

LOAN AGREEMENT

by and between

**THE CITY OF SAN LEANDRO,
a California charter city**

and

WASHINGTON AVENUE, L.P., a California limited partnership

**15101 WASHINGTON
(Affordable Housing Asset Fund Loan)**

DATE

THIS LOAN AGREEMENT (this “**Agreement**”) is entered into effective as of **DATE** (“**Effective Date**”) by and between the City of San Leandro, a California charter city (“**City**”) and Washington Avenue, L.P., a California limited partnership (“**Developer**”). City and Developer are hereinafter collectively referred to as the “**Parties.**”

RECITALS

A. Developer owns, or intends to acquire, that certain real property located at 15101 Washington Avenue, San Leandro, California, also known as Alameda County Assessor Parcel Number _____ (the “**Property**”), as more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

B. Developer has proposed to develop a seventy-two (72) unit multifamily residential apartment building consisting of three (3) studio units, thirty-three (33) one-bedroom units, eighteen (18) two-bedroom units, and eighteen (18) three-bedroom units, of which seventy one (71) units will be rented at an affordable housing cost to low, very-low, and extremely-low income households (the “**Project**”).

C. Developer has requested, and City has agreed, to provide a loan to Developer in the amount of One Million Six Hundred Thirty Five Thousand Forty Dollars (\$1,635,040) from the City’s Affordable Housing Asset Fund (the “**Loan**”) to assist in the development of the Project pursuant to the terms and conditions set forth herein.

D. The City has determined that (i) development of the Property pursuant to this Agreement will be of benefit to the City by providing affordable housing in the City, and (ii) the loan is necessary to make the Project economically feasible and affordable to low, very low-, and extremely-low income households.

E. A material inducement to City to enter into this Agreement is the agreement by Developer to develop the Property within the time periods specified herein and in accordance with the provisions hereof, and the City would be unwilling to enter into this Agreement in the absence of an enforceable commitment by Developer to complete the Project in accordance with such provisions and within such time periods.

F. Prior to the distribution of the Loan by the City: (i) Developer shall execute a secured promissory note (the “**Note**”) in the amount of the Loan and a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (“**Deed of Trust**”), which shall provide City with a security interest in the Property and the Project, and (ii) Developer and City shall execute an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the “**Regulatory Agreement**”), which shall be recorded against the Property and which shall require Project rents to be affordable to low, very low, and extremely-low income households for a term of not less than 55 years. The Note, the Regulatory Agreement and Deed of Trust are collectively hereinafter referred to as the “**City Documents.**”

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE I DEFINITIONS

1. Definitions. The following terms shall have the meanings set forth in the Sections referenced below whenever used in this Agreement and the Exhibits attached hereto. Additional terms are defined in the Recitals and text of this Agreement.

- 1.1 “**Certificate of Completion**” is defined in Section 3.15.
- 1.2 “**City Documents**” is defined in Recital F.
- 1.3 “**Claims**” is defined in Section 3.17.
- 1.4 “**Conditions of Approval**” is defined in Section 3.2.
- 1.5 “**Construction Plans**” is defined in Section 3.11.
- 1.6 “**Environmental Laws**” is defined in Section 9.4.
- 1.7 “**Hazardous Materials**” is defined in Section 9.3.
- 1.8 “**Improvements**” is defined in Section 3.9.
- 1.9 “**Indemnitees**” is defined in Section 3.17.
- 1.10 “**Loan**” is defined in Recital C and Article 4.
- 1.11 “**Note**” is defined in Article 4.
- 1.12 “**Project**” is defined in Recital B and further described in Section 3.2.
- 1.13 “**Regulatory Agreement**” is defined in Recital F.

ARTICLE II
REPRESENTATIONS; EFFECTIVE DATE AND TERM

2.1 Developer's Representations. Developer represents and warrants as follows, and Developer covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 not to be true, Developer shall immediately give written notice of such fact or condition to City. Developer acknowledges that City shall rely upon Developer's representations made herein notwithstanding any investigation made by or on behalf of City.

(i) Authority. Developer is a California limited partnership duly organized and in good standing under the laws of the State of California. Developer has the full right, power and authority to undertake all obligations of Developer as provided herein, and Developer's execution, performance and delivery of this Agreement, the Regulatory Agreement, the City Documents have been duly authorized by all requisite actions.

(ii) No Conflict. Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

(iii) No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Developer to perform its obligations under this Agreement.

(iv) No Developer Bankruptcy. Developer is not the subject of a bankruptcy or insolvency proceeding.

2.2 City Representations. City represents and warrants to Developer and covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.2 not to be true, City shall immediately give written notice of such fact or condition to Developer. City acknowledges that Developer shall rely upon City's representations made herein notwithstanding any investigation made by or on behalf of Developer.

(i) Authority. City is a California charter city duly organized and in good standing under the laws of the State of California. City has the full right, power and authority to undertake all of the respective obligations as provided herein, and the execution, performance and delivery of this Agreement by City has been duly authorized by all requisite actions on the part of each such entity. The persons executing this Agreement on behalf of City has been duly authorized to do so. This Agreement constitutes a valid and binding obligation of City.

(ii) No Conflict. City's execution, delivery and performance of their respective obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which either is bound.

(iii) No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of City to perform their obligations under this Agreement.

(iv) No Bankruptcy. City is not the subject of a bankruptcy or insolvency proceeding.

2.3 Effective Date. The obligations of Developer and City hereunder shall be effective as of the Effective Date.

ARTICLE III DEVELOPMENT OF THE PROJECT

3.1 The Property. Developer represents and warrants that as of the Effective Date: (i) Developer possesses, or intends to acquire, fee simple title to the Property, and (ii) to the best knowledge of Developer after reasonable inquiry, the Property is subject to no covenant, condition, restriction or agreement that would hinder or prevent Developer's performance of its obligations under this Agreement, the Regulatory Agreement, and the City Documents. If at any time the foregoing statements become untrue, the City shall have the right to terminate this Agreement upon written notice to Developer.

3.2 Scope of Development. Developer shall develop the Project on the Property in accordance with the terms and conditions of this Agreement, the Regulatory Agreement, the City Documents and in compliance with the terms and conditions of all approvals, entitlements and permits that the City or any other governmental body or agency with jurisdiction over the Project or the Property has granted or issued as of the date hereof or may hereafter grant or issue in connection with development of the Project, including without limitation, all mitigation measures imposed in connection with environmental review of the Property and the Project and all conditions of approval imposed in connection with any entitlements, approvals or permits (all of the foregoing approvals, entitlements, permits, mitigation measures and conditions of approval are hereafter collectively referred to as the "**Conditions of Approval**").

The Project consists of the design, development and construction on the Property of a 72-unit multifamily residential project, consisting of three (3) studio units, thirty-three (33) one-bedroom units, eighteen (18) two-bedroom units, and eighteen (18) three-bedroom units. Developer agrees that thirty-five (35) of the units will be rented at an affordable housing cost to low, very-low, and extremely-low income households. The Project will include one (1) manager's unit.

3.3 Affordable Housing. Developer covenants and agrees for itself, its successors and assigns that seventy one (71) of the residential units developed within the Project shall be occupied by low, very-low, or extremely-low income households and rented at an affordable rent to households of low, very low, and extremely low-income in accordance with the terms hereof and the Regulatory Agreement which the Parties shall execute substantially in the form attached hereto as Exhibit C concurrently with the execution of this Agreement, and which shall be recorded in the Official Records of Alameda County (“**Official Records**”) on the date that Developer acquires the Property.

3.4 Project Approvals. Developer acknowledges and agrees that execution of this Agreement by City does not constitute approval for the purpose of the issuance of building permits for the construction of the Project, does not limit in any manner the discretion of City in such approval process, and does not relieve Developer from the obligation to obtain all necessary entitlements, approvals, and permits for the construction of the Project, including without limitation, the approval of architectural plans, the issuance of any certificates regarding historic resources required in connection with the Project (if any), and the completion of any required environmental review of the Project pursuant to CEQA and the National Environmental Policy Act (NEPA).

Developer covenants that it shall: (i) obtain all necessary permits and approvals which may be required by City and any other governmental agency having jurisdiction over the construction of the Project or the development of the Property, (ii) comply with all Conditions of Approval, (iii) comply with all mitigation measures, if any, imposed in connection with any environmental review of the Property or the Project, and (iv) not commence construction of the Project prior to issuance of building permits.

3.5 Fees. Developer shall be solely responsible for, and shall promptly pay when due, all customary and usual fees and charges of City in connection with obtaining building permits and other approvals for the Project, including without limitation, those related to the processing and consideration of amendments, if any, to the current entitlements, any related approvals and permits, environmental review, architectural review, historic review, and any subsequent approvals for the Project or the development of the Property.

3.6 Development Schedule. Developer shall commence and complete construction of the Project and shall satisfy all other obligations of Developer under this Agreement within the time periods set forth herein, as such time periods may be extended upon the mutual written consent of the Parties. Developer shall commence construction of the Project by the later of (i) thirty (30) days following receipt of all approvals and financing for the Project, or (ii) no later than the date required for the commencement of construction pursuant to Low-Income Housing Tax Credit (“LIHTC”) program requirements if the Project is financed in part by LIHTC, and shall diligently prosecute to completion the construction of the Project in order to allow City to issue a final certificate of occupancy for the Project within twenty-four (24) months following commencement of construction. Developer’s failure to commence or complete construction of

the Project in accordance with the foregoing schedule as such may be amended by the written consent of the Parties shall constitute a default hereunder.

3.7 Cost of Acquisition and Construction. Except as expressly set forth herein, Developer shall be solely responsible for all direct and indirect costs and expenses incurred in connection with the acquisition of the Property, the design, development and construction of the Project and compliance with the Conditions of Approval, including without limitation the installation and construction of all off-site or on-site improvements required by City in connection therewith, and none of such costs and expenses shall be the obligation of the City.

3.8 Rights of Access; Books and Records. For the purpose of ensuring that the Project is developed in compliance with this Agreement, Developer shall permit representatives of the City to enter upon the Property to inspect the Project following 48-hours' written notice (except in the case of emergency in which case such notice as may be practical under the circumstances shall be provided). Upon request, Developer shall permit the City to inspect at reasonable times and on a confidential basis those books, records and all other documents of Developer necessary to determine Developer's compliance with the terms of this Agreement.

3.9 City Disclaimer. Developer acknowledges that the City is under no obligation, and neither City undertakes or assumes any responsibility or duty to Developer or to any third party, to in any manner review, supervise, or inspect the progress of construction or the operation of the Project. Developer and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, the performance of architects, subcontractors, and material suppliers, and all other matters relating to the construction and operation of the Project. Any review or inspection undertaken by the City is solely for the purpose of determining whether Developer is properly discharging its obligations under this Agreement, and shall not be relied upon by Developer or any third party as a warranty or representation by the City as to the quality of the design or construction of the Project and other improvements constructed on the Property (collectively, the "**Improvements**") or otherwise.

3.10 Financing Plan. As set forth in the attached Exhibit F, Developer has provided City with a preliminary financing plan for the Project ("**Financing Plan**") which describes (i) the estimated costs of Project development, including acquisition costs, and hard and soft construction costs, (ii) an operating pro forma which describes projected revenue and expenses for the Project, and (iii) identification of sources of construction and permanent financing.

Not later than sixty (60) days prior to the commencement of construction (see Section 3.6) Developer shall provide evidence to City that all sources of funds for Project construction and permanent financing have been firmly committed by Developer, equity investors or lending institutions, subject only to commercially reasonable conditions.

3.11 Construction Plans. Developer shall submit to City detailed construction plans for the Project (the "**Construction Plans**") for approval. As used herein "**Construction Plans**"

mean all construction documents upon which Developer and Developer's contractors shall rely in building the Project and developing the Property (including the landscaping, parking, and common areas) and shall include, without limitation, the site development plan, final architectural drawings, landscaping, exterior lighting and signage plans and specifications, materials specifications, final elevations, and building plans and specifications. The Construction Plans shall be based upon the scope of development set forth herein and upon the development approvals issued by the City for the Project, and shall not materially deviate therefrom without the express written consent of City. The Construction Plans shall be deemed approved by the City unless rejected by the City in writing for their failure to comply with the requirements set forth herein within thirty (30) days after receipt by the City. Such approval of the Construction Plans by the City shall not relieve Developer's obligation to obtain any and all approvals and permits required by the City or the City Building and Safety Division.

If rejected by the City in whole or in part, Recipient shall submit new or corrected Construction Plans within thirty (30) days after notification of the City's rejection and the reasons therefor. The City shall then have thirty (30) days to review and approve Recipient's new or corrected Construction Plans. The provisions of this Section relating to time periods for approval, rejection, or resubmission of new or corrected Construction Plans shall continue to apply until the Construction Plans have been approved by the City.

3.12 Construction Pursuant to Plans. Developer shall construct the Project in accordance with the approved Construction Plans, the Conditions of Approval, and all other permits and approvals granted by the City pertaining to development of the Project. Developer shall comply with all directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental agency having jurisdiction over the Property or the Project. Each element of the work shall proceed only after procurement of each permit, license or other authorization that may be required for such element by any governmental agency having jurisdiction. All design and construction work on the Project shall be performed by licensed contractors, engineers or architects, as applicable.

3.13 Change in Construction Plans. If Developer desires to make any material change in the approved Construction Plans, Developer shall submit the proposed change in writing to the City for its written approval, which approval shall not be unreasonably withheld or delayed if the Construction Plans, as modified by any proposed change, conform to the requirements of this Agreement and any approvals issued by City after the Effective Date. The Parties shall meet in good faith to discuss the changes if the City propose to reject the changes. Any change in the Construction Plans required in order to comply with applicable codes shall be deemed approved, so long as such change does not substantially nor materially change the design, function, use, or amenities of the Project as shown on the latest approved Construction Plans.

3.14 Defects in Plans. City shall not be responsible to Developer or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. Developer shall indemnify, defend (with counsel approved

by City) and hold harmless the Indemnitees (defined in Section 3.17 below) from and against all Claims arising out of, or relating to, or alleged to arise from or relate to defects in the Construction Plans or defects in any work done pursuant to the Construction Plans whether or not any insurance policies shall have been determined to be applicable to any such Claims. Developer's indemnification obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement and the recordation of a Certificate of Completion. It is further agreed that City do not, and shall not, waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Developer's deposit with City of any of the insurance policies described in this Agreement. Developer's indemnification obligations pursuant to this Section shall not extend to Claims arising due to the gross negligence or willful misconduct of the Indemnitees.

