b>	<b>\$ 1,148,041</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>Professional Services</b>									
Architect	943,413		943,413						
Engineer	-		-						
Survey	15,000		15,000						
PNA/CNA	-		-						
Accounting/Cost Cert./Audit	50,000		50,000						
Market Study	10,000		10,000						
Appraisal	8,000		8,000						
LEED/Energy Survey	-		-						
Investment Banking - Hunt	298,250		-						298,250
Investment Banking - CCP	135,600		-						135,600
CDLAC/TCAC App. Preparation	25,000		-						25,000
Legal - Transactional	50,000		50,000						
Legal - Enviromental	120,000		120,000						
Other Legal Fees	180,000		180,000						
IRMA Fee	50,000		-						50,000
Non-Profit Acq./Organization Fee	100,000		100,000						
	<b>\$ 1,985,263</b>	<b>\$ -</b>	<b>\$ 1,476,413</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 508,850</b>
<b>Construction Finance</b>									
Construction Loan Interest	1,511,431		913,828						597,604
Construction Origination Fees	-		-						
RS Construction Admin Fee	178,692		178,692						-
Adler Loan Interest During Const.	-		-						-
Negative Arbitrage	375,984		370,717						5,267
Pre-Development Loan Interest	21,607		21,607						
Pre-Development Loan Fees	7,715		7,715						
Title/Recording/Closing Cost	30,000		30,000						
Const. Period RE Taxes	48,600		48,600						
Const. Period Insurance	332,077		332,077						
P & P Bond	-		-						
Borrow Legal - Construction	70,000		70,000						
Lender Legal - Construction	-		-						
Payment and Performance Bond	-		-						
	<b>\$ 2,576,106</b>	<b>\$ -</b>	<b>\$ 1,973,235</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 602,871</b>



## CONSTRUCTION BUDGET

### Description

### Acquisition

### Permanent Finance

Perm Origination Fees  
City of LE Loan Fees  
Title/Recording/Closing Cost  
Trustee Fee  
Issuer/CDLAC Fees  
Bond Counsel - Legal  
Borrow Legal - Perm  
Lender Legal - Perm

### Total

### Acq. Basis

### NC/Rehab Basis

### Depr./Ineligible

### Land Improvements

### Personal Property

### Amortize

### Expense

178,692

57,213

15,000

8,500

190,416

75,000

81,195

95,085

178,692

57,213

15,000

8,500

190,416

75,000

81,195

95,085

\$ 701,100 \$ - \$ - \$ - \$ - \$ - \$ - \$ 701,100 \$ -

### Tax Credit Fees

Application Fees  
Monitoring Fees  
TC Syndicator UW/DD Fees  
Organization Fees

234,375

58,630

50,000

-

234,375

58,630

50,000

-

\$ 343,005 \$ - \$ - \$ - \$ - \$ - \$ - \$ 343,005 \$ -

### Soft Costs

Tap Fees  
Permits  
Permits, Fees & PreDev Cost  
Impact Fees  
Environmental/Phase I/Soil Test  
Mitigation/Endow.  
Other  
Operational Cost During Lease-Up  
Marketing  
FF& E

1,875,103

471,890

-

1,291,673

43,500

361,881

20,548

-

10,000

100,000

1,875,103

471,890

-

1,291,673

43,500

20,548

-

100,000

361,881

10,000

\$ 4,174,595 \$ - \$ 3,702,714 \$ - \$ - \$ - \$ 100,000 \$ - \$ 371,881

### Reserves

Operating Reserve  
Replacement Reserve  
Subsidy Reserve  
Tax/Insurance Escrow  
Rent-up Reserve

1,000,000

-

-

57,044

-

\$ 1,057,044 \$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ -

### Developer Fee

Basis Eligible Developer Fee  
Required Deferred Developer Fee  
Total Developer Fee

2,930,000

1,264,609

4,194,609

-

-

-

2,930,000

1,264,609

4,194,609

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

\$ 4,194,609 \$ - \$ 4,194,609 \$ - \$ - \$ - \$ - \$ - \$ -

### Total

\$ 42,058,943 \$ - \$ 29,990,813 \$ - \$ 4,465,016 \$ 100,000 \$ 1,044,106 \$ 1,483,602

### Total NC/Rehab Eligible Basis

34,555,829

### Total Eligible Basis

34,555,829



County: Riverside  
Metropolitan Statistical Area: [Riverside-San Bernadino-Ontario, CA](#)  
Area Median Income: \$ 71,800 Per Novogradac  
Year: 2019

# Bedrooms	# Bathrooms	Unit Type	# units	Unit SQFT	Total SQFT	Set Aside	Subsidy	Projected Net Rent	Max LIHTC Rent	UA	Urban Futures Assesed Rents	Max Net Rent	Total Monthly Rent	Overhang
2	1.0	LIHTC	3	829	2,487	50%		\$ 704	\$ 808	104	\$ 705	\$ 704	\$ 2,112	\$ -
2	1.0	LIHTC	9	829	7,461	60%		\$ 865	\$ 969	104	\$ 867	\$ 865	\$ 7,785	\$ -
2	1.0	LIHTC	5	969	4,845	50%		\$ 704	\$ 808	104	\$ 705	\$ 704	\$ 3,520	\$ -
2	1.0	LIHTC	21	969	20,349	60%		\$ 865	\$ 969	104	\$ 867	\$ 865	\$ 18,165	\$ -
3	1.0	LIHTC	2	1,147	2,294	50%		\$ 769	\$ 933	129	\$ 769	\$ 804	\$ 1,538	\$ -
3	1.0	LIHTC	13	1,147	14,911	60%		\$ 948	\$ 1,120	129	\$ 948	\$ 991	\$ 12,324	\$ -
3	1.5	LIHTC	5	1,222	6,110	50%		\$ 769	\$ 933	129	\$ 769	\$ 804	\$ 3,845	\$ -
3	1.5	LIHTC	34	1,222	41,548	60%		\$ 948	\$ 1,120	129	\$ 948	\$ 991	\$ 32,232	\$ -
3	2.0	LIHTC	2	1,219	2,438	50%		\$ 769	\$ 933	129	\$ 769	\$ 804	\$ 1,538	\$ -
3	2.0	LIHTC	21	1,219	25,599	60%		\$ 948	\$ 1,120	129	\$ 948	\$ 991	\$ 19,908	\$ -
3	1.5	LIHTC	3	1,203	3,609	50%		\$ 769	\$ 933	129	\$ 769	\$ 804	\$ 2,307	\$ -
3	1.5	LIHTC	24	1,203	28,872	60%		\$ 948	\$ 1,120	129	\$ 948	\$ 991	\$ 22,752	\$ -
2	1.0	Manager	1	969	969	n/a		\$ -	\$ -		\$ -	\$ -	\$ -	\$ -
			143	161,492								\$ 128,026		-
												\$ 1,536,312		-

Unit Breakdown	
LIHTC	142
Market	0
Manager	1
Other Affordable	0
143	

Bedroom Breakdown	
Studio/SRO	0
1 BR	0
2 BR	39
3 BR	104
4 BR	0
143	

AMI Set-Aside Count		
50%	20	14.0%
60%	122	85.3%
n/a	1	0.7%
143		100.0%

Unit Fraction	100.0%
Area Fraction	100.0%
Applicable Fraction	100.0%

## Other Income

Commercial	-	Per Month	-
		Per Year	-

NSF & Late Fees	\$ 3.90	PUPM	\$ 558
TIF Income	466.20	PUPM	66,667
Damage/Clean	3.06	PUPM	438
Laundry	1.40	PUPM	200
Misc. Income	0.70	PUPM	100
Application Fee	1.89	PUPM	270
			\$ 68,233
			\$ 818,796

Total Monthly Income \$ 196,259  
Total Annual Income \$ 2,355,108

		PUPY	% of Income
Gross Potential Rents	\$ 1,536,312	\$ 10,743	
Subsidy Overhang	-	-	0.0%
Commercial	-	-	0.0%
TIF Income	800,000		
Other Income	18,796	131	0.8%
Bad Debt/Concessions	-	-	0.0%
Vacancy	(77,755)	(544)	5.0%
<b>Net Income</b>	<b>\$ 2,277,353</b>	<b>\$ 15,926</b>	<b>100.0%</b>

Administrative	\$ 80,908	566	3.6%
Payroll	170,192	1,190	7.5%
Management Fee	55,401	387	3.75%
Repairs & Maintenance	120,620	843	5.3%
Utilities	141,000	986	6.2%
RE Taxes /Assesments	5,000	35	0.2%
Insurance	52,044	364	2.3%
Replacement Reserves	42,900	300	1.9%
AOF-Pacific Annual Fee	17,160	120	0.8%
Other	-	-	0.0%
City of L.E. Monitoring Fee:	8,580	60	0.4%
<b>Total Expenses</b>	<b>\$ 693,805</b>	<b>\$ 4,852</b>	<b>30.5%</b>
<b>TCAC Expenses</b>	<b>\$ 628,745</b>	<b>\$ 4,397</b>	