3.15 Certificate of Completion for Project. Promptly after completion of construction of the Project, issuance of a final Certificate of Occupancy by the City, and the written request of Developer, the City will provide an instrument ("**Certificate of Completion**") so certifying. The Certificate of Completion shall be conclusive evidence that Developer has satisfied its obligations regarding the development of the Property.

The Certificate of Completion shall be issued substantially in the form attached hereto as Exhibit B, and at Developer's option, shall be recorded in the Official Records. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust or mortgage securing money loaned to finance the Project or any part thereof and shall not be deemed a notice of completion under the California Civil Code, nor shall such Certificate provide evidence that Developer has satisfied any obligation that survives the expiration of this Agreement, including without limitation, Developer's obligations pursuant to the Regulatory Agreement.

3.16 Equal Opportunity. During the construction of the Project, there shall be no discrimination on the basis of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction of the Project, and Developer shall direct its contractors and subcontractors to refrain from discrimination on such basis.

3.17 Prevailing Wage Requirements. To the extent, and if, required by applicable federal and state laws, rules and regulations, Developer and its contractors and agents shall comply with California Labor Code Section 1720 *et seq.* and applicable federal labor laws and standards, and the regulations adopted pursuant thereto ("**Prevailing Wage Laws**"), and shall be responsible for carrying out the requirements of such provisions. Developer shall submit to City a plan for monitoring payment of prevailing wages and shall implement such plan at Developer's expense.

Developer shall indemnify, defend (with counsel approved by City) and hold the City, and its respective elected and appointed officers, officials, employees, agents, consultants, and

contractors (collectively, the “**Indemnitees**”) harmless from and against all liability, loss, cost, expense (including without limitation attorneys’ fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively “**Claims**”) which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City do not and shall not waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Developer’s deposit with City of any of the insurance policies described in this Agreement. The provisions of this Section 3.17 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project. Developer’s indemnification obligations under this Section 3.17 shall not apply to any Claim which arises as a result of an Indemnitee’s gross negligence or willful misconduct.

3.18 Compliance with Laws. Developer shall carry out and shall cause its contractors to carry out the construction of the Project in conformity with all applicable federal, state and local laws, rules, ordinances and regulations, including without limitation, all applicable federal and state labor laws and standards, applicable provisions of the California Public Contracts Code, the City zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City's Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

3.19 Liens and Stop Notices. Until the expiration of the term of the Regulatory Agreement and full repayment of the Loan, Developer shall not allow to be placed on the Property or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of Developer. If a claim of a lien or stop notice is given or recorded affecting the Project, Developer shall within thirty (30) days of such recording or service: (a) pay and discharge (or cause to be paid and discharged) the same; or (b) effect the release thereof by recording and delivering (or causing to be recorded and delivered) to the party entitled thereto a surety bond in sufficient form and amount or provide other assurance satisfactory to City that the claim of lien or stop notice will be paid or discharged.

3.20 Right of City to Satisfy Liens on the Property. If Developer fails to satisfy or discharge any lien or stop notice on the Property pursuant to Section 3.19 above, the City shall have the right, but not the obligation, to satisfy any such liens or stop notices at Developer’s

expense and without further notice to Developer. In such event Developer shall be liable for and shall immediately reimburse City for such paid lien or stop notice. Alternatively, the City may require Developer to immediately deposit with City the amount necessary to satisfy such lien or claim pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against Developer. Developer shall file a valid notice of cessation or notice of completion upon cessation of construction of the Improvements for a continuous period of thirty (30) days or more, and shall take all other reasonable steps to forestall the assertion of claims or liens against the Property or the Improvements. The City may (but has no 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 Property and the Improvements.

3.22 Performance and Payment Bond(s).

(a) Prior to commencement of construction of the Project, Developer shall deliver to the City copies of payment bond(s) and performance bond(s) issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of the Project.

(b) In lieu of such performance and payment bonds, Developer may submit evidence satisfactory to the City of the Developer's ability to commence and complete construction of the Project in the form of an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, or other marketable securities held by a broker or other financial institution, with signature authority of the City required for any withdrawal, or a completion guaranty in a form and from a guarantor acceptable to City. Such evidence must be submitted in approvable form in sufficient time to allow the City to review and approve the information within prior to the scheduled construction start date.

ARTICLE IV CITY FINANCIAL ASSISTANCE

4.1 Loan. Using funds from the City's Housing Asset Fund, the City shall provide a loan in the amount of One Million Six Hundred Thirty Five Thousand Forty Dollars (\$1,635,040) (the "**Loan**") to Developer upon the terms and conditions and for the purposes set forth in this Agreement. The Loan shall be evidenced by a promissory note (the "**Note**") substantially in the form attached hereto as Exhibit D, and shall be secured by a deed of trust (the "**Deed of Trust**") executed by Developer as Trustor substantially in the form attached hereto as Exhibit E and recorded against the Property subordinate only to such liens as City shall approve in writing. The outstanding principal balance of the Note will accrue three percent (3%) simple annual interest commencing upon the date of disbursement.

Provided that Developer has complied with all conditions precedent to disbursement of the Loan set forth in Section 4.5, the proceeds of the Loan ("**Loan Proceeds**") shall be disbursed

in accordance with Section 4.4 hereof. The Parties agree that City shall disburse Loan Proceeds only for the purposes set forth in Section 4.4.

4.2 Payment Dates; Maturity Date. All payments on the loan shall be deferred until the Maturity Date. The entire outstanding principal balance of the Loan together with accrued interest and all other sums due under the City Documents shall be payable in full on the fifty-fifth (55th) anniversary of the date that City issues the final certificate of occupancy for the Project (the “**Maturity Date**”).

4.3 Security. As security for repayment of the Note, Developer shall execute the Deed of Trust pursuant to which City shall be provided a lien against the Property and the Improvements. The Deed of Trust shall be recorded in the Official Records on the date that Developer acquires the Property. The Deed of Trust may be subordinated only to such liens and subject only to such title exceptions as City may approve in writing. The City acknowledges that Developer’s construction and permanent lender(s) may require the subordination of the Deed of Trust and the City shall subordinate the Deed of Trust to deeds of trust or other security instruments approved by the City pursuant to a written instrument conforming to the requirements of California Health and Safety Code Section 33334.14(a)(4) and including without limitation, the provisions set forth in Section 8.4 below. .

4.4 Use and Disbursement of Proceeds. The Loan Proceeds shall be used solely to fund acquisition and predevelopment of the Property and/or construction of the Project, and closing, escrow and other costs approved by the City.

4.5 Conditions to Disbursement of Loan Proceeds. City’s obligation to fund the Loan and disburse the proceeds thereof is conditioned upon the satisfaction of all of the following conditions:

(a) Developer’s delivery to City of each of the following: (i) certificate of good standing, certified by the Secretary of State indicating that Developer is properly organized, in good standing, and authorized to do business in the State of California, and (ii) a certified resolution indicating that Developer has authorized this transaction and that the persons executing this Agreement, the Regulatory Agreement, and the City Documents on Developer’s behalf have been duly authorized to do so.

(b) Developer’s delivery to the City of evidence of insurance coverage in accordance with the requirements set forth in Section 11.2.

(c) Developer’s delivery of the Regulatory Agreement and each of the City Documents, each fully-executed and acknowledged as applicable.

(d) Recordation of the Regulatory Agreement and the Deed of Trust in the Official Records simultaneously with the disbursement of any Loan Proceeds.

(e) Reserved.

(f) The City's receipt of a written requisition for disbursement of funds from Developer specifying the amount and use of the requested funds, accompanied by the title company's estimated settlement statement showing the acquisition price, closing costs and all other amounts due in escrow for Developer's acquisition of the Property.

4.6 No Obligation to Disburse Proceeds Upon Default. Notwithstanding any other provision of this Agreement, the City shall have no obligation to disburse or authorize the disbursement of any portion of the Loan Proceeds following:

- (i) the failure of any of Developer's representations and warranties made in this Agreement or in connection with the Loan to be true and correct in all material respects;
- (ii) the termination of this Agreement by mutual agreement of the Parties;
- (iii) the conditions to disbursement of the Loan set forth in Section 4.5 have not been satisfied within the time frame set forth in Section 3.1, unless an extension of such date is approved by City in writing; or
- (iv) the occurrence of an Event of Default under this Agreement, the Regulatory Agreement, any of the City Documents which remains uncured beyond any applicable cure period.

4.7 Prepayment; Acceleration

(a) Prepayment. Developer shall have the right to prepay the Loan at any time and from time to time, without penalty or premium, provided that any prepayment of principal must be accompanied by interest accrued but unpaid to the date of prepayment. Prepayments shall be applied first to accrued but unpaid interest and then to principal. Any such prepayment shall have no effect upon Developer's obligations under the Regulatory Agreement which shall survive for the full term of the Regulatory Agreement.

(b) Due On Sale or Encumbrance. Unless City agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued under the Note shall be due and payable upon the Transfer (as defined in Section 7.2) absent the prior written consent of City of all or any part of or interest in the Property except for a Transfer permitted under Section 7.3 of this Agreement or as otherwise permitted pursuant to this Agreement.

4.8 Nonrecourse. Except as expressly provided in this Section 4.8, Developer shall have no personal liability for payment of the principal of, or interest on the Note, and the sole recourse of City with respect to the payment of the principal of, and interest on the Note shall be to the Property and the Improvements and any other collateral held by City as security for the Note; provided however, nothing contained in the foregoing limitation of liability shall: (i) limit

or impair the enforcement against all such security for the Note of all the rights and remedies of the City thereunder; (ii) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto; or (iii) be deemed in any way to limit the rights of the City to obtain specific performance by the Developer of its covenants under the City Documents, other than the covenants to pay the City principal and interest due under the Note.

The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note; nothing contained herein is intended to relieve the Developer of its obligation to indemnify the City under this Agreement, or liability for: (i) fraud or willful misrepresentation by the Developer; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by the Developer other than in accordance with the Deed of Trust; and/or (iv) the misappropriation of any proceeds by the Developer under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Development

ARTICLE V INTENTIONALLY OMITTED

ARTICLE VI USE OF THE PROPERTY

6.1 Use; Affordable Housing. Developer covenants and agrees for itself and its successors and assigns that the Property shall be used for the development and operation of the Project in accordance with the terms and conditions of this Agreement and the Regulatory Agreement.

6.2 Maintenance. Developer shall at its own expense, maintain the Property, the Improvements and related landscaping and common areas in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Developer agrees to maintain the Project and the Property (including without limitation, the residential units, common areas, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Project. Developer shall prevent and/or rectify any physical deterioration of the Property and the Project and shall make all repairs, renewals and replacements necessary to keep the Property and the Improvements in good condition and repair. Developer shall provide adequate security services for occupants of the Project.

6.3 Taxes and Assessments. Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, payroll, withholding, sales, and other taxes assessed against the Property and payable by Developer, 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 the Developer exercises its right to contest any tax, assessment, or charge, 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. Developer shall have the right to apply for all applicable tax exemptions, including, without limitation, the welfare exemption from property tax for low-income housing.

6.4 Obligation to Refrain from Discrimination. Developer shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Developer covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition 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 Property or part thereof, nor shall Developer or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Developer shall include such provision in all deeds, leases, contracts and other instruments executed by Developer, and shall enforce the same diligently and in good faith.

ARTICLE VII

LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DEVELOPER

7.1 Change Pursuant to this Agreement. Developer has represented that it possess the necessary expertise, skill and ability to carry out the development of the Project on the Property pursuant to this Agreement. The qualifications, experience, financial capacity and expertise of Developer is of particular concern to the City. It is because of these qualifications, experience, financial capacity and expertise that the City has entered into this Agreement with Developer. No voluntary or involuntary successor, assignee or transferee of Developer shall acquire any rights or powers under this Agreement, except as expressly provided herein.

7.2 Prohibition on Transfer. Prior to the expiration of the term of the Regulatory
5055770.1 15

Agreement, Developer shall not, except as expressly permitted by this Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, “**Transfer**”) of the whole or any part of the Property, the Project, the Improvements, or this Agreement, without the prior written approval of City. Any such attempt to assign this Agreement without the City’s consent shall be null and void and shall confer no rights or privileges upon the purported assignee. In addition to the foregoing, prior to the expiration of the term of the Regulatory Agreement, except as expressly permitted by this Agreement, Developer shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a “significant change of ownership” shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Developer, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner(s), nor the transfer by the investor limited partner(s) to subsequent limited partner(s) shall be restricted by this provision.

7.3 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent: (i) the granting of utility easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to this Agreement; (iii) the lease of individual units to tenants for occupancy as their principal residence in accordance with the Regulatory Agreement; (iv) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or the Property in accordance with the approved Financing Plan and subject to the requirements of Article VIII, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; and (v) a Transfer to entity which is under the direct control or under common control with Abode Communities or in which Abode Communities is the sole member or the general partner (“**Controlled Affiliate**”).

7.4 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property or portion thereof if all of the following requirements are met (provided however, the requirements of this Section 7.4 shall not apply to Transfers described in Section 7.3):

(i) The proposed transferee demonstrates to the City’s satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete construction of the Project and to otherwise fulfill the obligations undertaken by the Developer under this Agreement.

(ii) The Developer and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of this Agreement, the Property or interest therein together with such documentation of the proposed transferee’s qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Developer under this Agreement, the Regulatory Agreement, the City Documents arising after the effective date of the Transfer and all obligations of Developer arising prior to the effective date of the Transfer (unless Developer expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Developer's obligations pursuant to the Conditions of Approval and all other conditions, and restrictions set forth in this Agreement and the Regulatory Agreement.

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the City Manager unless the City Manager, in his or her discretion, refers the matter of approval to the City Council. If the City rejects a proposed Transfer, the City, as applicable, shall provide the reasons for such rejection in writing within thirty (30) days following receipt of written request by Developer, and representatives of the City shall meet with Developer and the proposed transferee to discuss in good faith the reasons for the rejection and Developer's and transferee's responses thereto.

7.5 Effect of Transfer without City Consent.

7.5.1 In the absence of specific written agreement by the City, no Transfer by Developer shall be deemed to relieve the Developer or any other party from any obligation under this Agreement or the Regulatory Agreement.

7.5.2 Without limiting any other remedy City may have under this Agreement, or under law or equity, this Agreement may be terminated by City if without the prior written approval of the City, Developer assigns or Transfers this Agreement or the Property prior to the City's issuance of a Certificate of Completion. This Section 7.5.2 shall not apply to Transfers described in clauses (i) through (iv) of Section 7.3.

7.6 Recovery of City Costs. Developer shall reimburse City for all costs, including but not limited to attorneys' fees, incurred in reviewing instruments and other legal documents proposed to affect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten days following City's delivery to Developer of an invoice detailing such costs. This Section 7.6 shall not apply to Transfers described in Section 7.3.

ARTICLE VIII SECURITY FINANCING AND RIGHTS OF MORTGAGEES

8.1 Mortgages and Deeds of Trust for Development. Mortgages and deeds of trust, or any other reasonable security instrument are permitted to be placed upon the Property only for

the purpose of securing loans approved pursuant to the approved Financing Plan for the purpose of financing the acquisition of the Property, the design and construction of the Improvements, other expenditures reasonably necessary for development of the Property pursuant to this Agreement, and the rehabilitation and/or refinancing of the Project. Developer shall not enter into any conveyance for such financing without the prior written approval of the City Manager or his or her designee. As used herein, the terms “mortgage” and “deed of trust” shall mean any security instrument used in financing real estate acquisition, construction and land development.

8.1.1 Regulatory Agreement to be Senior to Mortgages. City agree that if required by construction and/or permanent lenders the Memorandum of this Agreement, the Deed of Trust, and the Regulatory Agreement may be subordinated to deeds of trust or other security instruments approved by the City pursuant to a written instrument conforming to the requirements of California Health and Safety Code Section 33334.14(a)(4) and including without limitation, the provisions set forth in Section 8.4 below.

8.2 Holder Not Obligated to Construct. The holder of any mortgage, deed of trust authorized by this Agreement shall not be obligated to construct or complete the Improvements or to guarantee such construction or completion. 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 or improvements provided for or authorized by this Agreement.

8.3 Notice of Default and Right to Cure. Whenever City delivers any notice of default hereunder, City shall concurrently deliver a copy of such notice to each holder of record of any mortgage or deed of trust secured by the Property provided that City has been provided with the address for delivery of such notice. City shall have no liability to any such holder for any failure by the City to provide such notice to such holder. Each such holder shall have the right, but not the obligation, at its option, to cure or remedy any such default or breach.

8.4 City Right to Cure Defaults. In the event of a breach or default by Developer under a mortgage or deed of trust secured by the Property, City may (but has no obligation to) cure the default, without acceleration of the subject loan, following prior notice thereof to the holder of such instrument and Developer. In such event, Developer shall be liable for, and City shall be entitled to reimbursement from Developer for all costs and expenses incurred by City associated with and attributable to the curing of the default or breach and such sum shall constitute a part of the indebtedness secured by the Deed of Trust.

8.5 Holder to be Notified. Developer, for itself, its successors and assigns hereby warrants and agrees that each term contained herein dealing with security financing and rights of holders shall be either inserted into the relevant deed of trust or mortgage or acknowledged by the holder prior to its creating any security right or interest in the Property.

8.6 Modifications to Agreement. City shall not unreasonably withhold its consent to modifications of this Agreement requested by Project lenders or investors provided such modifications do not alter City's substantive rights and obligations under this Agreement.

8.7 Estoppel Certificates. Any Party shall, at any time, and from time to time, within thirty (30) days after receipt of written request from the other Party, execute and deliver to such Party a written statement certifying that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties (if such be the case), (ii) this Agreement has not been amended or modified, or if so amended, identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing the nature of any such defaults.

ARTICLE IX ENVIRONMENTAL MATTERS

9.1 No City Liability; Developer's Covenants. City shall not be responsible for the cost of any soil, groundwater or other environmental remediation or other response activities for any Hazardous Materials, if any, existing or occurring on the Property or any portion thereof, and Developer shall be solely responsible for all actions and costs associated with any such activities required by any regulatory agency with jurisdiction over the Property and/or required for the development of the Project, the Property, or any portion thereof. Upon receipt of any notice regarding the presence, release or discharge of Hazardous Materials in, on or under the Property, or any portion thereof, Developer (as long as Developer owns the property which is the subject of such notice) agrees to timely initiate and diligently pursue and complete all appropriate response, remediation and removal actions for the presence, release or discharge of such Hazardous Materials within such deadlines as specified by applicable Environmental Laws. Developer hereby covenants and agrees that:

(1) Developer shall not knowingly permit the Project or the Property or any portion of either to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence or release of Hazardous Materials in, on, under, about or from the Project or the Property with the exception of any previously disclosed existing conditions on the Property and cleaning supplies and other materials customarily used in construction, rehabilitation, use or maintenance of residential property and used, stored and disposed of in compliance with Hazardous Materials Laws, and

(2) Developer shall keep and maintain the Project and the Property and each portion thereof in compliance with, and shall not cause or permit the Project or the Property or any portion of either to be in violation of, any Hazardous Materials Laws.

9.2 Environmental Indemnification. Developer shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against any and all Claims including without limitation any expenses associated with the investigation, assessment,

monitoring, response, removal, treatment, abatement or remediation of Hazardous Materials and administrative, enforcement or judicial proceedings resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, storage or disposal or the alleged presence, release, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property, or (ii) the failure of Developer, Developer's employees, agents, contractors, subcontractors, or any person acting on behalf of any of the foregoing to comply with Hazardous Materials Laws or the covenants set forth in Section 9.1. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The provisions of this Section 9.2 shall survive the issuance of a Certificate of Completion for the Project and the expiration or earlier termination of this Agreement. Developer's indemnification obligation under this Section 9.2 shall not apply to acts described in clause (i) above caused by the gross negligence or willful misconduct of an Indemnitee.

9.2.1 No Limitation. Developer hereby acknowledges and agrees that Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 9.2 above, are in no way limited or otherwise affected by any information the City may have concerning the Property and/or the presence in, on, under or about the Property of any Hazardous Materials, whether the City obtained such information from the Developer or from its own investigations. It is further agreed that City do not and shall not waive any rights against Developer that they may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City by Developer, of any of the insurance policies described in this Agreement.

9.3 Hazardous Materials. As used herein, the term "**Hazardous Materials**" means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation (i) petroleum or oil or gas or any direct or indirect product or by-product thereof; (ii) asbestos and any material containing asbestos; (iii) any substance, material or waste regulated by or listed (directly or by reference) as a "hazardous substance", "hazardous material", "hazardous waste", "toxic waste", "toxic pollutant", "toxic substance", "solid waste" or "pollutant or contaminant" in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section

25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder; (iv) any substance, material or waste which is defined as such or regulated by any “Superfund” or “Superlien” law, or any Environmental Law; or (v) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

9.4 Environmental Laws. As used herein, the term “**Environmental Laws**” means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to Hazardous Materials (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (iv) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as each of the foregoing now exist or are hereafter amended, together with any regulations promulgated thereunder.

ARTICLE X DEFAULTS, REMEDIES AND TERMINATION

10.1 Event of Developer Default. The following events shall constitute an event of default on the part of Developer (“**Event of Developer Default**”):

(a) Developer fails to commence or complete construction of the Project within the times set forth in Section 3.6, or subject to force majeure, abandons or suspends construction of the Project prior to completion for a period of sixty (60) days or more;

(b) Developer fails to pay when due the principal and interest (if any) payable under the Note and such failure continues for thirty (30) days after City notifies Developer thereof in writing;

(c) A Transfer occurs, either voluntarily or involuntarily, in violation of Article VII;

(d) Developer fails to maintain insurance on the Property and the Project as required pursuant to this Agreement, and Developer fails to cure such default within ten (10) days;

(e) Subject to Developer's right to contest the following charges pursuant to Section 6.3, if Developer fails to pay prior to delinquency taxes or assessments due on the Property or the Project or fails to pay when due any other charge that may result in a lien on the Property or the Project, and Developer fails to cure such default within 30 days of date of delinquency, but in all events upon the imposition of any such tax or other lien;

(f) A default is declared in writing under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(g) Any representation or warranty contained in this Agreement or in any financial statement, certificate or report submitted to the City in connection with this Agreement or Developer's request for the Loan proves to have been false in any material and adverse respect when made and continues to be materially adverse to the City;

(h) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Developer (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Developer in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Developer; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(i) A court of competent 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 Developer under 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 its properties, or (4) directing the winding up or liquidation of the Developer;

(j) Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) 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 sixty (60) 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 as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(k) The Developer shall have voluntarily suspended its business or Developer shall have been dissolved or terminated;

(l) An event of default arises under this Agreement, the Regulatory Agreement, or any City Document and remains uncured beyond any applicable cure period; or

(m) Developer defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 10.1 and unless a shorter cure period is specified for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which City shall have given written notice of the default to Developer; provided however, if the default is of a nature that it cannot be cured within 30 days, a Developer Event of Default shall not arise hereunder if Developer commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than ninety (90) days after receipt of notice of the default or such longer period as the City may allow.

10.2 City Default. An event of default on the part of City (“**Event of City Default**”) shall arise hereunder if City fails to keep, observe, or perform any of its covenants, duties, or obligations under this Agreement, and the default continues for a period of thirty (30) days after written notice thereof from Developer to City, or in the case of a default which cannot with due diligence be cured within thirty (30) days, City fails to commence to cure the default within thirty (30) days of such notice and thereafter fails to prosecute the curing of such default with due diligence and in good faith to completion.

10.3 City’s Right to Terminate Agreement. If an Event of Developer Default shall occur and be continuing beyond any applicable cure period, then City shall, in addition to other rights available to it under law or this Agreement, have the right to terminate this Agreement. If City makes such election, City shall give written notice to Developer and to any mortgagee entitled to such notice specifying the nature of the default and stating that this Agreement shall expire and terminate on the date specified in such notice, and upon the date specified in the notice, this Agreement and all rights of Developer under this Agreement, shall expire and terminate.

10.4 City's Remedies and Rights Upon an Event of Developer Default. Upon the occurrence of an Event of Developer Default and the expiration of any applicable cure period, City shall have all remedies available to them under law or equity, including, but not limited to the following, City may, at its election, without notice to or demand upon Developer, except for notices or demands required by law or expressly required pursuant to this Agreement, the Regulatory Agreement, or the City Documents, exercise one or more of the following remedies:

- (a) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable;
- (b) Seek specific performance to enforce the terms of this Agreement, the Regulatory Agreement, or City Documents;
- (c) Foreclose on the Property pursuant to the Deed of Trust;
- (d) Pursue any and all other remedies available under law to enforce the terms of the this Agreement, the Regulatory Agreement, and the City Documents and City's rights thereunder.

10.5 Developer's Remedies Upon an Event of City Default. Upon the occurrence of an City Event of Default, in addition to pursuing any other remedy allowed at law or in equity or otherwise provided in this Agreement, Developer may bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking to obtain any other remedy consistent with the purpose of this Agreement.

10.6 Remedies Cumulative; No Consequential Damages. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same or any other default by the other Party. Notwithstanding anything to the contrary set forth herein, a party's right to recover damages in the event of a default shall be limited to actual damages and shall exclude consequential damages.

10.7 Inaction Not a Waiver of Default. No failure or delay by any Party in asserting any of its rights and remedies as to any default shall operate as a waiver of such default or of any such rights or remedies, nor deprive any Party of its rights to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies in the same or any subsequent default.

ARTICLE XI INDEMNITY AND INSURANCE.

11.1 Indemnity. Developer shall indemnify, defend (with counsel approved by City) and hold Indemnitees harmless from and against any and all Claims, including without limitation, Claims arising directly or indirectly, in whole or in part, as a result of or in connection with Developer's or Developer's contractors, subcontractors, agents or employees development, construction, improvement, operation, ownership or maintenance of the Project or the Property, or any part thereof or otherwise arising out of or in connection with Developer's performance under this Agreement. Developer's indemnification obligations under this Section 11.1 shall not extend to Claims resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 11.1 shall survive the issuance of a Certificate of Completion for the Project and the expiration or earlier termination of this Agreement. It is further agreed that City do not and shall not waive any rights against Developer that they may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City by Developer, of any of the insurance policies described in this Agreement.

11.2 Liability and Workers Compensation Insurance.

(a) Developer and all contractors working on behalf of Developer on the Project shall maintain a commercial general liability policy in the amount of Two Million Dollars (\$2,000,000) combined single limit, Four Million Dollars (\$4,000,000) annual aggregate, or such other policy limit as City may require in their reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name the Indemnitees as additional insureds.

(b) Developer and all contractors working on behalf of Developer shall maintain a comprehensive automobile liability coverage in the amount of One Million Dollars (\$1,000,000), combined single limit including coverage for owned and non-owned vehicles and shall furnish or cause to be furnished to City evidence satisfactory to City that Developer and any contractor with whom Developer has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. Automobile liability policies shall name the Indemnitees as additional insureds.

(c) Upon commencement of construction and continuing until issuance of a Certificate of Completion, Developer and all contractors working on behalf of Developer shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming City as a loss payee.

(d) Developer shall maintain property insurance covering all risks of loss (other than earthquake), including flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, naming City as a loss payee.

(e) Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A-VIII. The Commercial General Liability and comprehensive

automobile policies required hereunder shall name the Indemnitees as additional insureds. Builder's Risk and property insurance shall name City as a loss payee.

(f) Prior to closing of the Loan, Developer shall furnish City with certificates of insurance in form acceptable to City evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall contain a statement of obligation on the part of the carrier to notify City of any material adverse change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material adverse change, cancellation, termination or non-renewal.

(g) If any insurance policy or coverage required hereunder is canceled or reduced, Developer shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Developer's expense, and Developer shall promptly reimburse City for such expense upon receipt of billing from City.

(h) Coverage provided by Developer shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City. Developer shall furnish the required certificates and endorsements to City prior to the commencement of construction of the Project, and shall provide City with certified copies of the required insurance policies upon request of City.