**Net Operating Income** \$ 1,583,548 \$ 11,074 103.1%

**Mandatory Debt Service** \$ 1,360,471 \$ 9,514 88.6%  
**DSCR** 1.1640

Waterfall Cashflow \$ 223,077 1,560 14.5%

AMF - Riverside Annual Amount: \$ 7,500  
Accrues?: Yes  
Escalates?: Yes 3.0%

Land Lease \$ -  
Accrues?: No  
Escalates?: No

AMF - Cottages Mgmt Annual Amount: \$ 17,840  
Accrues?: Yes  
Escalates?: Yes 3.0%

Other Fee: \$ -  
Accrues?: No  
Escalates?: No 3.0%

## Operating Expense - USRG

<u>Administrative</u>	
Administrative	29,108
Leasing Expense	14,000
Legal Fees	18,000
Other Professional Fees/Services	19,800
	<b>\$ 80,908</b>

<u>Payroll</u>	
Office Salaries	56,500
Maintenance Salaries	53,940
Bonuses	2,000
Worker's Comp/FICA/Insurance	57,752
	<b>\$ 170,192</b>

<u>Repairs &amp; Maintenance</u>	
Service Expense	78,970
Cleaning & Decorating Expense	27,630
Repairs	14,020
	<b>\$ 120,620</b>

<u>Utilities</u>	
Electricity	30,000
Water & Sewer	99,000
Gas	12,000
	<b>\$ 141,000</b>

<u>Insurance</u>	<b>\$ 52,044</b>
<u>Management Fee</u>	<b>\$ 50,380</b>

<u>Taxes</u>	
Real Estate	-
Assesments	5,000
	<b>\$ 5,000</b>

<u>Other</u>	
AOF-Pacific Annual Fee	<b>\$ 17,160</b>
Sub-Total	<b>637,304</b>
Replacement Reserves	<b>42,900</b>

**Total 680,204**

	<u>Acquisition Credit</u>	<u>Const/Rehab Credit</u>
Eligible Basis	\$ -	\$ 34,555,829
Basis Reductions	-	-
Net Eligible Basis	-	34,555,829
Applicable Fraction	100.0%	100.0%
	\$ -	\$ 34,555,829
Basis Boost		130%
Qualified Basis	\$ -	\$ 44,922,578
Credit Rate	3.27%	3.27%
Total Eligible Annual Credit	\$ -	\$ 1,468,968
Maximum Allocated/Allowed Credit	2,500,000	
Annual Credit	\$ 1,468,968	
Total Credits	\$ 14,689,683	
Total Annual Credits to TBD/Riverside	\$ 1,468,821	
Total Credits to TBD/Riverside	\$ 14,688,214	99.99%
Total to TBD/Riverside Equity	\$ 13,601,286	\$ 0.926



CONSTRUCTION PERIOD FLOW OF FUNDS

			1	2	3	4	5	6	7	8	9	
			Apr-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19
USES	During Construction	Permanent	Close	Start	50% Completion							
Acquisition	\$ 3,918,362	\$ 3,918,362	\$ 3,918,362									
Construction - Hard Cost	21,960,817	21,960,817		-	700,000	700,000	1,075,000	1,450,000	1,818,819	2,150,000	2,500,000	2,575,000
Construction - Soft Cost	4,024,595	4,164,595	1,004,381	2,144,614	120,000	110,000	70,000	70,000	70,000	45,000	45,000	45,000
Contingency	1,148,041	1,148,041	12,381	10,705	64,231	85,642	85,642	10,705	10,705	107,052	85,642	94,206
Professional Services	1,985,263	1,985,263	1,985,263									
Construction Finance	688,691	688,691	688,691									
Construction Loan Interest	913,828	1,511,431			13,571	17,605	21,683	27,194	33,994	42,378	52,493	64,029
Adler Carry Back Loan Interest	-	-			-	-	-	-	-	-	-	-
Negative Arbitrage	370,717	375,984			51,272	46,423	44,288	42,128	39,211	35,611	31,172	25,817
Permanent Finance	701,100	701,100	701,100									
Tax Credit Fees	343,005	343,005	343,005									
Marketing	8,750	10,000										
Operating Reserve	-	1,000,000		-	-	-	-	-	-	-	-	-
Replacement Reserve	-	-		-	-	-	-	-	-	-	-	-
Subsidy Reserve	-	-		-	-	-	-	-	-	-	-	-
Tax/Insurance Escrow	57,044	57,044	57,044	-	-	-	-	-	-	-	-	-
Rent-up Reserve	-	-	-	-	-	-	-	-	-	-	-	-
Hard Developer Fee	948,721	1,897,442	569,233									
Deferred Developer Fee		2,297,167										
TOTAL USES	\$ 37,068,934	\$ 42,058,943	\$ 9,279,460	2,155,319	949,075	959,669	1,296,612	1,600,027	1,972,729	2,380,041	2,714,307	2,804,052
-												
SOURCES												
First Mortgage Loan	-	11,534,444										
Second Loan	-	8,650,000										
City of Lake Elsinore	5,521,250	5,721,250	5,521,250									
Adler Land Carryback		-										
Cash from Operations	113,198	254,695										
Grant	-	-										
Sponsor Equity/(Surplus)	100	100	100									
Tax Credit Equity	8,704,823	13,601,286	2,720,257	-								1,496,141
Construction Loan	23,825,583		1,037,853	2,155,319	949,075	959,669	1,296,612	1,600,027	1,972,729	2,380,041	2,714,307	1,307,910
Deferred Developer Fee		2,297,167										
TOTAL SOURCES	\$ 38,164,954	\$ 42,058,943	\$ 9,279,460	2,155,319	949,075	959,669	1,296,612	1,600,027	1,972,729	2,380,041	2,714,307	2,804,052
Civic Partners Gap/(Surplus)												
			-	-	-	-	-	-	-	-	-	-
Construction Loan Draw	23,825,583		1,037,853	2,155,319	949,075	959,669	1,296,612	1,600,027	1,972,729	2,380,041	2,714,307	1,307,910
Construction Loan Balance			1,037,853	3,193,172	4,142,247	5,101,916	6,398,528	7,998,555	9,971,284	12,351,325	15,065,632	16,373,542
Construction Loan Interest	5.10%			13,571	17,605	21,683	27,194	33,994	42,378	52,493	64,029	69,588
Negative Arbitrage	23,825,583		22,787,730	20,632,411	19,683,337	18,723,668	17,427,056	15,827,028	13,854,299	11,474,259	8,759,952	7,452,042
	2.700%			51,272	46,423	44,288	42,128	39,211	35,611	31,172	25,817	19,710



CONSTRUCTION PERIOD FLOW OF FUNDS

	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	
	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	
				75%			100%												
USES	Completion				Completion				Stabilization					Final Equity					Total
Acquisition																			\$ 3,918,362
Construction - Hard Cost	2,575,000	2,040,000	1,750,000	1,300,000	1,108,826	218,172	-	-	-	-	-	-	-	-	-	-	-	-	21,960,817
Construction - Soft Cost	42,500	35,000	35,100	48,000	60,000	40,000	40,000	40,000	40,000	40,000	20,000	-	-	-	-	-	-	-	4,164,595
Contingency	119,898	102,770	68,513	51,385	34,257	17,128	187,180	-	-	-	-	-	-	-	-	-	-	-	1,148,041
Professional Services																			1,985,263
Construction Finance																			688,691
Construction Loan Interest	69,588	81,606	91,285	99,601	99,601	99,601	99,601	99,601	99,601	99,601	99,601	99,601	99,601	-	-	-	-	-	1,511,431
Adler Carry Back Loan Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Negative Arbitrage	19,710	16,767	10,404	5,280	878	878	878	878	878	878	878	878	878	-	-	-	-	-	375,984
Permanent Finance																			701,100
Tax Credit Fees																			343,005
Marketing	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250											10,000
Operating Reserve	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,000,000	-	-	1,000,000
Replacement Reserve	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Subsidy Reserve	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Tax/Insurance Escrow	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	57,044
Rent-up Reserve	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Hard Developer Fee							379,488						474,360			474,360			1,897,442
Deferred Developer Fee																2,297,167			2,297,167
TOTAL USES	2,827,946	2,277,393	1,956,553	1,505,516	1,304,811	377,028	708,397	141,728	140,478	140,478	120,478	100,478	574,839	-	-	3,771,528	-	-	\$ 42,058,943
SOURCES																			
First Mortgage Loan													11,534,444						11,534,444
Second Loan													8,650,000						8,650,000
City of Lake Elsinore													200,000						5,721,250
Adler Land Carryback																			-
Cash from Operations				28,299	28,299	28,299	28,299	28,299	28,299	28,299	28,299	28,299							254,695
Grant													-						-
Sponsor Equity/(Surplus)												-		-	-	-	-	-	100
Tax Credit Equity				3,128,296			1,360,129						3,627,463			1,269,000			13,601,286
Construction Loan	2,827,946	2,277,393	1,956,553	-	-	-	-	-	-	-	-	-	(23,435,433)	-	-	-	-	-	-
Deferred Developer Fee																2,297,167			2,297,167
TOTAL SOURCES	2,827,946	2,277,393	1,956,553	3,156,595	28,299	28,299	1,388,428	28,299	28,299	28,299	28,299	28,299	576,474	-	-	3,566,167	-	-	\$ 42,058,943
Civic Partners Gap/(Surplus)	-	-	-	(1,651,080)	(374,568)	(25,839)	(705,870)	(592,441)	(480,262)	(368,083)	(275,904)	(203,725)	(205,360)	(205,360)	(205,360)	(0)	(0)	(0)	
Construction Loan Draw	2,827,946	2,277,393	1,956,553	-	-	-	-	-	-	-	-	-	(23,435,433)	-	-	-	-	-	
Construction Loan Balance	19,201,487	21,478,881	23,435,433	23,435,433	23,435,433	23,435,433	23,435,433	23,435,433	23,435,433	23,435,433	23,435,433	23,435,433	-	-	-	-	-	-	
Construction Loan Interest	81,606	91,285	99,601	99,601	99,601	99,601	99,601	99,601	99,601	99,601	99,601	99,601	-	-	-	-	-	-	1,511,431
Negative Arbitrage	4,624,096	2,346,703	390,150	390,150	390,150	390,150	390,150	390,150	390,150	390,150	390,150	390,150							
	16,767	10,404	5,280	878	878	878	878	878	878	878	878	878							375,984