ARTICLE XII MISCELLANEOUS PROVISIONS

12.1 No Brokers. Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transactions contemplated by this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the expiration or earlier termination of this Agreement.

12.2 Enforced Delay; Extension of Times of Performance. Subject to the limitations set forth below, performance by any Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Parties, acts or failures to act of any other public or governmental agency or entity (other than the acts or failures to act of City which shall not excuse performance by City), or any other cause beyond the affected Party's reasonable control. An extension of time for any such cause

shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Parties within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Parties within ten (10) days of receipt of the notice. None of the Parties shall unreasonably withhold consent to an extension of time pursuant to this Section.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of Developer and City (acting in the discretion of its City Manager unless he or she determine in his or her discretion to refer such matter to the City Council). City and Developer acknowledge that adverse changes in economic conditions, either of the affected Party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing to complete the work of Improvements shall not constitute grounds of enforced delay pursuant to this Section. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

12.3 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

City: City of San Leandro
835 East 14th Street
San Leandro, CA 94577
Attention: City Manager

Developer: Washington Avenue, L.P.
1149 South Hill Street, Suite 700
Los Angeles, CA 90015
Attention: Senior Vice President, Development

With a copy to:
Nicole Deddens
Bocarsly Emden Cowan Esmail & Arndt LLP
633 West Fifth Street, 64th Floor
Los Angeles, CA 90071

12.4 Attorneys' Fees. If any Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

12.5 Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party. This Agreement may be amended or modified only by a written instrument executed by the Parties.

12.6 Binding on Successors. Subject to the restrictions on Transfers set forth in Article VII, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Any reference in this Agreement to a specifically named party shall be deemed to apply to any permitted successor and assign of such party who has acquired an interest in compliance with this Agreement or under law.

12.7 Construction. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since all of the Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if all Parties had prepared it.

12.8 Action or Approval. Whenever action and/or approval by City is required under this Agreement, the City Manager or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the City Manager determines in his or her discretion that such action or approval requires referral to the City Council for consideration.

12.9 Entire Agreement. This Agreement, including the exhibits listed below, which are attached hereto and incorporated herein by this reference, together with the Regulatory Agreement, the City Documents contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof.

Exhibit A Legal Description of Property

Exhibit B	Form of Certificate of Completion
Exhibit C	Form of Regulatory Agreement
Exhibit D	Form of Promissory Note
Exhibit E	Form of Deed of Trust
Exhibit F	Financing Plan

12.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Parties. Any executed counterpart of this Amendment may be delivered to the other Parties by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

12.11 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

12.12 No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

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

12.14 Non-Liability of Officials, Employees and Agents. No officer, official, employee or agent of City shall be personally liable to Developer or its successors in interest in the event of any default or breach by City or for any amount which may become due to Developer or its successors in interest pursuant to this Agreement.

12.15 Time of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Property. For purposes of this Agreement, a “business day” means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of California.

12.16 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of

laws. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of Alameda County, California or in the Federal District Court for the Northern District of California.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date first written above.

DEVELOPER:

WASHINGTON AVENUE, L.P., a California limited partnership

By: _____,
Lara Regus

Its: Senior Vice President,
Development _____

CITY:

City of San Leandro

By: _____
Frances Robustelli, City Manager

ATTEST:

By: _____
Leticia Miguel, City Clerk

APPROVED AS TO FORM:

By: _____
Richard D. Pio Roda, City Attorney

**EXHIBIT A
LEGAL DESCRIPTION**

**EXHIBIT B
FORM OF CERTIFICATE OF COMPLETION**

CERTIFICATE OF COMPLETION

Recording requested by
and when recorded mail to:

City of San Leandro
835 East 14th Street
San Leandro, CA 94577
Attention: City Clerk

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

**CERTIFICATE OF COMPLETION
(15101 Washington Avenue)**

This Certificate of Completion (this “**Certificate**”) is made by the City of San Leandro, a California charter city (“**City**”) effective as of _____.

RECITALS

A. City and WASHINGTON AVENUE, L.P., a California limited partnership (“**Owner**”) entered into that certain Loan Agreement dated as of _____, 2022 (the “**Loan Agreement**”) regarding the development of a residential housing project on property located at 15101 Washington Avenue, San Leandro, California, also known as Assessor’s Parcel Numbers _____, as more particularly described on Exhibit A attached hereto and incorporated herein (the “**Property**”). Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the Loan Agreement.

B. Pursuant to Section 3.15 of the Loan Agreement, the City is required to furnish the Owner or its successors with a Certificate of Completion upon completion of construction of the Project, issuance of a final Certificate of Occupancy by the City, and written request in accordance with the Loan Agreement.

C. The City has determined that construction of the Project has been satisfactorily completed in accordance with the Loan Agreement.

NOW, THEREFORE, Agency hereby certifies as follows:

1. Development of the Project has been satisfactorily completed in conformance with the Loan Agreement.

2. All use, maintenance and nondiscrimination covenants contained in the Loan Agreement shall remain in effect and enforceable in accordance with the Loan Agreement. This Certificate does not constitute evidence of Owner's compliance with those covenants in the Loan Agreement that survive the issuance of this Certificate, including without limitation, compliance with the Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants entered into pursuant to the Loan Agreement and recorded in the Official Records as Instrument No. _____

3. This Certificate does not constitute evidence of compliance with or satisfaction of any obligation of Owner to any holder of a deed of trust securing money loaned to finance the development of the Property, Improvements or any part thereof and does not constitute a notice of completion under California Civil Code Section 3093.

4. Nothing contained in this instrument shall modify any provisions of the Loan Agreement or any other document executed in connection therewith.

IN WITNESS WHEREOF, Agency has executed and issued this Certificate of Completion as of the date first written above.

CITY OF SAN LEANDRO, a California charter city

By: _____

Name: _____
City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

SIGNATURES MUST BE NOTARIZED.

EXHIBIT C
FORM OF REGULATORY AGREEMENT

Recording requested by and when recorded mail to:

City of San Leandro
835 E 14th Street
San Leandro, CA 94577
Attn: Community Development Director

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

APN:

Space above this line for Recorder's use.

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

**THE CITY OF SAN LEANDRO,
a California charter city**

and

WASHINGTON AVENUE, L.P., a California limited partnership

15101 WASHINGTON

Dated _____, 2022

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this “**Agreement**”) is entered into effective as of _____, 2021 (the “**Effective Date**”) by and between the City of San Leandro, a California charter city (the “**City**”) and WASHINGTON AVENUE, L.P., a California limited partnership (“**Owner**”). City and Owner are hereinafter collectively referred to as the “**Parties.**”

RECITALS

A. Owner owns that certain real property located at 15101 Washington Avenue, San Leandro, California, also known as Alameda County Assessor Parcel Number _____ (the “**Property**”), as more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

B. Owner intends to develop a seventy-two (72) unit multifamily residential apartment building consisting of three (3) studio units, thirty-three (33) one-bedroom units, eighteen (18) two-bedroom units, and eighteen (18) three-bedroom units (the “**Project**”).

C. City and Owner previously entered into: 1) that certain loan agreement dated concurrently herewith pursuant to which the City provided Owner with a loan of One Million Six Hundred Thirty Five Thousand Forty Dollars (\$1,635,040) from the City’s Affordable Housing Asset Fund, and 2) that certain loan agreement dated concurrently herewith pursuant to which the City provided Owner with a loan of Three Hundred Forty Nine Thousand Nine Hundred Sixty Dollars (\$349,960) from the City’s Permanent Local Housing Allocation (collectively, the “**Loan Agreements**”). Each of the Loan Agreements is evidenced by a Secured Promissory Note (collectively, the “**Notes**”) executed by Owner and dated as of the date hereof, and is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (collectively, the “**Deeds of Trust**”) dated as of the date hereof and executed by Owner for the benefit of City. The Deeds of Trust will be recorded in the Official Records of Alameda County substantially concurrently herewith.

D. The Owner will also receive funds from the City’s allocation of Alameda County Measure A-1 funding. Measure A-1 was approved by the voters in November 2016 and authorized \$580 million in general obligation bonds to provide up to 8,500 units of affordable housing.

E. Pursuant to the Loan Agreement, the Owner has agreed to restrict thirty-five (35) of the units in the Project as affordable to and occupied by or available for occupancy by low, very low-income and extremely -income households for a period of not less than 55 years (the “**Restricted Units**”).

F. The Parties have agreed to enter into and record this Agreement in order to satisfy the conditions described in the foregoing Recitals. The purpose of this Agreement is to regulate and restrict the occupancy and rents of the Project’s Restricted Units for the benefit of the Project occupants and the City. The covenants in this Agreement are intended to run with the land and be binding on Owner and Owner’s successors and assigns for the full term of this Agreement.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Definitions.** The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.
 - 1.1 “Actual Household Size” shall mean the actual number of persons in the applicable household.
 - 1.2 “Area Median Income” or “AMI” means the area median income for Alameda County, California, adjusted for Actual Household Size, determined periodically by the California Department of Housing and Community Project (“HCD”) as published in Section 6932 of Title 25 of the California Code of Regulations (“Regulations”) or successor provision published pursuant to California Health and Safety Code Section 50093(c). If HCD ceases to make such determination, Area Median Income shall be the median income applicable to Alameda County, with adjustments for Actual Household Size, as determined from time to time by the U.S. Department of Housing and Urban Project (“HUD”) pursuant to the United States Housing Act of 1937 as amended, or such other method of median income calculation applicable to the City of San Leandro that HUD may hereafter adopt in connection with such Act.
 - 1.3 "Assumed Household Size" means the household size "adjusted for family size appropriate to the unit" in accordance with the California Tax Credit Allocation Committee rules and regulations.
 - 1.4 “Eligible Household” means a household for which total household income upon initial occupancy does not exceed the maximum income level for a Restricted Unit as specified in Sections 2.1 and 2.2.
 - 1.5 "Extremely-Low Income Household" shall mean household, with a Household Income which does not exceed the lower income limits applicable to Alameda County, as published and periodically updated by the California Department of Housing and Community Project pursuant to Section 50106 of the California Health and Safety Code.
 - 1.6 “Extremely-Low Income Unit" mean the Units which pursuant to Section 2.1 below, are required to be occupied by Extremely-Low Income Households.
 - 1.7 "Household Income" shall mean the total anticipated annual income of all persons in a household, as calculated in accordance with the California Tax Credit Allocation Committee rules and regulations 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, City shall provide the Owner with a reasonably similar method of calculation of gross income as provided in 25 California Code of Regulations Section 6914.

- 1.8** "Low Income Household" shall mean household, with a Household Income which does not exceed the lower income limits applicable to Alameda County, as published and periodically updated by the California Department of Housing and Community Project pursuant to Section 50079.5 of the California Health and Safety Code.
- 1.9** "Low Income Unit" shall mean the Units which pursuant to Section 2.1 below, are required to be occupied by Low Income Households.
- 1.10** "Project" shall mean the Property and the Seventy-Two (72) units to be developed on the Property, and any additional improvements and all landscaping, roads and parking spaces existing thereon, as the same may from time to time exist.
- 1.11** "Rent-Restricted" means a dwelling unit for which the gross rent charged for such unit does not exceed the Qualifying Rent, as adjusted for Assumed Household Size in accordance with the HCD Regulations and guidelines.
- 1.12** "Rent" shall mean the total of monthly payments by the tenants 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 Owner which are required of all tenants, other than security deposits; the cost of an adequate level of service for utilities paid by the tenant, 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 Owner, and paid by the Tenant. Utility allowances may be determined by use of the utility allowance published by the Alameda County Housing Authority, or if no such allowance is published, by a similar public agency approved by the City.
- 1.13** "Restricted Unit" means a dwelling unit which is reserved for occupancy at a Qualifying Rent by a Extremely Low-Income Eligible Household or Very Low-Income Eligible Household in accordance with and as set forth in Sections 2.1 and 2.2.
- 1.14** "Tenant" shall mean a household occupying a Restricted Unit.
- 1.15** "Term" means the term of this Regulatory Agreement, which commences as of the Effective Date and shall terminate on the fifty-fifth (55th) anniversary of the issuance of the certificate of occupancy for the Project.
- 1.16** "Very Low Income Household" shall mean a household with a Household Income that does not exceed fifty percent (50%) of Area Median Income.
- 1.17** "Very Low Income Units" shall mean the Units which, pursuant to Section 2.1(d) below, are required to be occupied by Very Low Income Households.

1.18 “Qualifying Rent” means a monthly rent which does not exceed the amounts set forth in Section 2.1 below.

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used solely for the construction and operation of the Project subject to the occupancy and affordability restrictions set forth herein for the Term of this Agreement. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City. Notwithstanding the foregoing or anything to the contrary contained herein, if the terms of financing for the Project require greater affordability restrictions than those imposed hereby, the requirements of such other financing shall prevail for the term thereof.

2.1 Occupancy Requirements.

For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Project, no fewer than thirty-five (35) dwelling units in the Project shall be both Rent-Restricted and occupied (or if vacant, available for occupancy) by Eligible Households. The size and mix of the Restricted Units are set forth in Exhibit B. In the event that the operating subsidies for the Restricted Units terminate, the City and Owner agree to meet in good faith to discuss the possibility of changing the mix of Restricted Units. However, in no event will any of the Rent Restricted Units have a rent that exceeds the Low Income Unit Rent. Any change in the mix of Restricted Units, except as otherwise provided for herein, shall require the approval of the City Council.

2.1.1 Manager's Unit. One (1) Unit shall be reserved for an on-site manager and shall not be subject to affordability or occupancy restrictions set forth herein.

2.1.2 Intermingling of Units. All Units shall be intermingled and of comparable quality. Tenants in all Units shall have equal access to and enjoyment of all common facilities of the Project.

2.2 Qualifying Rent for Restricted Units.

2.2.1 Low Income Unit Rent. Subject to the provisions of Section 2.3 below, the Rent charged to Tenants of the Low Income Units shall not exceed one-twelfth (1/12th) of thirty percent of sixty percent (60%) of Area Median Income, adjusted for Assumed Household Size.

2.2.2 Very Low Income Unit Rent. Subject to the provisions of Section 2.3 below, the Rent charged to Tenants of the Very Low Income Units shall not exceed one-twelfth (1/12th) of thirty percent (30%) of fifty percent (50%) of Area Median Income, adjusted for Assumed Household Size.

2.2.3 Extremely Low Income Unit Rent. Subject to the provisions of Section 2.3 below, the Rent charged to Tenants of the Extremely Low Income

Units shall not exceed one-twelfth (1/12th) of thirty percent (30%) of thirty percent (30%) of Area Median Income, adjusted for Assumed Household Size.

2.3 Increased Income of Occupying Households.

2.3.1 Increased Income Above Very-Low Income. If upon recertification of a tenant's income, the Developer determines that tenant's adjusted income has increased higher than Extremely Low Household Income, Very Low Income Household, or Low Income Household, as applicable, Developer may raise the Qualifying Rent accordingly after providing tenant with sixty (60) days advance written notice of such increase; if the Developer has raised such rent then the Developer shall rent the next available unit of equivalent size to a Very Low Income Household, Low Income Household or Moderate Income Household, to meet the requirements of Exhibit B.

2.3.2 Non-Qualifying Household. If, upon recertification of a Tenant's income, the Owner determines that a Tenant has an Adjusted Income exceeding the qualifying income for Low Income Household, adjusted for Actual Household Size, such Tenant shall be permitted to continue to occupy the Unit at a Rent not exceeding one-twelfth of thirty percent (30%) of the Tenant's actual household income.

2.3.3 Continued Compliance. In the event an occupant household's income increases and the rent is increased as set forth in Sections 2.3.1 and 2.3.2 above, the Restricted Unit shall continue to be classified as a Extremely Low Income Unit, Very Low Income Unit or a Low Income Unit, as applicable, until such time as the Unit is either vacated by the occupant or another Unit is rented at the applicable income limit.

2.4 Preferences. In renting Restricted Units, Owner shall give first preference to Eligible Households in which at least one member lives or works in the City of San Leandro, and second preference to Eligible Households in which at least one member lives or works in the Alameda County, unless compliance with the foregoing criteria is prohibited by law or by state or federal sources of financing for the Project, in which case Owner shall notify City of this fact in writing.

2.5 No Condominium Conversion. Owner shall not convert the Project to condominium or cooperative ownership or sell condominium or cooperative rights to the Project during the term of this Agreement.

2.6 Non-Discrimination; Compliance with Fair Housing Laws.

2.6.1 Fair Housing. Owner shall comply with state and federal fair housing laws in the marketing and rental of the units in the Project. Owner shall 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 Section 8 program or any successor thereto.

2.6.2 Non-Discrimination. The Owner covenants by and for itself and any successors in interest 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 Property and the Project, nor shall the Owner itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property. The foregoing covenants shall run with the land.

3. Income Certification & Reporting

3.1 Reporting Requirements.

3.1.1 Tenant Certification. Owner or Owner's authorized agent shall obtain from each household prior to initial occupancy of each Restricted Unit, and on every anniversary thereafter, a written certificate containing all of the following in such format and with such supporting documentation as City may reasonably require:

- (a) The identity and age of each member of the household; and
- (b) Total household income.

3.1.2 The Owner 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 a pay stub for the most recent pay period; (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 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 (6) if the applicant is unemployed and has no such tax return, obtain another form of independent verification.

3.1.3 Owner shall retain such certificates for not less than three (3) years, and upon City's request, shall make the originals available for inspection by City and shall provide copies of such certificates to City.

3.2 Annual Report; Inspections. Owner shall submit an annual report (“Annual Report”) to the City in form satisfactory to City, together with a certification that the Project is in compliance with the requirements of this Agreement.

3.2.1 Owner shall submit to the City such Annual Report:

- (a) Not later than the ninetieth (90) day after the close of each fiscal year of the City; or such other date as maybe requested by City; and
- (b) Within fifteen (15) days after receipt of a written request, any other information or completed forms requested by City in order to comply with reporting requirements of the State of California.

3.2.2 The Annual Report shall, at a minimum, include the following information for each dwelling unit in the Project:

- (a) Unit number;
- (b) Identification of the Unit as an Extremely Low Income Unit, Very-Low Income Unit, or Low Income Unit; and
- (c) Current rent and other charges;
- (d) Dates of any vacancies during the previous year;
- (e) Number of people residing in the unit;
- (f) Total household income of residents;
- (g) Documentation of source of household income; and
- (h) The information required by Section 3.1.1.

3.2.3 Upon City’s request, Owner shall include with the Annual Report, an income recertification for each household, documentation verifying tenant eligibility, and such additional information as City may reasonably request from time to time in order to show compliance with this Agreement. The Annual Report shall conform to the format requested by City; provided however, during such time that the Project is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of federal low-income housing tax credits or tax-exempt financing, Owner may satisfy the requirements of this Section by providing City with a copy of compliance reports required in connection with such financing.

3.3 On-site Inspection. Owner shall permit representatives of City to enter and inspect the Property and the Project during reasonable business hours in order to

monitor compliance with this Agreement upon 48-hours advance notice of such visit to Owner or to Owner's management agent.

- 3.4 Records. The Owner shall maintain complete, accurate and current records pertaining to the Project, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income and household size of tenants. All tenant lists, applications and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Owner 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. The Owner shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years.

4. Term of Agreement.

- 4.1 Term of Restrictions. This Agreement shall remain in effect through the 55th anniversary of the issuance of the final certificate of occupancy for the Project.
- 4.2 Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof regardless of any sale, assignment, transfer, or conveyance of the Property or the Project or any part thereof or interest therein.
- 4.3 Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge the terms of this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement in accordance with its terms.
- 4.4 Notice of Expiration of Term. Owner shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11, and any other applicable law existing at the time of expiration of the Term. Such notice requirements include: (i) a twelve (12) month notice to existing tenants, prospective tenants and Affected Public Agencies (as defined in California Government Code Section 65863.10(a)) prior to the expiration of the Term, (ii) a six (6) month notice requirement to existing tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term; (iii) a notice of an offer to purchase the Project to "qualified entities" (as defined in California Government Code Section 65863.11(d)), if the Project is to be sold within five (5) years of the end of the Term; (iv) a notice of right of first refusal within the one hundred eighty (180) day period that qualified entities may purchase the Project.

5. Binding Upon Successors; Covenants to Run with the Land.

- 5.1 Owner hereby subjects its interest in the Property and the Project to the covenants and restrictions set forth in this Agreement. The City and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be

deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and City, regardless of any sale, assignment, conveyance or transfer of the Property, the Project or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Project (other than the tenants of the individual dwelling units within the Project) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby.

- 5.2 Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and the Project in favor of City.

6. Property Management; Repair and Maintenance; Marketing.

- 6.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Property and the Project, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Except as City may otherwise agree in writing, City shall have no responsibility for management or maintenance of the Property or the Project.

- 6.2 Management Entity. Unless managed directly by Owner, the Project shall at all times be managed by an experienced management agent reasonably acceptable to City, with demonstrated ability to operate residential facilities like the Project in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). City hereby approves John Stewart Company as the initial Management Agent. The Owner shall submit for City's approval the identity of any proposed Management Agent. The Owner 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, City shall

approve the proposed Management Agent by notifying the Owner in writing. Unless the proposed Management Agent is disapproved by City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved.

6.2.1 Performance Review. City reserves the right to conduct an annual (or more frequently, if deemed reasonably necessary by City) review of the management practices and financial status of the Project. The purpose of each periodic review will be to enable City to determine if the Project is being operated and managed in accordance with the requirements and standards of this Agreement. The Owner shall cooperate with City in such reviews.

6.2.2. Replacement of Management Agent. If, as a result of a periodic review, City determines in its reasonable judgement that the Project is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, City shall deliver notice to Owner of its intention to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days of receipt by Owner of such written notice, City staff and Owner shall meet in good faith to consider methods for improving the financial and operating status of the Project. If after a reasonable period as determined by City (not to exceed sixty (60) days), City determines that the Owner is not operating and managing the Project in accordance with the material requirements and standards of this Agreement, City may require replacement of the Management Agent.

If, after the above procedure, City requires in writing the replacement of the Management Agent, Owner shall promptly dismiss the then Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in above and approved by City.

Any contract for the operation or management of the Project entered into by Owner 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 default under this Agreement.

6.3 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property and the Project in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Project and the Property (including without limitation, the residential units, common meeting rooms, common areas, landscaping, driveways and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned

vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Project. Owner shall prevent and/or rectify any physical deterioration of the Property and the Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate security services for occupants of the Project.

6.3.1 City's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and such default continues for a period of thirty (30) days after written notice from City (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from City (with respect to landscaping, building improvements and general maintenance), then City, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property.

6.3.2 Costs. All costs expended by City in connection with the foregoing, shall constitute an indebtedness secured by the Deed of Trust, and shall be paid by Owner to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor shall bear interest at the rate of 10% per annum.

6.4 Marketing and Management Plan. Not later than 180 calendar days following the issuance of the first building permit for the Project, Owner shall submit for City review and approval, a plan for marketing and managing the Property ("Marketing and Management Plan"). The Marketing and Management Plan shall address in detail how Owner plans to market the Restricted Units to prospective Eligible Households in accordance with fair housing laws and this Agreement, Owner's tenant selection criteria, and how Owner plans to certify the eligibility of Eligible Households. The Plan shall also describe the management team and shall address how the Owner and the management entity plan to manage and maintain the Property and the Project. The Plan shall include the proposed management agreement and the form of rental agreement that Owner proposes to enter into with Project tenants. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Property and the Project, and throughout the term of this Agreement, shall submit proposed modifications to City for its review and approval.

6.5 Approval of Amendments. If City has not responded to any submission of the Management and Marketing Plan, the proposed management entity, or a proposed amendment or change to any of the foregoing within 30 days following City's receipt of such plan, proposal or amendment, the plan, proposal or amendment shall be deemed approved by City.

- 6.6** Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies, including without limitation possessory interest taxes, if applicable, imposed by any public authority or utility company with respect to the Property or the Project, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as: i) Owner is contesting such charge in good faith and by appropriate proceedings, ii) Owner maintains reserves adequate to pay any contested liabilities, and iii) On final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest.
- 6.7** Insurance Coverage. Prior to issuance of building permits for the Project, and continuing throughout the term of this Agreement Owner shall comply with the insurance requirements set forth in the Loan Agreement, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in the Loan Agreement; provided however, during such time that lenders or low-income housing tax credit investors providing financing for the Project impose insurance requirements that are inconsistent with the requirements set forth in the Loan Agreement, Owner may satisfy the requirements of this Section by meeting the requirements of such lenders or investors. Notwithstanding the foregoing, throughout the term hereof, Owner shall comply with the provisions of the Loan Agreement pertaining to (i) provision to City of proof of insurance for the Project, (ii) naming of City as additional insured, and (iii) provision to City of notice of cancellation or reduction in coverage.
- 6.8** Property Damage or Destruction. If any part of the Project is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced within 180 days after the damage or loss occurs and shall be completed within one year thereafter, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible.
- 7.** Recordation; No Subordination. This Agreement shall be recorded in the Official Records of Alameda County. Owner hereby represents, warrants and covenants that with the exception of easements of record, if any, absent the written consent of City, this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in the Property or the Project. If at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against the Project in position superior to this Agreement, upon the request of City, Owner hereby covenants and agrees to promptly undertake all action necessary to clear such matter from title or to subordinate such interest to this Agreement consistent with the intent of and in accordance with this Section 7, and to provide such evidence thereof as City may reasonably request. Notwithstanding the forgoing, the City acknowledges that Owner's construction and permanent lender(s) may require the subordination of this Agreement, and the City shall subordinate this Agreement to deeds of trust or other security instruments approved by the City pursuant to a written instrument conforming to

the requirements of California Health and Safety Code Section 33334.14(a)(4) and including without limitation, the provisions set forth in Section 8.4 of the Loan Agreement.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to the Loan Agreement or this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, “**Transfer**”) of the whole or any part of the Property, the Project, or the Improvements, without the prior written consent of the City; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to an entity in which an affiliate is the general partner or managing member shall require City consent.

8.2 Permitted Transfers. The City shall not withhold its consent to the following Transfers: (i) the granting of utility easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to this Agreement; (iii) the lease of individual units to tenants for occupancy as their principal residence in accordance with this Agreement; (iv) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or the Property in accordance with the approved Financing Plan contained in the Loan Agreements, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; and (v) a Transfer to entity which is under the direct control or under common control with Abode Communities or its affiliate or in which Abode Communities or its affiliate is the sole member or the general partner (“**Controlled Affiliate**”).

8.2.1 In addition, City shall not unreasonably withhold its consent to the sale, transfer or other disposition of the Project, in whole or in part, provided that:

- (a)** The Project is and shall continue to be operated in compliance with this Agreement;
- (b)** The transferee expressly assumes all obligations of Owner imposed by this Agreement;
- (c)** The transferee executes all documents reasonably requested by the City with respect to the assumption of the Owner’s obligations under this Agreement, and upon City’s request, delivers to the City an opinion of its counsel to the effect that such document and this Agreement are valid, binding and enforceable obligations of such transferee; and either:

- (i) The transferee has at least three years' experience in the ownership, operation and management of low-income rental housing projects of similar size to that of the Project, without any record of material violations of nondiscrimination provisions or other state or federal laws or regulations applicable to such projects, or
- (ii) The transferee agrees to retain a property management firm with the experience and record described in this Agreement.

8.3 Encumbrances. Owner agrees to use best efforts to ensure that any deed of trust secured by the Project for the benefit of a lender other than City ("Third-Party Lender") shall contain each of the following provisions:

8.3.1 Third-Party Lender shall use its best efforts to provide to City a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner (provided however, the failure to do so shall not impair such Third-Party Lender's rights and remedies); and

8.3.2 City shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure.

Owner agrees to provide to City a copy of any notice of default Owner receives from any Third-Party Lender within three (3) business days following Owner's receipt thereof.

8.4 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Project or the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Project or the Property that such violation has occurred.

9. Default and Remedies.

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("Event of Default"):

- (a) The occurrence of a Transfer in violation of this Agreement;

- (b) Owner's failure to maintain insurance on the Property and the Project as required hereunder, and the failure of Owner to cure such default within 10 days.
- (c) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Property or the Project or failure to pay any other charge that may result in a lien on the Property or the Project, and Owner's failure to cure such default within 10 days.
- (d) Owner's default in the performance of any term, provision or covenant under this Agreement, and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which City shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within 30 days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith, but in no event longer than 120 days from receipt of the notice of default.