PROFORMA

Year	0	0	1	2	3	4	5	6	7	8	9	10	
	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	
	0%	55%	100%										
Gross Potential Rents	\$	-	871,456	1,614,088	1,654,440	1,695,801	1,738,196	1,781,651	1,826,192	1,871,847	1,918,643	1,966,609	2,015,774
Subsidy	-	-	-	-	-	-	-	-	-	-	-	-	-
Commercial	-	-	-	-	-	-	-	-	-	-	-	-	-
TIF Income	-	458,131	819,308	807,610	795,855	784,051	772,205	760,326	748,420	736,498	724,568	712,641	712,641
Other Income	-	10,662	19,748	20,241	20,747	21,266	21,798	22,343	22,901	23,474	24,060	24,662	24,662
Bad Debt/Concessions	-	-	-	-	-	-	-	-	-	-	-	-	-
Vacancy	-	(44,106)	(81,692)	(83,734)	(85,827)	(87,973)	(90,172)	(92,427)	(94,737)	(97,106)	(99,533)	(102,022)	(102,022)
Net Income	\$	-	1,296,143	2,371,452	2,398,557	2,426,576	2,455,540	2,485,481	2,516,434	2,548,431	2,581,509	2,615,705	2,651,056
Administrative	-	46,342	86,671	89,704	92,844	96,093	99,457	102,938	106,540	110,269	114,129	118,123	118,123
Payroll	-	97,481	182,314	188,695	195,299	202,135	209,209	216,532	224,110	231,954	240,073	248,475	248,475
Management Fee	-	31,425	58,205	59,661	61,152	62,681	64,248	65,854	67,500	69,188	70,918	72,691	72,691
Repairs & Maintenance	-	69,088	129,211	133,734	138,414	143,259	148,273	153,462	158,834	164,393	170,146	176,102	176,102
Utilities	-	80,761	151,043	156,329	161,801	167,464	173,325	179,391	185,670	192,169	198,894	205,856	205,856
Taxes	-	2,864	5,356	5,544	5,738	5,938	6,146	6,361	6,584	6,814	7,053	7,300	7,300
Insurance	-	29,809	55,751	57,702	59,722	61,812	63,975	66,215	68,532	70,931	73,413	75,983	75,983
Replacement Reserves	-	-	42,900	44,187	45,513	46,878	48,284	49,733	51,225	52,762	54,344	55,975	55,975
AOF-Pacific Annual Fee	-	9,829	18,382	19,026	19,691	20,381	21,094	21,832	22,596	23,387	24,206	25,053	25,053
Other	-	-	-	-	-	-	-	-	-	-	-	-	-
City of L.E. Monitoring Fee:	-	4,914	9,191	9,513	9,846	10,190	10,547	10,916	11,298	11,694	12,103	12,527	12,527
Total Expenses	\$	-	\$ 372,514	\$ 739,024	\$ 764,093	\$ 790,019	\$ 816,831	\$ 844,559	\$ 873,234	\$ 902,890	\$ 933,560	\$ 965,279	\$ 998,083
Net Operating Income	\$	-	923,629	1,632,428	1,634,463	1,636,556	1,638,709	1,640,923	1,643,199	1,645,541	1,647,949	1,650,425	1,652,973
Mandatory Debt Service													
Principal	-	-	359,163	376,975	395,670	415,293	435,888	457,505	480,194	504,008	529,003	555,238	555,238
Interest	-	-	971,031	953,220	934,524	914,902	894,306	872,689	850,001	826,186	801,191	774,956	774,956
Fees	-	-	30,032	29,481	28,903	28,296	27,659	26,990	26,289	25,552	24,779	23,968	23,968
Total Mandatory Debt Service	\$	-	\$ -	\$ 1,360,227	\$ 1,359,676	\$ 1,359,097	\$ 1,358,491	\$ 1,357,854	\$ 1,357,185	\$ 1,356,483	\$ 1,355,747	\$ 1,354,974	\$ 1,354,162
DSCR				1.20	1.20	1.20	1.21	1.21	1.21	1.21	1.22	1.22	1.22
Remaining Cash Flow	-	923,629	272,201	274,788	277,459	280,218	283,069	286,014	289,057	292,202	295,452	298,810	298,810



## PROFORMA

Year	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
<b>Waterfall Cash Flow</b>	\$ -	923,629	272,201	274,788	277,459	280,218	283,069	286,014	289,057	292,202	295,452	298,810
<b>Cash from Ops to Fund Construction</b>	\$ -	254,695	-									
<b>AMF - Riverside Annual Amount:</b>	\$ -	7,500	7,500	7,763	8,034	8,315	8,606	8,908	9,219	9,542	9,876	10,222
Accrual	\$ -	-	-	-	-	-	-	-	-	-	-	-
<b>Beginning Balance of DDF</b>	\$ 2,297,167	2,297,167	1,635,733	1,371,032	1,104,007	834,582	562,679	288,217	11,110	-	-	-
Deferred Developer Fee Payment	\$ -	661,434	264,701	267,025	269,425	271,903	274,463	277,107	11,110	-	-	-
Incurred Interest	\$ -	-	-	-	-	-	-	-	-	-	-	-
Interest Paid	\$ -	-	-	-	-	-	-	-	-	-	-	-
Accrued Interest	\$ -	-	-	-	-	-	-	-	-	-	-	-
Principal Paid	\$ -	661,434	264,701	267,025	269,425	271,903	274,463	277,107	11,110	-	-	-
Balance of DDF	\$ 2,297,167	1,635,733	1,371,032	1,104,007	834,582	562,679	288,217	11,110	-	-	-	-
<b>Remaining Cash Flow</b>	\$ -	-	-	-	-	-	-	-	268,728	282,660	285,576	288,589
<b>AMF - Cottages Mgmt Annual Amount:</b>	\$ -	-	-	-	-	-	-	-	161,482	23,492	24,314	25,165
Accrual	\$ -	17,840	36,304	55,415	75,195	95,666	116,855	138,785	-	-	-	-
<b>Remaining Cash Flow</b>	\$ -	-	-	-	-	-	-	-	107,246	259,168	261,261	263,423
<b>Soft Loan Interest Payments</b>	\$ -	-	-	-	-	-	-	-	53,623	129,584	130,631	131,712
<b>Soft Loan Principal Payments</b>	\$ -	-	-	-	-	-	-	-	-	-	-	-
<b>Residual Cashflow</b>	\$ -	-	-	-	-	-	-	-	53,623	129,584	130,631	131,712
<b>Residual Split</b>												
<b>GP IMF - Cottages Mgmt</b>	\$ -	-	-	-	-	-	-	-	48,261	116,626	117,568	118,541
LP Distribution	\$ -	-	-	-	-	-	-	-	5,362	12,958	13,063	13,171
Soft Loan Accrued Interest	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	118,015	42,054	41,007	39,926
<b>Total Income (Losses)</b>	\$ (171,638)	744,492	452,227	472,363	493,458	515,558	538,713	562,974	540,134	498,405	525,374	553,649
<b>LP Income (Losses)</b>	\$ (171,620)	744,417	452,182	472,315	493,408	515,507	538,659	562,918	540,080	498,355	525,321	553,593
<b>GP Income (Losses)</b>	\$ (17)	74	45	47	49	52	54	56	54	50	53	55





PROFORMA

	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
Year	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045
Gross Potential Rents	2,066,169	2,117,823	2,170,769	2,225,038	2,280,664	2,337,680	2,396,122	2,456,025	2,517,426	2,580,362	2,644,871	2,710,993	2,778,767	2,848,237	2,919,442
Subsidy	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Commercial	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TIF Income	700,727	688,836	676,982	665,176	653,432	641,763	630,184	618,712	440,309	-	-	-	-	-	-
Other Income	25,279	25,910	26,558	27,222	27,903	28,600	29,315	30,048	30,799	31,569	32,359	33,168	33,997	34,847	35,718
Bad Debt/Concessions	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Vacancy	(104,572)	(107,187)	(109,866)	(112,613)	(115,428)	(118,314)	(121,272)	(124,304)	(127,411)	(130,597)	(133,861)	(137,208)	(140,638)	(144,154)	(147,758)
Net Income	2,687,602	2,725,383	2,764,443	2,804,823	2,846,570	2,889,730	2,934,350	2,980,482	2,861,123	2,481,335	2,543,368	2,606,952	2,672,126	2,738,929	2,807,402
Administrative	122,258	126,537	130,965	135,549	140,293	145,204	150,286	155,546	160,990	166,624	172,456	178,492	184,740	191,205	197,898
Payroll	257,172	266,173	275,489	285,131	295,111	305,439	316,130	327,194	338,646	350,499	362,766	375,463	388,604	402,205	416,283
Management Fee	74,508	76,371	78,280	80,237	82,243	84,299	86,406	88,566	90,781	93,050	95,376	97,761	100,205	102,710	105,278
Repairs & Maintenance	182,265	188,644	195,247	202,081	209,153	216,474	224,050	231,892	240,008	248,409	257,103	266,102	275,415	285,055	295,032
Utilities	213,061	220,518	228,236	236,224	244,492	253,049	261,906	271,073	280,560	290,380	300,543	311,062	321,949	333,218	344,880
Taxes	7,555	7,820	8,093	8,377	8,670	8,973	9,287	9,613	9,949	10,297	10,658	11,031	11,417	11,816	12,230
Insurance	78,642	81,395	84,243	87,192	90,244	93,402	96,671	100,055	103,557	107,181	110,932	114,815	118,834	122,993	127,297
Replacement Reserves	57,654	59,384	61,165	63,000	64,890	66,837	68,842	70,907	73,034	75,225	77,482	79,807	82,201	84,667	87,207
AOF-Pacific Annual Fee	25,930	26,837	27,777	28,749	29,755	30,797	31,875	32,990	34,145	35,340	36,577	37,857	39,182	40,553	41,973
Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
City of L.E. Monitoring Fee:	12,965	13,419	13,888	14,374	14,878	15,398	15,937	16,495	17,072	17,670	18,288	18,928	19,591	20,277	20,986
Total Expenses	\$ 1,032,009	\$ 1,067,096	\$ 1,103,384	\$ 1,140,914	\$ 1,179,728	\$ 1,219,872	\$ 1,261,390	\$ 1,304,331	\$ 1,348,742	\$ 1,394,675	\$ 1,442,182	\$ 1,491,317	\$ 1,542,137	\$ 1,594,699	\$ 1,649,063
Net Operating Income	1,655,593	1,658,287	1,661,059	1,663,909	1,666,841	1,669,857	1,672,960	1,676,151	1,512,381	1,086,659	1,101,186	1,115,635	1,129,989	1,144,231	1,158,340
Mandatory Debt Service															
Principal	582,774	611,675	642,010	673,849	707,267	742,343	779,157	817,798	858,355	900,923	253,898	266,490	279,706	293,577	308,137
Interest	747,421	718,519	688,185	656,346	622,927	587,852	551,037	512,397	471,840	429,272	399,834	387,243	374,027	360,155	345,596
Fees	23,116	22,222	21,284	20,299	19,266	18,181	17,042	15,847	14,593	13,276	12,366	11,977	11,568	11,139	10,689
Total Mandatory Debt Service	\$ 1,353,311	\$ 1,352,417	\$ 1,351,479	\$ 1,350,494	\$ 1,349,460	\$ 1,348,376	\$ 1,347,237	\$ 1,346,042	\$ 1,344,788	\$ 1,343,471	\$ 666,099	\$ 665,709	\$ 665,300	\$ 664,871	\$ 664,421
DSCR	1.22	1.23	1.23	1.23	1.24	1.24	1.24	1.25	1.12	0.81	1.65	1.68	1.70	1.72	1.74
Remaining Cash Flow	302,282	305,870	309,580	313,415	317,381	321,482	325,723	330,109	167,593	(256,812)	435,087	449,926	464,689	479,359	493,919





## PROFORMA

Year	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045
<b>Waterfall Cash Flow</b>	302,282	305,870	309,580	313,415	317,381	321,482	325,723	330,109	167,593	(256,812)	435,087	449,926	464,689	479,359	493,919
<b>Cash from Ops to Fund Construction</b>															
<b>AMF - Riverside Annual Amount:</b>	10,579	10,950	11,333	11,730	12,140	12,565	13,005	13,460	13,931	-	29,342	15,446	15,986	16,546	17,125
Accrual	-	-	-	-	-	-	-	-	-	14,419	-	-	-	-	-
<b>Beginning Balance of DDF</b>	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Deferred Developer Fee Payment	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Incurred Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Interest Paid	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Accrued Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Principal Paid	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Balance of DDF	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Remaining Cash Flow</b>	291,702	294,920	298,247	301,686	305,241	308,917	312,718	316,649	153,662	(256,812)	405,745	434,480	448,702	462,813	476,794
<b>- Cottages Mgmt Annual Amount:</b>	26,046	26,957	27,901	28,878	29,888	30,934	32,017	33,138	34,297	-	72,238	38,026	39,357	40,735	42,160
Accrual	-	-	-	-	-	-	-	-	-	35,498	-	-	-	-	-
<b>Remaining Cash Flow</b>	265,656	267,963	270,346	272,808	275,353	277,982	280,701	283,511	119,365	(256,812)	333,507	396,454	409,345	422,079	434,633
<b>Soft Loan Interest Payments</b>	132,828	133,981	135,173	136,404	137,676	138,991	140,350	141,756	59,682	-	166,754	198,227	204,673	211,039	217,317
<b>Soft Loan Principal Payments</b>	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Residual Cashflow</b>	132,828	133,981	135,173	136,404	137,676	138,991	140,350	141,756	59,682	(256,812)	166,754	198,227	204,673	211,039	217,317
<b>Residual Split</b>															
<b>GP IMF - Cottages Mgmt</b>	119,545	120,583	121,656	122,764	123,909	125,092	126,315	127,580	53,714	-	150,078	178,404	184,205	189,935	195,585
LP Distribution	13,283	13,398	13,517	13,640	13,768	13,899	14,035	14,176	5,968	-	16,675	19,823	20,467	21,104	21,732
Soft Loan Accrued Interest	38,809	37,656	36,465	35,233	33,961	32,646	31,287	29,882	111,955	171,638	4,884	(26,589)	(33,035)	(39,402)	(45,679)
<b>Total Income (Losses)</b>	<b>583,293</b>	<b>614,375</b>	<b>646,964</b>	<b>681,134</b>	<b>716,962</b>	<b>754,530</b>	<b>793,922</b>	<b>835,229</b>	<b>786,665</b>	<b>472,474</b>	<b>337,928</b>	<b>350,928</b>	<b>372,566</b>	<b>394,818</b>	<b>417,708</b>
<b>LP Income (Losses)</b>	583,235	614,314	646,899	681,066	716,890	754,454	793,843	835,146	786,587	472,427	337,894	350,893	372,528	394,778	417,666
<b>GP Income (Losses)</b>	58	61	65	68	72	75	79	84	79	47	34	35	37	39	42



PROFORMA

	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40
Year	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060
Gross Potential Rents	2,992,429	3,067,239	3,143,920	3,222,518	3,303,081	3,385,658	3,470,300	3,557,057	3,645,984	3,737,133	3,830,562	3,926,326	4,024,484	4,125,096	4,228,223
Subsidy	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Commercial	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TIF Income	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Income	36,611	37,526	38,464	39,426	40,412	41,422	42,457	43,519	44,607	45,722	46,865	48,037	49,238	50,468	51,730
Bad Debt/Concessions	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Vacancy	(151,452)	(155,238)	(159,119)	(163,097)	(167,175)	(171,354)	(175,638)	(180,029)	(184,530)	(189,143)	(193,871)	(198,718)	(203,686)	(208,778)	(213,998)
Net Income	2,877,587	2,949,527	3,023,265	3,098,847	3,176,318	3,255,726	3,337,119	3,420,547	3,506,061	3,593,712	3,683,555	3,775,644	3,870,035	3,966,786	4,065,956
Administrative	204,824	211,993	219,413	227,092	235,040	243,267	251,781	260,593	269,714	279,154	288,925	299,037	309,503	320,336	331,548
Payroll	430,852	445,932	461,540	477,694	494,413	511,718	529,628	548,165	567,350	587,208	607,760	629,032	651,048	673,834	697,419
Management Fee	107,910	110,607	113,372	116,207	119,112	122,090	125,142	128,271	131,477	134,764	138,133	141,587	145,126	148,754	152,473
Repairs & Maintenance	305,358	316,045	327,107	338,555	350,405	362,669	375,362	388,500	402,098	416,171	430,737	445,813	461,416	477,566	494,281
Utilities	356,951	369,444	382,375	395,758	409,609	423,946	438,784	454,141	470,036	486,488	503,515	521,138	539,377	558,256	577,795
Taxes	12,658	13,101	13,559	14,034	14,525	15,034	15,560	16,104	16,668	17,251	17,855	18,480	19,127	19,796	20,489
Insurance	131,753	136,364	141,137	146,077	151,189	156,481	161,958	167,626	173,493	179,566	185,850	192,355	199,088	206,056	213,268
Replacement Reserves	89,823	92,518	95,293	98,152	101,097	104,130	107,253	110,471	113,785	117,199	120,715	124,336	128,066	131,908	135,865
AOF-Pacific Annual Fee	43,442	44,962	46,536	48,165	49,850	51,595	53,401	55,270	57,204	59,207	61,279	63,424	65,643	67,941	70,319
Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
City of L.E. Monitoring Fee:	21,721	22,481	23,268	24,082	24,925	25,798	26,700	27,635	28,602	29,603	30,639	31,712	32,822	33,970	35,159
Total Expenses	\$ 1,705,291	\$ 1,763,448	\$ 1,823,600	\$ 1,885,816	\$ 1,950,166	\$ 2,016,726	\$ 2,085,570	\$ 2,156,777	\$ 2,230,429	\$ 2,306,610	\$ 2,385,408	\$ 2,466,912	\$ 2,551,217	\$ 2,638,418	\$ 2,728,615
Net Operating Income	1,172,296	1,186,079	1,199,665	1,213,031	1,226,152	1,239,000	1,251,550	1,263,770	1,275,632	1,287,102	1,298,147	1,308,732	1,318,818	1,328,368	1,337,340
Mandatory Debt Service															
Principal	323,418	339,457	356,292	373,961	392,507	411,973	432,404	453,848	476,355	499,979	524,774	550,799	578,115	606,785	636,878
Interest	330,314	314,275	297,441	279,771	261,225	241,760	221,329	199,885	177,377	153,754	128,958	102,933	75,618	46,947	16,855
Fees	10,216	9,720	9,199	8,653	8,079	7,477	6,845	6,182	5,486	4,755	3,988	3,184	2,339	1,452	521
Total Mandatory Debt Service	\$ 663,948	\$ 663,452	\$ 662,932	\$ 662,385	\$ 661,812	\$ 661,210	\$ 660,578	\$ 659,915	\$ 659,218	\$ 658,488	\$ 657,721	\$ 656,916	\$ 656,071	\$ 655,185	\$ 654,254
DSCR	1.77	1.79	1.81	1.83	1.85	1.87	1.89	1.92	1.94	1.95	1.97	1.99	2.01	2.03	2.04
Remaining Cash Flow	508,348	522,627	536,734	550,646	564,340	577,791	590,972	603,856	616,414	628,614	640,426	651,816	662,747	673,184	683,087