9.2 Remedies.

9.2.1 If within the applicable cure period, Owner fails to cure a default or fails to commence to cure and diligently pursue completion of a cure, as applicable, or if a cure is not possible, City may proceed with any of the following remedies:

- (a) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;
- (b) For violations of obligations with respect to rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Qualifying Rent;
- (c) Pursue any other remedy allowed at law or in equity, or authorized by the Deeds of Trust.

9.2.2 Each of the remedies provided herein is cumulative and not exclusive. The City may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Indemnification.

- 10.1** Notwithstanding the insurance coverage required hereunder, Owner shall defend, indemnify and hold the City and its officials, officers, directors, employees, and agents (collectively, the “**Indemnified Parties**”) harmless from and against any and all losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including reasonable attorneys' fees) which an Indemnified Party may incur as a result of:
- 10.1.1** Owner's failure to perform any obligation as and when required by this Agreement;
 - 10.1.2** Any failure of Owner's representations or warranties to be true and complete in all material respects when made; or
 - 10.1.3** Any act or omission by Owner, or any of Owner’s contractors, subcontractors, agents, employees, licensees or suppliers with respect to the Project or the Property, except to the extent that such losses are caused by the gross negligence or willful misconduct of such Indemnified Party.
- 10.2** Owner shall pay immediately upon an Indemnified Party's demand any amounts owing under the indemnity provided under this Section. The duty of Owner to indemnify includes the duty to defend the Indemnified Party in any court action, administrative action, or other proceeding brought by any third party arising in connection with the Project or the Property with counsel reasonably approved by City. Owner's duty to indemnify the Indemnified Parties shall survive the expiration or earlier termination of this Agreement.

11. Miscellaneous.

- 11.1 Amendments.** This Agreement may be amended or modified only by a written instrument signed by both Parties.
- 11.2 No Waiver.** Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.
- 11.3 Notices.** Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: i) Personal delivery, in which case notice is effective upon delivery; ii) Certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is

confirmed by a return receipt; iii) Nationally recognized overnight courier, in which case notice is effective on delivery if delivery is confirmed by the delivery service; iv) such other method as mutually agreed by the Parties in writing.

11.3.1 All such notices shall be sent to:

City: City of San Leandro
835 E 14th Street
San Leandro, CA 94577
Attn: Community Development Director

Owner: WASHINGTON AVENUE, L.P.,
a California limited partnership
1149 South Hill Street, Suite 700
Los Angeles, CA 90015
Attention: Senior Vice President, Development

- 11.4** Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.
- 11.5** Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.
- 11.6** Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or designee, without further approval by the governing board of the City Council.
- 11.7** Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.
- 11.8** Headings; Construction. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.
- 11.9** Time is of the Essence. Time is of the essence in the performance of this Agreement.
- 11.10** Governing Law. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

- 11.11** Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.
- 11.12** Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.
- 11.13** Entire Agreement; Exhibits. This Agreement, together with the City Documents contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto.
- 11.14** Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

Exhibit A

LEGAL DESCRIPTION

(Attach legal description of Property.)

DRAFT

Exhibit B

Unit Mix Restrictions

The units in the Project shall be occupied by (or if vacant available for occupancy by) in accordance with the chart below and the requirements of Section 2 of the Agreement.

Unit Type	Extremely Low Income Unit	Very Low Income Unit	Low Income Unit	Manager's Unit	Total
Studio	1				1
One Bedroom	14	2			16
Two Bedroom	6	3			9
Three Bedroom	6	3			9
Total	27	8			35

5093873.1

EXHIBIT D
FORM OF SECURED PROMISSORY NOTE

SECURED PROMISSORY NOTE
(15101 Washington Ave - Affordable Housing Asset Fund Loan)

\$1,635,040

San Leandro, California
_____, 2022

FOR VALUE RECEIVED, WASHINGTON AVENUE, L.P., a California limited partnership (“**Borrower**”), promises to pay to the City of San Leandro, a California charter city (“**City**”), in lawful money of the United States of America, the principal sum of **One Million Six Hundred Thirty Five Thousand Forty Dollars (\$1,635,040)** or so much thereof as may be advanced by City pursuant to the Loan Agreement referred to below, together with interest on the outstanding principal balance in accordance with the terms and conditions described herein. Interest shall accrue on the outstanding principal balance at a rate equal to three percent (3%) simple interest per annum, commencing upon the date of disbursement thereof. Interest shall be calculated on the basis of a year of 365 days, and charged for the actual number of days elapsed.

This Secured Promissory Note (this “**Note**”) has been executed and delivered pursuant to and in accordance with an Loan Agreement executed by and between Borrower and City, dated as of **DATE** (the “**Loan Agreement**”), and is subject to the terms and conditions of the Loan Agreement, which is by this reference incorporated herein and made a part hereof. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Loan Agreement.

This Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (“**Deed of Trust**”) dated as of the date hereof, executed by Borrower for the benefit of City and encumbering the property described therein. City shall be entitled to the benefits of the security provided by the Deed of Trust and shall have the right to enforce the covenants and agreements contained herein, in the Regulatory Agreement, and the Loan Agreement. The Regulatory Agreement shall remain effective for the full term thereof and shall survive the repayment of this Note.

PAYMENTS

1.1 PAYMENT DATES; MATURITY DATE. All payments on this Note shall be deferred until the Maturity Date. The entire outstanding principal balance of this Note, together with interest accrued thereon and any other sums accrued hereunder shall be payable in full on the fifty-fifth (55th) anniversary of the date upon which City issues a final certificate of occupancy for the Project (“**Maturity Date**”).

1.2 DUE ON SALE. The entire unpaid principal balance and all interest and other sums accrued hereunder shall be due and payable upon the Transfer (as defined in Section 7.2 of the Loan Agreement) absent City consent, of all or any part of the Project or the Property or any interest therein other than a Transfer permitted without City consent pursuant to the Loan Agreement. Without limiting the generality of the foregoing, this Note shall not be assumable without City’s prior written consent, which consent may be granted or denied in City’s sole discretion; provided however, this Note may be assumed in connection with a permitted transfer as described in Section 7.3 of the Loan Agreement.

1.3 PREPAYMENT. Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note, provided that each such prepayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such prepayment. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal.

1.4 MANNER OF PAYMENT. All payments of principal and interest on this Note shall be made to City at 835 East 14th Street, San Leandro, California 94577 or such other place as City shall designate to Borrower in writing, or by wire transfer of immediately available funds to an account designated by City in writing.

2. DEFAULTS AND REMEDIES.

2.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

(A) Borrower fails to pay when due the principal and interest payable hereunder and such failure continues for thirty (30) days after City notifies Borrower thereof in writing.

(B) Pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Borrower or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower or any general partner thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

(C) A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower or any general partner thereof in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower or any general partner thereof or substantially all of such entity's assets, (iii) orders the liquidation of Borrower or any general partner thereof, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Project, and in each case the order or decree is not released, vacated, dismissed or fully bonded within 60 days after its issuance.

(D) The occurrence of a Transfer in violation of Article VII of the Loan Agreement.

(E) A default is declared under any debt instrument secured by a mortgage or deed of trust on the Project or the Property and remains uncured beyond any applicable cure period such that the holder of such instrument has the right to accelerate payment thereunder.

(F) Borrower fails to maintain insurance on the Property and the Project as required pursuant to the City Documents and Borrower fails to cure such default within 10 days.

(G) Subject to Borrower's right to contest the following charges pursuant to the City Documents, if Borrower fails to pay taxes or assessments due on the Property or the

Project or fails to pay any other charge that may result in a lien on the Property or the Project, and Borrower fails to cure such default within 10 days.

(H) If any representation or warranty contained in any City Document, or any certificate furnished in connection therewith, or in connection with any request for disbursement of the proceeds of the Loan (the “**Loan Proceeds**”) proves to have been false or misleading in any material adverse respect when made and continues to be materially adverse to the City.

(I) An Event of Default shall have been declared under the Regulatory Agreement or any City Document, and remains uncured beyond the expiration of any applicable cure period.

2.2 REMEDIES. Upon the occurrence of an Event of Default hereunder, City may, at its option (i) by written notice to Borrower, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon and all sums due hereunder, immediately due and payable regardless of any prior forbearance, (ii) exercise any and all rights and remedies available to it under applicable law, and (iii) exercise any and all rights and remedies available to City under this Note and the other City Documents, including without limitation the right to pursue foreclosure under the Deed of Trust. Borrower shall pay all reasonable costs and expenses incurred by or on behalf of City including, without limitation, reasonable attorneys' fees, incurred in connection with City's enforcement of this Note and the exercise of any or all of its rights and remedies hereunder and all such sums shall be a part of the indebtedness secured by the Deed of Trust. The rights and remedies of City under this Note shall be cumulative and not alternative.

2.3 DEFAULT RATE. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate of ten percent (10%) per annum (the “**Default Rate**”); provided however, if any payment due hereunder is not paid when due, the Default Rate shall apply commencing upon the due date for such payment. When Borrower is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again be the rate specified in the first paragraph of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent City from exercising any of its other rights or remedies.

3. MISCELLANEOUS

3.1 WAIVERS; BORROWER'S WAIVERS. No waiver by City of any right or remedy under this Note shall be effective unless in a writing signed by City. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by City will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. No waiver that may be given by City will be applicable except in the specific instance for which it is given. No notice to or demand on Borrower will be deemed to be a waiver of any obligation of Borrower or of the right of City to take further action without notice or demand as provided in this Note.

To the maximum extent permitted by applicable law Borrower hereby waives presentment, demand, protest, notices of dishonor and of protest and all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice.

3.2 NOTICES. Any notice required or permitted to be given hereunder shall be given in accordance with Section 12.3 of the Loan Agreement.

3.3 SEVERABILITY. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

3.4 GOVERNING LAW; VENUE. This Note shall be governed by the laws of the State of California without regard to principles of conflicts of laws. Any legal action filed in connection with this Note shall be filed in the Superior Court of Alameda County, California, or in the Federal District Court for the Northern District of California.

3.5 PARTIES IN INTEREST. This Note shall bind Borrower and its successors and assigns and shall accrue to the benefit of City and its successors and assigns.

3.6 SECTION HEADINGS, CONSTRUCTION. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation.

3.7 RELATIONSHIP OF THE PARTIES. The relationship of Borrower and City under this Note is solely that of borrower and lender, and the loan evidenced by this Note and secured by the Deed of Trust will in no manner make City the partner or joint venturer of Borrower.

3.8 TIME IS OF THE ESSENCE. Time is of the essence with respect to every provision of this Note.

3.9 NONRECOURSE. Except as expressly provided in this Section 3.9, neither Borrower nor its partners shall have personal liability for payment of the principal of, or interest on, this Note, and the sole recourse of City with respect to the payment of the principal of, and interest on, this Note shall be to the Project, the Property and any other collateral held by City as security for this Note; provided however, nothing contained in the foregoing limitation of liability shall: (i) limit or impair the enforcement against all such security for the Note of all the rights and remedies of the City thereunder; (ii) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the Note as demand for money within the meaning and intendment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto; or (iii) be deemed in any way to limit the rights of the City to obtain specific performance by the Borrower of its covenants under the City Documents, other than the covenants to pay the City principal and interest due under the Note.

The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note; nothing contained herein is intended to relieve the Borrower of its obligation to indemnify the City under this Agreement, or liability for: (i) fraud or willful misrepresentation by the Borrower; (ii) the

failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by the Borrower other than in accordance with the Deed of Trust; and/or (iv) the misappropriation of any proceeds by the Borrower under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Development

IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the date first written above.

DEVELOPER:

WASHINGTON AVENUE, L.P., a California limited partnership

By: _____,
Lara Regus

Its: Senior Vice President, Development

5093891.1

**EXHIBIT E
FORM DEED OF TRUST**

Recording requested by and when recorded mail to:

City of San Leandro
835 East 14th Street
San Leandro, CA 94577
Attn: City Clerk

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

**DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**
(15101 Washington – Housing Asset Fund Loan)

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this “**Deed of Trust**”) is made as of _____, by WASHINGTON AVENUE, L.P., a California limited partnership (“**Trustor**”) to _____ Title Insurance Company as trustee (“**Trustee**”), for the benefit of the City of San Leandro, a municipal corporation (“**Beneficiary**”).

RECITALS

A. Trustor owns fee simple title to the land described in Exhibit A attached hereto and incorporated herein by this reference (the “**Land**”). Trustor intends to construct a 72-unit multifamily residential development on the Land and related improvements (the “**Project**”).

B. Beneficiary and Trustor have entered into an Loan Agreement dated as of _____ (the “**Loan Agreement**”) pursuant to which Beneficiary will provide a loan to Trustor in the amount of up to One Million Six Hundred Thirty Five Thousand Forty Dollars (\$1,635,040) (“**Loan**”) for the purpose of partially financing the Project. Trustor has issued to Beneficiary a secured promissory note dated as of the date hereof (the “**Note**”) to evidence Trustor’s obligation to repay the Loan. This Deed of Trust, the Loan Agreement, the Note and the Regulatory Agreement (defined below) are collectively referred to herein as the “**City Documents**.”

C. As a condition precedent to the making of the Loan, Beneficiary has required that Trustor enter into this Deed of Trust and grant to Trustee for the benefit of Beneficiary, a lien and security interest in the Project and in Trustor’s fee simple interest in the Land to secure repayment of the Note and performance of Trustor’s obligations under the Loan Agreement and the other City Documents.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows.