PROFORMA

Year	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060
Waterfall Cash Flow	508,348	522,627	536,734	550,646	564,340	577,791	590,972	603,856	616,414	628,614	640,426	651,816	662,747	673,184	683,087
sh from Ops to Fund Construction															
AMF - Riverside Annual Amount:	17,724	18,345	18,987	19,651	20,339	21,051	21,788	22,550	23,340	24,156	25,002	25,877	26,783	27,720	28,690
Accrual	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Beginning Balance of DDF	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Deferred Developer Fee Payment															
Incurred Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Interest Paid	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Accrued Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Principal Paid	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Balance of DDF	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Remaining Cash Flow	490,624	504,282	517,747	530,995	544,001	556,740	569,184	581,306	593,074	604,458	615,424	625,939	635,965	645,464	654,396
- Cottages Mgmt Annual Amount:	43,636	45,163	46,744	48,380	50,073	51,826	53,640	55,517	57,460	59,471	61,553	63,707	65,937	68,245	70,633
Accrual	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Remaining Cash Flow	446,988	459,119	471,003	482,615	493,928	504,914	515,545	525,788	535,614	544,987	553,872	562,232	570,028	577,219	583,763
Soft Loan Interest Payments	223,494	229,559	235,502	241,307	246,964	252,457	257,772	262,894	267,807	272,493	276,936	281,116	285,014	288,610	291,882
Soft Loan Principal Payments	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Residual Cashflow	223,494	229,559	235,502	241,307	246,964	252,457	257,772	262,894	267,807	272,493	276,936	281,116	285,014	288,610	291,882
Residual Split															
GP IMF - Cottages Mgmt	201,145	206,604	211,951	217,177	222,267	227,211	231,995	236,605	241,026	245,244	249,242	253,004	256,512	259,749	262,693
LP Distribution	22,349	22,956	23,550	24,131	24,696	25,246	25,777	26,289	26,781	27,249	27,694	28,112	28,501	28,861	29,188
Soft Loan Accrued Interest	(51,856)	(57,922)	(63,864)	(69,670)	(75,326)	(80,820)	(86,135)	(91,257)	(96,169)	(100,856)	(105,298)	(109,478)	(113,376)	(116,972)	(120,244)
Total Income (Losses)	441,260	465,498	490,450	516,142	542,603	569,864	597,955	626,911	656,765	687,555	719,319	752,096	785,930	820,863	856,943
LP Income (Losses)	441,216	465,452	490,401	516,090	542,549	569,807	597,895	626,848	656,700	687,487	719,247	752,021	785,851	820,781	856,857
GP Income (Losses)	44	47	49	52	54	57	60	63	66	69	72	75	79	82	86



PROFORMA

	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55
Year	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075
Gross Potential Rents	4,333,929	4,442,277	4,553,334	4,667,167	4,783,846	4,903,443	5,026,029	5,151,679	5,280,471	5,412,483	5,547,795	5,686,490	5,828,652	5,974,369	6,123,728
Subsidy	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Commercial	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TIF Income	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Income	53,023	54,349	55,708	57,100	58,528	59,991	61,491	63,028	64,604	66,219	67,874	69,571	71,311	73,093	74,921
Bad Debt/Concessions	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Vacancy	(219,348)	(224,831)	(230,452)	(236,213)	(242,119)	(248,172)	(254,376)	(260,735)	(267,254)	(273,935)	(280,783)	(287,803)	(294,998)	(302,373)	(309,932)
Net Income	4,167,605	4,271,795	4,378,590	4,488,054	4,600,256	4,715,262	4,833,144	4,953,972	5,077,822	5,204,767	5,334,886	5,468,258	5,604,965	5,745,089	5,888,716
Administrative	343,152	355,162	367,593	380,458	393,774	407,557	421,821	436,585	451,865	467,681	484,049	500,991	518,526	536,674	555,458
Payroll	721,828	747,092	773,240	800,304	828,314	857,305	887,311	918,367	950,510	983,778	1,018,210	1,053,847	1,090,732	1,128,908	1,168,419
Management Fee	156,285	160,192	164,197	168,302	172,510	176,822	181,243	185,774	190,418	195,179	200,058	205,060	210,186	215,441	220,827
Repairs & Maintenance	511,581	529,486	548,018	567,198	587,050	607,597	628,863	650,873	673,654	697,232	721,635	746,892	773,033	800,089	828,093
Utilities	598,017	618,948	640,611	663,033	686,239	710,257	735,116	760,845	787,475	815,036	843,563	873,087	903,645	935,273	968,007
Taxes	21,206	21,949	22,717	23,512	24,335	25,186	26,068	26,980	27,925	28,902	29,914	30,961	32,044	33,166	34,327
Insurance	220,732	228,458	236,454	244,730	253,295	262,160	271,336	280,833	290,662	300,835	311,364	322,262	333,541	345,215	357,298
Replacement Reserves	139,941	144,140	148,464	152,918	157,505	162,230	167,097	172,110	177,274	182,592	188,070	193,712	199,523	205,509	211,674
AOF-Pacific Annual Fee	72,780	75,327	77,964	80,692	83,517	86,440	89,465	92,596	95,837	99,192	102,663	106,257	109,976	113,825	117,809
Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
City of L.E. Monitoring Fee:	36,390	37,664	38,982	40,346	41,758	43,220	44,733	46,298	47,919	49,596	51,332	53,128	54,988	56,912	58,904
Total Expenses	\$ 2,821,913	\$ 2,918,417	\$ 3,018,239	\$ 3,121,493	\$ 3,228,298	\$ 3,338,776	\$ 3,453,053	\$ 3,571,262	\$ 3,693,538	\$ 3,820,021	\$ 3,950,857	\$ 4,086,197	\$ 4,226,194	\$ 4,371,012	\$ 4,520,815
Net Operating Income	1,345,692	1,353,378	1,360,351	1,366,561	1,371,958	1,376,486	1,380,090	1,382,710	1,384,283	1,384,746	1,384,029	1,382,062	1,378,771	1,374,077	1,367,901
Mandatory Debt Service															
Principal	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Mandatory Debt Service	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
DSCR															
Remaining Cash Flow	1,345,692	1,353,378	1,360,351	1,366,561	1,371,958	1,376,486	1,380,090	1,382,710	1,384,283	1,384,746	1,384,029	1,382,062	1,378,771	1,374,077	1,367,901



## PROFORMA

Year	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075
<b>Waterfall Cash Flow</b>	1,345,692	1,353,378	1,360,351	1,366,561	1,371,958	1,376,486	1,380,090	1,382,710	1,384,283	1,384,746	1,384,029	1,382,062	1,378,771	1,374,077	1,367,901
<b>sh from Ops to Fund Construction</b>															
<b>AMF - Riverside Annual Amount:</b>	29,694	30,734	31,809	32,923	34,075	35,268	36,502	37,780	39,102	40,470	41,887	43,353	44,870	46,441	48,066
Accrual	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Beginning Balance of DDF</b>	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Deferred Developer Fee Payment															
Incurred Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Interest Paid	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Accrued Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Principal Paid	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Balance of DDF	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Remaining Cash Flow</b>	1,315,997	1,322,644	1,328,541	1,333,638	1,337,883	1,341,219	1,343,588	1,344,930	1,345,181	1,344,275	1,342,142	1,338,709	1,333,900	1,327,637	1,319,835
<b>- Cottages Mgmt Annual Amount:</b>	73,105	75,664	78,312	81,053	83,890	86,826	89,865	93,010	96,266	99,635	103,122	106,732	110,467	114,334	118,335
Accrual	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Remaining Cash Flow</b>	1,242,892	1,246,980	1,250,229	1,252,585	1,253,993	1,254,393	1,253,723	1,251,920	1,248,916	1,244,640	1,239,019	1,231,977	1,223,433	1,213,303	1,201,500
<b>Soft Loan Interest Payments</b>	621,446	416,396	165,425	151,634	137,394	122,706	107,571	91,993	75,974	59,519	42,635	25,329	7,609	-	-
<b>Soft Loan Principal Payments</b>	-	207,094	459,690	474,659	489,602	504,490	519,290	533,967	548,484	562,801	576,875	590,660	253,640	-	-
<b>Residual Cashflow</b>	621,446	623,490	625,114	626,293	626,996	627,196	626,862	625,960	624,458	622,320	619,510	615,989	962,184	1,213,303	1,201,500
<b>Residual Split</b>															
<b>GP IMF - Cottages Mgmt</b>	559,301	561,141	562,603	563,663	564,297	564,477	564,175	563,364	562,012	560,088	557,559	554,390	865,966	1,091,973	1,081,350
LP Distribution	62,145	62,349	62,511	62,629	62,700	62,720	62,686	62,596	62,446	62,232	61,951	61,599	96,218	121,330	120,150
Soft Loan Accrued Interest	(449,809)	(244,759)	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Income (Losses)</b>	<b>585,059</b>	<b>589,865</b>	<b>600,513</b>	<b>618,341</b>	<b>636,192</b>	<b>654,036</b>	<b>671,841</b>	<b>689,574</b>	<b>707,196</b>	<b>724,668</b>	<b>741,948</b>	<b>758,990</b>	<b>460,325</b>	<b>235,664</b>	<b>238,485</b>
<b>LP Income (Losses)</b>	585,000	589,806	600,453	618,279	636,128	653,971	671,774	689,505	707,125	724,595	741,874	758,914	460,279	235,640	238,461
<b>GP Income (Losses)</b>	59	59	60	62	64	65	67	69	71	72	74	76	46	24	24



SOFT LOAN PAYMENTS

			0	0	1	2	3	4	5	6	7	8	9	10	
Year			2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	
Cashflow Available for Payments on Soft Debt:			\$ -	-	-	-	-	-	-	-	107,246	259,168	261,261	263,423	
4th Loan	Paid from CF?	% of CF													
City of Lake Elsinore	Yes	50.0%	Beginning Balance	\$ 5,721,250	5,892,888	6,064,525	6,236,163	6,407,800	6,579,438	6,751,075	6,922,713	7,094,350	7,212,365	7,254,418	7,295,425
			Payment	-	-	-	-	-	-	-	-	(53,623)	(129,584)	(130,631)	(131,712)
			Incurred Interest	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638
			Interest Paid	-	-	-	-	-	-	-	-	53,623	129,584	130,631	131,712
			Accrued Interest	171,638	343,275	514,913	686,550	858,188	1,029,825	1,201,463	1,373,100	1,491,115	1,533,168	1,574,175	1,614,101
			Principal Paid	-	-	-	-	-	-	-	-	-	-	-	-
			Balance	\$ 5,892,888	6,064,525	6,236,163	6,407,800	6,579,438	6,751,075	6,922,713	7,094,350	7,212,365	7,254,418	7,295,425	7,335,351
			Remaining Cash Flow	\$ -	-	-	-	-	-	-	-	53,623	129,584	130,631	131,712
Cashflow Available after Payments on Soft Debt:			\$ -	-	-	-	-	-	-	-	53,623	129,584	130,631	131,712	



HUNT MORTGAGE GROUP

SOFT LOAN PAYMENTS

			11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	
Year			2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	
Cashflow Available for Payments on Soft Debt:			265,656	267,963	270,346	272,808	275,353	277,982	280,701	283,511	119,365	(256,812)	333,507	396,454	409,345	422,079	434,633	446,988	459,119	
4th Loan	Paid from CF?	% of CF																		
City of Lake Elsinore	Yes	50.0%	Beginning Balance	7,335,351	7,374,160	7,411,816	7,448,280	7,483,514	7,517,475	7,550,121	7,581,408	7,611,290	7,723,246	7,894,883	7,899,767	7,873,178	7,840,142	7,800,741	7,755,061	7,703,205
			Payment	(132,828)	(133,981)	(135,173)	(136,404)	(137,676)	(138,991)	(140,350)	(141,756)	(59,682)	-	(166,754)	(198,227)	(204,673)	(211,039)	(217,317)	(223,494)	(229,559)
			Incurred Interest	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638
			Interest Paid	132,828	133,981	135,173	136,404	137,676	138,991	140,350	141,756	59,682	-	166,754	198,227	204,673	211,039	217,317	223,494	229,559
			Accrued Interest	1,652,910	1,690,566	1,727,030	1,762,264	1,796,225	1,828,871	1,860,158	1,890,040	2,001,996	2,173,633	2,178,517	2,151,928	2,118,892	2,079,491	2,033,811	1,981,955	1,924,033
			Principal Paid	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
			Balance	7,374,160	7,411,816	7,448,280	7,483,514	7,517,475	7,550,121	7,581,408	7,611,290	7,723,246	7,894,883	7,899,767	7,873,178	7,840,142	7,800,741	7,755,061	7,703,205	7,645,283
			Remaining Cash Flow	132,828	133,981	135,173	136,404	137,676	138,991	140,350	141,756	59,682	(256,812)	166,754	198,227	204,673	211,039	217,317	223,494	229,559
			Cashflow Available after Payments on Soft Debt:	132,828	133,981	135,173	136,404	137,676	138,991	140,350	141,756	59,682	(256,812)	166,754	198,227	204,673	211,039	217,317	223,494	229,559



SOFT LOAN PAYMENTS

			28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44		
Year			2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064		
Cashflow Available for Payments on Soft Debt:			471,003	482,615	493,928	504,914	515,545	525,788	535,614	544,987	553,872	562,232	570,028	577,219	583,763	1,242,892	1,246,980	1,250,229	1,252,585		
4th Loan	Paid from CF?	% of CF																			
City of Lake Elsinore	Yes	50.0%	Beginning Balance	7,645,283	7,581,419	7,511,749	7,436,423	7,355,603	7,269,468	7,178,212	7,082,042	6,981,186	6,875,888	6,766,410	6,653,033	6,536,061	6,415,817	5,966,009	5,514,156	5,054,467	
			Payment	(235,502)	(241,307)	(246,964)	(252,457)	(257,772)	(262,894)	(267,807)	(272,493)	(276,936)	(281,116)	(285,014)	(288,610)	(291,882)	(621,446)	(623,490)	(625,114)	(626,293)	
			Incurred Interest	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	171,638	165,425	151,634
			Interest Paid	235,502	241,307	246,964	252,457	257,772	262,894	267,807	272,493	276,936	281,116	285,014	288,610	291,882	621,446	416,396	165,425	151,634	
			Accrued Interest	1,860,169	1,790,499	1,715,173	1,634,353	1,548,218	1,456,962	1,360,792	1,259,936	1,154,638	1,045,160	931,783	814,811	694,567	244,759	-	-	-	
			Principal Paid	-	-	-	-	-	-	-	-	-	-	-	-	-	-	207,094	459,690	474,659	
			Balance	7,581,419	7,511,749	7,436,423	7,355,603	7,269,468	7,178,212	7,082,042	6,981,186	6,875,888	6,766,410	6,653,033	6,536,061	6,415,817	5,966,009	5,514,156	5,054,467	4,579,808	
			Remaining Cash Flow	235,502	241,307	246,964	252,457	257,772	262,894	267,807	272,493	276,936	281,116	285,014	288,610	291,882	621,446	623,490	625,114	626,293	
			Cashflow Available after Payments on Soft Debt:	235,502	241,307	246,964	252,457	257,772	262,894	267,807	272,493	276,936	281,116	285,014	288,610	291,882	621,446	623,490	625,114	626,293	





SOFT LOAN PAYMENTS

			45	46	47	48	49	50	51	52	53	54	55		
Year			2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	Totals	
Cashflow Available for Payments on Soft Debt:			1,253,993	1,254,393	1,253,723	1,251,920	1,248,916	1,244,640	1,239,019	1,231,977	1,223,433	1,213,303	1,201,500		
4th Loan	Paid from CF?	% of CF													
City of Lake Elsinore	Yes	50.0%	Beginning Balance	4,579,808	4,090,206	3,585,716	3,066,426	2,532,459	1,983,975	1,421,174	844,299	253,640	-	-	
			Payment	(626,996)	(627,196)	(626,862)	(625,960)	(624,458)	(622,320)	(619,510)	(615,989)	(261,249)	-	-	(14,261,090)
			Incurred Interest	137,394	122,706	107,571	91,993	75,974	59,519	42,635	25,329	7,609	-	-	
			Interest Paid	137,394	122,706	107,571	91,993	75,974	59,519	42,635	25,329	7,609	-	-	8,539,840
			Accrued Interest	-	-	-	-	-	-	-	-	-	-	-	
			Principal Paid	489,602	504,490	519,290	533,967	548,484	562,801	576,875	590,660	253,640	-	-	5,721,250
			Balance	4,090,206	3,585,716	3,066,426	2,532,459	1,983,975	1,421,174	844,299	253,640	-	-	-	
			Remaining Cash Flow	626,996	627,196	626,862	625,960	624,458	622,320	619,510	615,989	962,184	1,213,303	1,201,500	
			Cashflow Available after Payments on Soft Debt:	626,996	627,196	626,862	625,960	624,458	622,320	619,510	615,989	962,184	1,213,303	1,201,500	