1. Grant in Trust. In consideration of the foregoing and for the purpose of securing payment and performance of the Secured Obligations defined and described in Section 2, Trustor hereby irrevocably and unconditionally grants, conveys, 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 Land, and all of the following, whether presently owned or hereafter acquired:

a. All buildings, structures, and improvements, now or hereafter located or constructed on the Land (“**Improvements**”);

b. All appurtenances, easements, rights of way, pipes, transmission lines or wires and other rights used in connection with the Land or the Improvements or as a means of access thereto, whether now or hereafter owned or constructed or placed upon or in the Land or Improvements and all existing and future privileges, rights, franchises and tenements of the Land, including all minerals, oils, gas and other commercially valuable substances which may be in, under or produced from any part of the Land, and all water rights, rights of way, gores or strips of land, and any land lying in the streets, ways, and alleys, open or proposed, in front of or adjoining the Land and Improvements (collectively, “**Appurtenances**”);

c. All machinery, equipment, fixtures, goods and other personal property of the Trustor, whether moveable or not, now owned or hereafter acquired by the Trustor and now or hereafter located at or used in connection with the Land, the Improvements or Appurtenances, and all improvements, restorations, replacements, repairs, additions or substitutions thereto (collectively, “**Equipment**”);

d. All existing and future leases, subleases, licenses, and other agreements relating to the use or occupancy of all or any portion of the Land or Improvements (collectively, “**Leases**”), all amendments, extensions, renewals or modifications thereof, and all rent, royalties, or other payments which may now or hereafter accrue or otherwise become payable thereunder to or for the benefit of Trustor, including but not limited to security deposits (collectively, “**Rents**”);

e. All insurance proceeds and any other proceeds from the Land, Improvements, Appurtenances, Equipment, Leases, and Rents, including without limitation, all deposits made with or other security deposits given to utility companies, all claims or demands relating to insurance awards which the Trustor now has or may hereafter acquire, including all advance payments of insurance premiums made by Trustor, and all condemnation awards or payments now or later made in connection with any condemnation or eminent domain proceeding (“**Proceeds**”);

f. All revenues, income, rents, royalties, payments and profits produced by the Land, Improvements, Appurtenances and Equipment, whether now owned or hereafter acquired by Trustor (“**Gross Revenues**”);

g. All architectural, structural and mechanical plans, specifications, design documents and studies produced in connection with development of the Land and construction of the Improvements (collectively, “**Plans**”); and

h. All interests and rights in any private or governmental grants, subsidies, loans or other financing provided in connection with development of the Land and construction of the Improvements (collectively, “**Financing**”).

All of the above-referenced interests of Trustor in the Land, Improvements, Appurtenances, Equipment, Leases, Rents, Proceeds, Gross Revenues, Plans and Financing as hereby conveyed to Trustee or made subject to the security interest herein described are collectively referred to herein as the “**Property.**”

2. Obligations Secured. This Deed of Trust is given for the purpose of securing payment and performance of the following (collectively, the “**Secured Obligations**”): (i) all present and future indebtedness evidenced by the Note and any amendment thereof, including principal, interest and all other amounts payable under the terms of the Note; (ii) all additional present and future obligations of Trustor to Beneficiary under any other agreement or instrument acknowledged by Trustor (whether existing now or in the future) which states that it is or such obligations are, secured by this Deed of Trust; (iii) all obligations of Trustor to Beneficiary under all modifications, supplements, amendments, renewals, or extensions of any of the foregoing, whether evidenced by new or additional documents; and (iv) reimbursement of all amounts advanced by or on behalf of Beneficiary to protect Beneficiary’s interests under this Deed of Trust or any other City Document as such may be modified, supplemented, amended, renewed or extended.

3. Assignment of Rents, Issues, and Profits. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary the Rents, royalties, issues, profits, revenue, income and proceeds of the Property. This is an absolute assignment and not an assignment for security only. Beneficiary hereby confers upon Trustor a license to collect and retain such Rents, royalties, issues, profits, revenue, income and proceeds as they become due and payable prior to any Event of Default hereunder. Upon the occurrence of any such Event of Default, Beneficiary may terminate such license without notice to or demand upon Trustor and without regard to the adequacy of any security for the indebtedness hereby secured, and may either in person, by agent, or by a receiver to be appointed by a court, enter upon and take possession of the Property or any part thereof, and sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys’ fees, to any indebtedness secured hereby, and in such order as Beneficiary may determine. Beneficiary’s right to the rents, royalties, issues, profits, revenue, income and proceeds of the Property does not depend upon whether or not Beneficiary takes possession of the Property. The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and/or is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land or the Improvements, Beneficiary shall not be deemed to be a “mortgagee in possession,” shall not be responsible for performing any obligation of Trustor under any Lease, shall not be liable in any manner for the Property, or the use, occupancy, enjoyment or operation of any part of it, and shall not be responsible for any waste committed by Trustor, lessees or any third parties, or for dangerous or defective condition of the Property or any negligence in the management, repair or control of the Property. Absent Beneficiary’s written consent, Trustor shall not accept prepayment of Rents for

any rental period exceeding one month.

4. 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, subject to the rights of any beneficiaries under deeds of trust senior in priority to this Deed of Trust ("**Senior Deeds of Trust**"). The parties acknowledge that some of the Property may be determined under applicable law to be personal property or fixtures. To the extent that any Property 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 to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the California Uniform Commercial Code, as amended or recodified from time to time (the "**UCC**"), covering all such Property. To the extent such Property is not real property encumbered by the lien granted above, and is not absolutely assigned by the assignment set forth above, it is the intention of the parties that such Property 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.

5. Financing Statements. Pursuant to the UCC, Trustor, as debtor, hereby authorizes Beneficiary, as secured party, to file such financing statements and amendments thereof and such continuation statements with respect thereto as Beneficiary may deem appropriate to perfect and preserve Beneficiary's security interest in the Property and Rents, without requiring any signature or further authorization by Trustor. If requested by Beneficiary, 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. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall not 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 estate encumbered by this Deed of Trust irrespective 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 not 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 any 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.

6. Fixture Filing. Subject to the rights of beneficiaries under Senior Deeds of Trust, this Deed of Trust is intended to be and constitutes a fixture filing pursuant to the provisions of the UCC with respect to all of the Property constituting fixtures, is being recorded as a fixture financing statement and filing under the UCC, and covers property, goods and equipment which are or are to become fixtures related to the Land and the Improvements. Trustor covenants and agrees that this Deed of Trust is to be filed in the real estate records of Alameda County and shall also operate from the date of such filing as a fixture filing in accordance with Section 9502 and other applicable provisions of the UCC. This Deed of Trust shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to the UCC, as amended. Trustor shall be deemed to be the "debtor" and Beneficiary shall be deemed to be the "secured party" for all purposes under the UCC.

7. Trustor's Representations, Warranties and Covenants; Rights and Duties of the Parties.

7.1 Representations and Warranties. Trustor represents and warrants that: (i) Trustor lawfully possesses and holds a fee simple interest in the Land and the Improvements, (ii) Trustor has good and marketable title to all of the Property; (iii) Trustor has the full and unlimited power, right and authority to encumber the Property and assign the Rents; (iv) subject only to encumbrances of record and senior liens permitted pursuant to the City Documents or otherwise approved in writing by Beneficiary ("**Permitted Encumbrances**"), this Deed of Trust creates a valid first lien on Trustor's entire interest in the Property; (v) except with respect to Permitted Encumbrances, Trustor owns the Property free and clear of any deeds of trust, mortgages, security agreements, reservations of title or conditional sales contracts, (vi) there is no financing statement affecting the Property on file in any public office other than as disclosed in writing to Beneficiary; and (vii) the correct address of Trustor's chief executive office is specified in Section 10.2.

Trustor further represents and warrants that this Deed of Trust and all other documents delivered or to be delivered by Trustor in connection herewith: (a) have been duly authorized, executed, and delivered by Trustor; (b) are binding obligations of Trustor; and (c) do not violate the provisions of any agreement to which Trustor is a party or which affects the Property. Trustor further represents and warrants that there are no pending, or to Trustor's knowledge, threatened actions or proceedings before any court or administrative agency which may adversely affect Trustor's ownership of the Property.

7.2 Payment and Performance of Secured Obligations. Trustor shall promptly pay when due the principal and any interest due on the indebtedness evidenced by the Note, and shall promptly pay and perform all other obligations of Trustor arising in connection with the Secured Obligations or the City Documents in accordance with the respective terms thereof.

7.3 Use of Loan Proceeds; Preservation and Maintenance of Property; Compliance with Laws. Trustor covenants that it shall use the proceeds of the Loan (the "**Loan Proceeds**") solely for purposes authorized by the City Documents. Trustor shall keep the Land and Improvements in good repair and condition, and from time to time shall make necessary repairs,

renewals and replacements thereto so that the Property shall be preserved and maintained. Trustor covenants to comply with all federal, state and local laws, regulations, ordinances and rules applicable to the Property and the Project, including without limitation all applicable requirements of state and local building codes and regulations, and all applicable statutes and regulations relating to accessibility for the disabled. Trustor shall not remove, demolish or materially alter any Improvement without Beneficiary's consent, shall complete or restore promptly and in good and workmanlike manner any building, fixture or other improvement which may be constructed, damaged, or destroyed thereon, and shall pay when due all claims for labor performed and materials furnished therefor. Trustor shall use the Land and Improvements solely for purposes authorized by the City Documents, shall not commit or allow waste of the Property, and shall not commit or allow any act upon or use of the Property which would violate any applicable law or order of any governmental authority, nor shall Trustor bring on or keep any article on the Property or cause or allow any condition to exist thereon which could invalidate or which would be prohibited by any insurance coverage required to be maintained on the Property pursuant to the City Documents.

7.4 Restrictions on Conveyance and Encumbrance; Acceleration. It shall be an Event of Default hereunder if any Transfer (as defined in the Loan Agreement) of the Property, any part thereof or any interest therein occurs in violation of the requirements of the City Documents. If any such Transfer occurs in violation of such requirements, without limiting the provisions of Section 8 hereof, all obligations secured by this Deed of Trust, irrespective of the maturity dates of such obligations, shall at the option of Beneficiary, and without demand, immediately become due and payable, subject to any applicable cure period.

7.5 Inspections; Books and Records. Beneficiary and its agents and representatives shall have the right at any reasonable time upon reasonable notice to enter upon the Land and inspect the Property to ensure compliance with the City Documents. Trustor shall maintain complete and accurate books of account and other records (including copies of supporting bills and invoices) adequate to document the use of the Loan Proceeds and the operation of the Property, together with copies of all written contracts, Leases and other instruments which affect the Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection at any reasonable time by Beneficiary following two business days prior notice.

7.6 Charges, Liens, Taxes and Assessments. Trustor shall pay before delinquency all taxes, levies, assessments and other charges affecting the Property that are (or if not paid may become) a lien on all or part of the Property. Trustor may, at Trustor's expense, contest the validity or application of any tax, levy, assessment or charge affecting the Property 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 reasonably be required from time to time by Beneficiary; and provided further that Trustor shall timely make any payment necessary to prevent a lien foreclosure, sale, forfeiture or loss of the Property.

7.7 Subrogation. Beneficiary shall be subrogated to the liens of all encumbrances,

whether released of record or not, which are discharged in whole or in part by Beneficiary in accordance with this Deed of Trust.

7.8 Hazard, Liability and Workers' Compensation Insurance. At all times during the term hereof, Trustor shall at Trustor's expense, maintain insurance policies in accordance with the requirements set forth in the City Documents. Trustor shall file with Beneficiary prior to the commencement of the term hereof, certificates (or such other proof as Beneficiary may reasonably require, including without limitation copies of the required insurance policies) evidencing each of the insurance policies and endorsements thereto as required pursuant to the City Documents, and such certificates (or policies) shall provide that at least thirty (30) days' prior written notice shall be provided to Beneficiary prior to the expiration, cancellation or change in coverage under each such policy. If any insurance policy required pursuant to the City Documents is canceled or the coverage provided thereunder is reduced, Trustor shall, within ten (10) days after receipt of written notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Beneficiary a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Beneficiary may, without further notice and at its option, procure such insurance coverage at Trustor's expense, and Trustor shall promptly reimburse Beneficiary for such expense upon receipt of billing from Beneficiary.

7.9 Condition of Property. Trustor represents and warrants that except as disclosed to Beneficiary in writing, as of the date hereof: (i) Trustor has not received any notice from any governmental authority of any threatened or pending zoning, building, fire, or health code violation or violation of other governmental regulations concerning the Land that has not previously been corrected, and no condition on the Land violates any health, safety, fire, environmental, sewage, building, or other federal, state or local law, ordinance or regulation; (ii) no contracts, licenses, leases or commitments regarding the maintenance or use of the Property or allowing any third party rights to use the Property are in force; (iii) there are no threatened or pending actions, suits, or administrative proceedings against or affecting the Property or any portion thereof or the interest of Trustor in the Property; (iv) there are no threatened or pending condemnation, eminent domain, or similar proceedings affecting the Land or any portion thereof; (v) Trustor has not received any notice from any insurer of defects of the Property which have not been corrected; (vi) there are no natural or artificial conditions upon the Land or any part thereof that could result in a material and adverse change in the condition of the Land; (vii) all information that Trustor has delivered to Beneficiary, either directly or through Trustor's agents, is accurate and complete; and (viii) Trustor or Trustor's agents have disclosed to Beneficiary all material facts concerning the Property.

7.10 Hazardous Materials. Trustor represents and warrants that except as disclosed to Beneficiary in writing, as of the date hereof to the best knowledge of Trustor: (i) the Land is free and has always been free of Hazardous Materials (as defined below) and is not and has never been in violation of any Environmental Law (as defined below); (ii) there are no buried or partially buried storage tanks located on the Land; (iii) Trustor has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Land are or have ever been in violation of any Environmental Law or informing Trustor that the Land is subject to investigation or inquiry regarding Hazardous Materials on the Land or the potential violation of any Environmental Law;

(iv) there is no monitoring program required by the Environmental Protection Agency or any other governmental agency concerning the Land; (v) no toxic or hazardous chemicals, waste, or substances of any kind have ever been spilled, disposed of, or stored on, under or at the Land, whether by accident, burying, drainage, or storage in containers, tanks, holding areas, or any other means; (vi) the Land has never been used as a dump or landfill; and (vii) Trustor has disclosed to Beneficiary all information, records, and studies in Trustor's possession or reasonably available to Trustor relating to the Land concerning Hazardous Materials.