HUNT MORTGAGE GROUP

## LEASE-UP AND CREDIT DELIVERY SCHEDULE

25

Occupied Rehab:	No	
Units Occupied at Closing:	0	0%
Total LIHTC Units	142	
Units/Month Leased-up	25	

## Equity Schedule

Milestone	Date	% Equity	Equity
Closing	1-Apr-19	20.00%	2,720,257
Construction Start	1-Apr-19	0.00%	-
50% Completion	1-Dec-19	11.00%	1,496,141
75% Completion	1-Apr-20	23.00%	3,128,296
100% Completion	1-Jul-20	10.00%	1,360,129
Lease-Up Start	1-Apr-20	0.00%	
Lease-Up Finish	1-Sep-20	0.00%	
Stabilization	1-Jan-21	26.67%	3,627,463
Final Equity	1-Apr-21	9.33%	1,269,000
		100%	13,601,286

## 2020 Year 1 Tax Credit Projections

Month	Leased in Current Month	Cumulative Leased	% Leased	Qualified Leased	% Qualified	LIHTC Credits
1	0	0	0%	0	0%	-
2	0	0	0%	0	0%	-
3	0	0	0%	0	0%	-
4	25	25	18%	25	18%	21,552
5	25	50	35%	50	35%	43,104
6	25	75	53%	75	53%	64,655
7	25	100	70%	100	70%	86,207
8	25	125	88%	125	88%	107,759
9	17	142	100%	142	100%	122,414
10	0	142	100%	142	100%	122,414
11	0	142	100%	142	100%	122,414
12	0	142	100%	142	100%	122,414
						812,933

Average Leased 55% 55%

## 2021 Year 2 Tax Credit Projections

Month	Leased in Current Month	Cumulative Leased	% Leased	Qualified Leased	% Qualified	LIHTC Credits
1	0	142	100%	142	100%	122,414
2	0	142	100%	142	100%	122,414
3	0	142	100%	142	100%	122,414
4	0	142	100%	142	100%	122,414
5	0	142	100%	142	100%	122,414
6	0	142	100%	142	100%	122,414
7	0	142	100%	142	100%	122,414
8	0	142	100%	142	100%	122,414
9	0	142	100%	142	100%	122,414
10	0	142	100%	142	100%	122,414
11	0	142	100%	142	100%	122,414
12	0	142	100%	142	100%	122,414
						1,468,968

Average Leased 100% 100%

## 2022 Year 3 Tax Credit Projections

Month	Leased in Current Month	Cumulative Leased	% Leased	Qualified Leased	% Qualified	LIHTC Credits
1	0	142	100%	142	100%	122,414
2	0	142	100%	142	100%	122,414
3	0	142	100%	142	100%	122,414
4	0	142	100%	142	100%	122,414
5	0	142	100%	142	100%	122,414
6	0	142	100%	142	100%	122,414
7	0	142	100%	142	100%	122,414
8	0	142	100%	142	100%	122,414
9	0	142	100%	142	100%	122,414
10	0	142	100%	142	100%	122,414
11	0	142	100%	142	100%	122,414
12	0	142	100%	142	100%	122,414
						1,468,968

Average Leased 100% 100%



## DEPRECIATION AMORTIZATION SCHEDULE

HUNT MORTGAGE GROUP

### Depreciation

Bonus Depr?	Yes	Start Date:
Real Property: Acquisition	-	1-Apr-19
Real Property: NC/Rehab	29,990,813	1-Jul-20
Total Real Property	29,990,813	
Site Improvements	4,465,016	1-Jul-20
Personal Property	100,000	1-Jul-20

### Amortization

		Start Date:
Permanent Financing Fees	701,100	1-Jan-21
Tax Credit Fees	343,005	1-Sep-20
Expensed Construction Cost	1,483,602	1-Jul-20

Year	Real Property: Acquisition	Real Property: NC/Rehab	Site Improvements	Site Improvements - Bonus	Personal Property	Personal Property - Bonus	Permanent Financing Fees	Tax Credit Fees	Expensed Construction Cost	Annual Total Depreciation/Amortization
	30	30	15	100%	5	100%	40	15		
2020	-	499,847	-	4,465,016	-	100,000	-	7,622	1,483,602	6,556,087
2021	-	999,694	-	-	-	-	17,528	22,867	-	1,040,088
2022	-	999,694	-	-	-	-	17,528	22,867	-	1,040,088
2023	-	999,694	-	-	-	-	17,528	22,867	-	1,040,088
2024	-	999,694	-	-	-	-	17,528	22,867	-	1,040,088
2025	-	999,694	-	-	-	-	17,528	22,867	-	1,040,088
2026	-	999,694	-	-	-	-	17,528	22,867	-	1,040,088
2027	-	999,694	-	-	-	-	17,528	22,867	-	1,040,088
2028	-	999,694	-	-	-	-	17,528	22,867	-	1,040,088
2029	-	999,694	-	-	-	-	17,528	22,867	-	1,040,088
2030	-	999,694	-	-	-	-	17,528	22,867	-	1,040,088
2031	-	999,694	-	-	-	-	17,528	22,867	-	1,040,088
2032	-	999,694	-	-	-	-	17,528	22,867	-	1,040,088
2033	-	999,694	-	-	-	-	17,528	22,867	-	1,040,088
2034	-	999,694	-	-	-	-	17,528	22,867	-	1,040,088
2035	-	999,694	-	-	-	-	17,528	15,245	-	1,032,466
2036	-	999,694	-	-	-	-	17,528	-	-	1,017,221
	-	16,494,947	-	4,465,016	-	100,000	280,440	343,005		23,167,011

Year Ending	Capital Contributions	(Income)/ Loss	Depreciation & Amortization	Cash Distributions	Fed LIHTC	Total
31-Dec-19	(4,216,399)	171,638	-	-	-	<b>(4,180,355)</b>
31-Dec-20	(4,488,424)	(744,492)	6,555,431	-	812,851	<b>(2,455,276)</b>
31-Dec-21	(4,896,463)	(452,227)	1,039,984	-	1,468,821	<b>(3,304,213)</b>
31-Dec-22	-	(472,363)	1,039,984	-	1,468,821	<b>1,588,022</b>
31-Dec-23	-	(493,458)	1,039,984	-	1,468,821	<b>1,583,592</b>
31-Dec-24	-	(515,558)	1,039,984	-	1,468,821	<b>1,578,951</b>
31-Dec-25	-	(538,713)	1,039,984	-	1,468,821	<b>1,574,088</b>
31-Dec-26	-	(562,974)	1,039,984	-	1,468,821	<b>1,568,994</b>
31-Dec-27	-	(540,134)	1,039,984	5,362	1,468,821	<b>1,573,790</b>
31-Dec-28	-	(498,405)	1,039,984	12,958	1,468,821	<b>1,582,553</b>
31-Dec-29	-	(525,374)	1,039,984	13,063	1,468,821	<b>1,576,890</b>
31-Dec-30	-	(553,649)	1,039,984	13,171	655,970	<b>758,101</b>
31-Dec-31	-	(583,293)	1,039,984	13,283	-	<b>95,905</b>
31-Dec-32	-	(614,375)	1,039,984	13,398	-	<b>89,378</b>
31-Dec-33	-	(646,964)	1,039,984	13,517	-	<b>82,534</b>
31-Dec-34	-	(681,134)	1,039,984	13,640	-	<b>75,359</b>
31-Dec-35	-	(716,962)	1,032,363	13,768	-	<b>66,234</b>
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
	<b>(13,601,286)</b>	<b>(8,968,436)</b>	<b>22,147,574</b>	<b>112,161</b>	<b>14,688,214</b>	<b>3,854,547</b>

Capital Account
4,044,761
2,722,246
7,030,952
6,463,330
5,916,803
5,392,377
4,891,106
4,414,096
3,908,884
3,354,346
2,826,672
2,327,166
1,857,192
1,418,184
1,011,647
639,156
309,987
-
-
-

Net Assets	Non- recourse Liabilities	Minimum Gain
33,036,569	26,077,332	-
32,036,875	26,248,969	-
31,037,181	26,061,444	-
30,037,487	25,856,106	-
29,037,793	25,632,073	-
28,038,100	25,388,418	-
27,038,406	25,124,167	-
26,038,712	24,838,299	-
25,039,018	24,476,120	-
24,039,325	24,014,165	-
23,039,631	23,526,168	486,538
22,039,937	23,010,856	970,919
21,040,243	22,466,891	1,426,648
20,040,549	21,892,872	1,852,322
19,040,856	21,287,326	2,246,471
18,041,162	20,648,711	2,607,549
17,041,468	19,975,405	2,933,937
-	-	-
-	-	-
-	-	-



1st MORTGAGE

First Mortgage Loan		Red Stone - Ops Loan	
Loan Amount:	\$	11,534,444	
Note Rate:		4.85%	
All-In Rate:		4.85%	
Term (months):		480	
End of Term:		Dec-60	
Amortization (Months):	Yes	480	
Mandatory Annual Payment?:	Yes	\$653,733	
Commencement :		Stabilization	
Available During Construction?:	No	100%	-
Annual Payment:		\$653,733	
Monthly Payment:		\$54,478	

Fees:	
MIP	0.00%
Servicing Fee	0.15%
Other	0.00%
Total Fees:	0.15%

Notes About the Loan:
-----------------------

Rough Loan Sizing			
Loan Max - LTV	90%		28,503,862
Cap Rate	5.00%		
Loan Max - Cost	80%		33,647,154
Loan Max - DSCR	1.15		
Debt Constant Calc:			
Rate + Service Fee	5.00%		
Amo Rate	0.67%		
MIP	0.00%		
Debt Constant	5.67%		
Annual Debt Service Capacity	1,376,998		12,360,245

Bond Test	
Is this a TE Bond?	Yes
Basis+Land	34,555,829
50% of Basis + Land	17,277,915
Bond Amount	20,184,444
Bond % of Rehab/NC	58.4%
Bond Test	Passed

Annual Summary						
Year	Months	Payment	Interest	Principal	Fees	Balance
1	2019	0	-	-	-	11,534,444
2	2020	0	-	-	-	11,534,444
3	2021	12	653,733	557,296	96,437	11,438,007
4	2022	12	653,733	552,513	101,220	11,336,788
5	2023	12	653,733	547,493	106,239	11,230,549
6	2024	12	653,733	542,225	111,508	11,119,041
7	2025	12	653,733	536,695	117,038	11,002,003
8	2026	12	653,733	530,890	122,842	10,879,160
9	2027	12	653,733	524,798	128,934	10,750,226
10	2028	12	653,733	518,404	135,329	10,614,898
11	2029	12	653,733	511,693	142,040	10,472,858
12	2030	12	653,733	504,649	149,084	10,323,774
13	2031	12	653,733	497,255	156,477	10,167,296
14	2032	12	653,733	489,495	164,238	10,003,059
15	2033	12	653,733	481,350	172,383	9,830,676
16	2034	12	653,733	472,801	180,932	9,649,745
17	2035	12	653,733	463,828	189,904	9,459,840
18	2036	12	653,733	454,410	199,322	9,260,518
19	2037	12	653,733	444,525	209,207	9,051,311
20	2038	12	653,733	434,150	219,582	8,831,728
21	2039	12	653,733	423,260	230,472	8,601,256
22	2040	12	653,733	411,831	241,902	8,359,354
23	2041	12	653,733	399,834	253,898	8,105,456
24	2042	12	653,733	387,243	266,490	7,838,966
25	2043	12	653,733	374,027	279,706	7,559,260
26	2044	12	653,733	360,155	293,577	7,265,682
27	2045	12	653,733	345,596	308,137	6,957,545
28	2046	12	653,733	330,314	323,418	6,634,127
29	2047	12	653,733	314,275	339,457	6,294,670
30	2048	12	653,733	297,441	356,292	5,938,378
31	2049	12	653,733	279,771	373,961	5,564,417
32	2050	12	653,733	261,225	392,507	5,171,910
33	2051	12	653,733	241,760	411,973	4,759,937
34	2052	12	653,733	221,329	432,404	4,327,533
35	2053	12	653,733	199,885	453,848	3,873,686
36	2054	12	653,733	177,377	476,355	3,397,331
37	2055	12	653,733	153,754	499,979	2,897,352
38	2056	12	653,733	128,958	524,774	2,372,577
39	2057	12	653,733	102,933	550,799	1,821,778
40	2058	12	653,733	75,618	578,115	1,243,663
41	2059	12	653,733	46,947	606,785	636,878
42	2060	12	653,733	16,855	636,878	521
43	2061	12	-	-	-	0
44	2062	12	-	-	-	0
45	2063	12	-	-	-	0
46	2064	12	-	-	-	0
47	2065	12	-	-	-	0
48	2066	12	-	-	-	0
49	2067	12	-	-	-	0
50	2068	12	-	-	-	0
51	2069	12	-	-	-	0
52	2070	12	-	-	-	0
53	2071	12	-	-	-	0
54	2072	12	-	-	-	0
55	2073	12	-	-	-	0
56	2074	12	-	-	-	0
57	2075	12	-	-	-	0
			26,149,301	14,614,857	11,534,444	452,006



2nd MORTGAGE

Second Loan	Red Stone - TIF Loan
Loan Amount:	\$ 8,650,000
Note Rate:	4.85%
All-In Rate:	4.85%
Term (months):	240
End of Term:	Dec-40
Amortization (Months):	Yes 240
Mandatory Annual Payment?:	Yes \$676,462
Commencement :	Stabilization
Available During Construction?:	No 100% -
Annual Payment:	\$676,462
Monthly Payment:	\$56,372

Fees:	
MIP	0.00%
Servicing Fee	0.15%
Other	0.00%
Total Fees:	0.15%

Notes About the Loan:
-----------------------

Debt Constant Calc:		
Rate + Service Fee	5.00%	
Amo Rate	2.82%	
MIP	0.00%	
Debt Constant	7.82%	

Annual Summary						
Year	Months	Payment	Interest	Principal	Fees	Balance
1	2019	0	-	-	-	8,650,000
2	2020	0	-	-	-	8,650,000
3	2021	12	676,462	413,736	12,796	8,387,274
4	2022	12	676,462	400,707	12,393	8,111,518
5	2023	12	676,462	387,031	11,970	7,822,087
6	2024	12	676,462	372,677	11,526	7,518,302
7	2025	12	676,462	357,612	11,060	7,199,452
8	2026	12	676,462	341,799	10,571	6,864,789
9	2027	12	676,462	325,202	10,058	6,513,529
10	2028	12	676,462	307,782	9,519	6,144,849
11	2029	12	676,462	289,498	8,954	5,757,886
12	2030	12	676,462	270,308	8,360	5,351,732
13	2031	12	676,462	250,166	7,737	4,925,435
14	2032	12	676,462	229,024	7,083	4,477,997
15	2033	12	676,462	206,835	6,397	4,008,370
16	2034	12	676,462	183,545	5,677	3,515,452
17	2035	12	676,462	159,099	4,921	2,998,089
18	2036	12	676,462	133,442	4,127	2,455,069
19	2037	12	676,462	106,512	3,294	1,885,119
20	2038	12	676,462	78,247	2,420	1,286,904
21	2039	12	676,462	48,579	1,502	659,021
22	2040	12	676,462	17,441	539	0
23	2041	12	-	-	-	0
24	2042	12	-	-	-	0
25	2043	12	-	-	-	0
26	2044	12	-	-	-	0
27	2045	12	-	-	-	0
28	2046	12	-	-	-	0
29	2047	12	-	-	-	0
30	2048	12	-	-	-	0
31	2049	12	-	-	-	0
32	2050	12	-	-	-	0
33	2051	12	-	-	-	0
34	2052	12	-	-	-	0
35	2053	12	-	-	-	0
36	2054	12	-	-	-	0
37	2055	12	-	-	-	0
38	2056	12	-	-	-	0
39	2057	12	-	-	-	0
40	2058	12	-	-	-	0
41	2059	12	-	-	-	0
42	2060	12	-	-	-	0
43	2061	12	-	-	-	0
44	2062	12	-	-	-	0
45	2063	12	-	-	-	0
46	2064	12	-	-	-	0
47	2065	12	-	-	-	0
48	2066	12	-	-	-	0
49	2067	12	-	-	-	0
50	2068	12	-	-	-	0
51	2069	12	-	-	-	0
52	2070	12	-	-	-	0
53	2071	12	-	-	-	0
54	2072	12	-	-	-	0
55	2073	12	-	-	-	0
56	2074	12	-	-	-	0
57	2075	12	-	-	-	0
		13,529,242	4,879,242	8,650,000	150,904	



4TH LOAN

Fourth Loan		City of Lake Elsinore	
Loan Amount:		\$	5,721,250
Rate:			3.00%
Term (months):			660
End of Term:			Mar-74
Amortization (Months):	No		660
Mandatory Annual Payment?:	No		\$0
Commencement :			Closing
Available During Construction?:	Yes	96.5%	5,521,250
Is Soft Loan Paid?	Yes	50.0%	% of Cash Flow
Soft Interest, Simple or Compounding?			Simple
Annual Payment:			
Monthly Payment:			

Fees:

MIP	0.00%
Servicing Fee	0.00%
Other	0.00%
Total Fees:	0.00%

Notes About the Loan:

\$1.45M Accrued Funds Loan  
\$3M Low and Moderate Income Housing Asset Fund (LMIHAF)  
\$200K Fund 106 Loan  
\$1,071,250 - Future Fund 106

EXHIBIT O  
SUBORDINATION AGREEMENT  
(DEFERRED MITIGATION LOAN)

[TO COME]



EXHIBIT P  
GUARANTY  
[TO COME]