Trustor shall not cause or permit any Hazardous Material (as defined in Section 9.3 of the Loan Agreement) to be brought upon, kept, stored or used in, on, under, or about the Land by Trustor, its agents, employees, contractors or invitees except for incidental supplies ordinarily used in the construction and operation of residential developments in compliance with all applicable laws, and shall not cause any release of Hazardous Materials into, onto, under or through the Land. If any Hazardous Material is discharged, released, dumped, or spilled in, on, under, or about the Land and results in any contamination of the Land or adjacent property, or otherwise results in the release or discharge of Hazardous Materials in, on, under or from the Land, Trustor shall promptly take all actions at its sole expense as are necessary to comply with all Environmental Laws (as defined below).

Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold Beneficiary and its elected and appointed officials, officers, agents and employees (collectively, "**Indemnitees**") harmless from and against any and all loss, claim, liability, damage, demand, judgment, order, penalty, fine, injunctive or other relief, cost, expense (including reasonable fees and expenses of attorneys, expert witnesses, and other professionals advising or assisting Beneficiary), action, or cause of action (all of the foregoing, hereafter individually "**Claim**" and collectively "**Claims**") arising in connection with the breach of Trustor's covenants and obligations set forth in this Section 7.10 or otherwise arising in connection with the presence or release of Hazardous Materials in, on, under, or from the Property. The foregoing indemnity includes, without limitation, all costs of investigation, assessment, containment, removal, remediation of any kind, and disposal of Hazardous Materials, all costs of determining whether the Land is in compliance with Environmental Laws, all costs associated with bringing the Land into compliance with all applicable Environmental Laws, and all costs associated with claims for damages or injury to persons, property, or natural resources.

Without limiting the generality of the foregoing, Trustor shall, at Trustor's own cost and expense, do all of the following:

- a. pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnites in any legal or administrative proceeding incident to any matters against which Indemnites are entitled to be indemnified under this Deed of Trust;
- b. reimburse Indemnites for any expenses paid or incurred in connection with any matters against which Indemnites are entitled to be indemnified under this Deed of Trust; and
- c. reimburse Indemnites for any and all expenses, including without limitation out-of-pocket expenses and fees of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnites of their rights under this Deed of Trust, or in monitoring

and participating in any legal or administrative proceeding.

Trustor's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following, or by any failure of Trustor to receive notice of or consideration for any of the following: (i) any amendment or modification of any City Document; (ii) any extensions of time for performance required by any City Document; (iii) any provision in any of the City Documents limiting Beneficiary's recourse to property securing the Secured Obligations, or limiting the personal liability of Trustor, or any other party for payment of all or any part of the Secured Obligations; (iv) the accuracy or inaccuracy of any representation and warranty made by Trustor under this Deed of Trust or by Trustor or any other party under any City Document, (v) the release of Trustor or any other person, by Beneficiary or by operation of law, from performance of any obligation under any City Document; (vi) the release or substitution in whole or in part of any security for the Secured Obligations; and (vii) Beneficiary's failure to properly perfect any lien or security interest given as security for the Secured Obligations.

The provisions of this Section 7.10 shall be in addition to any and all other obligations and liabilities that Trustor may have under applicable law, and each Indemnitee shall be entitled to indemnification under this Section without regard to whether Beneficiary or that Indemnitee has exercised any rights against the Property or any other security, pursued any rights against any guarantor or other party, or pursued any other rights available under the City Documents or applicable law. The obligations of Trustor to indemnify the Indemnitees under this Section shall survive any repayment or discharge of the Secured Obligations, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Deed of Trust.

Without limiting any of the remedies provided in this Deed of Trust, Trustor acknowledges and agrees that each of the provisions in this Section 7.10 is an environmental provision (as defined in Section 736(f)(2) of the California Code of Civil Procedure) made by Trustor relating to real property security (the "**Environmental Provisions**"), and that Trustor's failure to comply with any of the Environmental Provisions will be a breach of contract that will entitle Beneficiary to pursue the remedies provided by Section 736 of the California Code of Civil Procedure ("**Section 736**") for the recovery of damages and for the enforcement of the Environmental Provisions. Pursuant to Section 736, Beneficiary's action for recovery of damages or enforcement of the Environmental Provisions shall not constitute an action within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Sections 580a, 580b, 580d, or 726(b) of the California Code of Civil Procedure.

"**Environmental Law**" means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to any Hazardous Material (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances,

including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (iv) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder.

7.11 Notice of Claims; Defense of Security; Reimbursement of Costs.

a. Notice of Claims. Trustor shall provide written notice to Beneficiary of any uninsured or partially uninsured loss affecting the Property through fire, theft, liability, or property damage in excess of an aggregate of Fifty Thousand Dollars (\$50,000) within five (5) business days of the occurrence of such loss. Trustor shall ensure that Beneficiary shall receive timely notice of, and shall have a right to cure, any default under any other financing document or other lien affecting the Property and shall use best efforts to ensure that provisions mandating such notice and allowing such right to cure shall be included in all such documents. Within three business days of Trustor's receipt thereof, Trustor shall provide Beneficiary with a copy of any notice of default Trustor receives in connection with any financing document secured by the Property or any part thereof.

b. Defense of Security. At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims.

c. Compensation; Reimbursement of Costs. Trustor agrees to pay all reasonable fees, costs and expenses charged by Beneficiary or Trustee for any service that Beneficiary or Trustee may render in connection with this Deed of Trust, including without limitation, fees and expenses related to provision of a statement of obligations or related to a reconveyance. 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 without limitation any rights or remedies afforded to Beneficiary or Trustee or both of them under Sections 7.17 and 8.2, whether or not any lawsuit is filed, or in defending any action or proceeding arising under or relating to this Deed of Trust, including reasonable attorneys' fees and other legal costs, costs of any disposition of the Property under the power of sale granted hereunder or any judicial foreclosure, and any cost of evidence of title.

d. Notice of Changes. Trustor shall give Beneficiary prior written notice of any change in the address of Trustor and the location of any Property, including books and records pertaining to the Property.

7.12 Indemnification. Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold harmless the Indemnitees (as defined in Section 7.10) from and against all Claims arising directly or indirectly in any manner in connection with or as a result of (a) any breach of Trustor's covenants under any City Document, (b) any representation by Trustor in any City Document which proves to be false or misleading in any material respect when made, (c) injury or death to persons or damage to property or other loss occurring on the Land or in any improvement located thereon, whether caused by the negligence or any other act or omission of Trustor or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any other condition or otherwise, (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Property, or any City Document or any transaction contemplated thereby, or any failure of Trustor to comply with all applicable state, federal and local laws and regulations applicable to the Property, provided that no Indemnitee shall be entitled to indemnification under this Section for matters caused by such Indemnitee's gross negligence or willful misconduct. The obligations of Trustor under this Section shall survive the repayment of the Loan and shall be secured by this Deed of Trust. Notwithstanding any contrary provision contained herein, the obligations of Trustor under this Section shall survive any foreclosure proceeding, any foreclosure sale, any delivery of a deed in lieu of foreclosure, and any release or reconveyance of this Deed of Trust.

7.13. Limitation of Liability. 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 Trustor, the lessees of the Property or any third parties, or any dangerous or defective condition of the Property; or (iv) any loss sustained by Trustor or any third party resulting from any act or omission of Beneficiary in managing the Property after an Event of Default, unless the loss is caused by the willful misconduct, gross negligence, or bad faith of Beneficiary. Trustor hereby expressly waives and releases all liability of the types described in this Section 7.13, and agrees that Trustor shall assert no claim related to any of the foregoing against Beneficiary.

7.14 Insurance and Condemnation Proceeds. Subject to the rights of any senior lienholders, and notwithstanding anything contained in any of the City Documents, unless Beneficiary and Trustor otherwise agree in writing, any award of damages in connection with any condemnation for public use of, or injury to the Property or any part thereof shall be applied to restoration or repair of the Property, provided Trustor determines that such restoration or repair is economically feasible and there is no default under any City Document that is continuing beyond the expiration of all applicable cure periods. If Trustor determines that such restoration or repair is not economically feasible or if a default exists after expiration of all applicable cure periods, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Trustor. In the event funds for such work are

insufficient, Beneficiary may, in its sole discretion and subject to the approval of Beneficiary's governing board, advance such additional funds as may be necessary to allow the Property to be repaired or restored, and may add the amount thereof to the principal balance of the Note. If the Property is abandoned by Trustor, or if Trustor fails to respond to Beneficiary within 30 days from the date notice is mailed by Beneficiary to Trustor that the insurance carrier offers to settle a claim for insurance benefits, Beneficiary is authorized to collect and apply the insurance proceeds at Beneficiary's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust

7.15 Release, Extension, Modification. At any time and from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement, Trustee may release or reconvey all or any part of the Property, consent to the making of any map or plat of the Land or part thereof, join in granting any easement or creating any restriction affecting the Property, or join in any extension agreement or other agreement affecting the lien or charge hereof. At any time and from time to time, without liability therefor and without notice, Beneficiary may (i) release any person liable for payment of any Secured Obligation, (ii) extend the time for payment or otherwise alter the terms of payment of any Secured Obligation; (iii) accept additional real or personal property of any kind as security for any Secured Obligation, or (iv) substitute or release any property securing the Secured Obligations.

7.16 Reconveyance. Upon written request of Beneficiary stating that all of the Secured Obligations have been satisfied in full, and upon surrender of this Deed of Trust, and the Note, Trustee shall reconvey, without warranty, the Property or so much of it as is then held under this Deed of Trust. The recitals in any reconveyance executed under this Deed of Trust of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor shall pay all fees of Trustee and all recordation fees related to such reconveyance.

7.17 Cure; Protection of Security. Beneficiary may cure any breach or default of Trustor, and if it chooses to do so in connection with any such cure, Beneficiary may also enter the Property and/or do any and all other things which it may in its reasonable 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 which 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 sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary to be conclusive as among Beneficiary, Trustee and Trustor; obtaining insurance and/or paying any premiums or charges for insurance required to be carried hereunder; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary. Beneficiary may take any of the actions permitted under this Section 7.17 either with or without giving notice, except for notices required under applicable law. Any amounts disbursed by Beneficiary pursuant to this paragraph shall become additional indebtedness secured by this Deed of Trust.

8. Default and Remedies.

8.1 Events of Default. Trustor acknowledges and agrees that an Event of Default shall occur under this Deed of Trust upon the occurrence of any one or more of the following events:

a. Beneficiary's declaration of an Event of Default under any City Document, subject to the expiration of any applicable cure period set forth in such document;

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

c. If Trustor's interest in the Property or any part thereof is voluntarily or involuntarily sold, transferred, leased, encumbered, or otherwise conveyed in violation of Section 7.4 hereof or if any other Transfer occurs in violation of the Loan Agreement;

d. Trustor fails to maintain the insurance coverage required under the City Documents or otherwise fails to comply with the requirements of Section 7.8 hereof and Trustor fails to cure such default within the time specified in Section 7.8;

e. Subject to Trustor's right to contest such charges as provided herein, Trustor fails to pay taxes or assessments due on the Land or the Improvements or fails to pay any other charge that may result in a lien on the Land or the Improvements, and Trustor fails to cure such default within ten (10) days.

f. Any representation or warranty of Trustor contained in or made in connection with the execution and delivery of this Deed of Trust or in any certificate or statement furnished pursuant hereto or in any other City Document proves to have been false or misleading in any material adverse respect when made;

g. If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Trustor or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Trustor or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Trustor or any general partner thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

h. If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Trustor or any general partner thereof in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Trustor or any general partner thereof or substantially all of such entity's assets, (iii) orders the liquidation of Trustor or any general partner thereof, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Project, and in each case the order or decree is not released, vacated, dismissed or fully bonded within 60 days after its issuance.

i. The holder of any other debt instrument secured by a mortgage or deed of trust on the Property or part thereof declares an event of default thereunder and exercises a right

to declare all amounts due under that debt instrument immediately due and payable, subject to the expiration of any applicable cure period set forth in such holder's documents; or

j. Trustor fails to perform any obligation arising under this Deed of Trust other than one enumerated in this Section 8.1, and does not cure that failure either within ten (10) days after written notice from Beneficiary or Trustee in the event of a monetary default, or within thirty (30) days after such written notice in the event of a nonmonetary default, provided that in the case of a nonmonetary default that in Beneficiary's reasonable judgment cannot reasonably be cured within thirty (30) days, an Event of Default shall not arise hereunder if Trustor commences to cure such default within thirty (30) days and thereafter prosecutes such cure to completion with due diligence and in good faith and in no event later than ninety (90) days, or such longer period as the City may approve, following receipt of notice of default.

8.2 Remedies. Subject to the applicable notice and cure provisions set forth herein, 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, and may exercise any one or more or all, of the remedies set forth in any City Document, and any other remedy existing at law or in equity or by statute, subject to the nonrecourse provisions set forth in the Note. All of Beneficiary's rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies. Beneficiary shall be entitled to collect all expenses incurred in pursuing the remedies provided hereunder, including without limitation reasonable attorneys' fees and costs.

a. Acceleration. Beneficiary may declare any or all of the Secured Obligations, including without limitation all sums payable under the Note and this Deed of Trust, to be due and payable immediately.

b. Receiver. Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property.

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 may also do any and all other things in connection with those actions that Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing copies of all of Trustor's or the then owner's books and records concerning the Property; 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; collecting and receiving any payment of money owing to Trustor; completing any unfinished construction; and/or contracting for and making repairs and alterations. 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 to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments.

d. UCC Remedies. Beneficiary may exercise any or all of the remedies

granted to a secured party under the UCC.

e. 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 foreclosure of mortgages on real property and/or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust.

f. 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.

Trustor's limited partners (the "**Limited Partners**") shall have the right to cure any default of Trustor hereunder upon the same terms and conditions afforded to Trustor. Provided that Beneficiary has been given written notice of the address for delivery of notices to the Limited Partners, Beneficiary shall provide any notice of default hereunder to the Limited Partners concurrently with the provision of such notice to Trustor, and as to the Limited Partners, the cure periods specified herein shall commence upon the date of delivery of such notice in accordance with Section 10.2.

8.3 Power of Sale. If Beneficiary elects to invoke the power of sale hereby granted, Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of its election to cause the Property to be sold to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of the Recorder of each County wherein the Property or some part thereof is situated as required by law and this Deed of Trust.

Prior to publication of the notice of sale, Beneficiary shall deliver to Trustee this Deed of Trust and the Note or other evidence of indebtedness which is secured hereby, together with a written request for the Trustee to proceed with a sale of the Property, pursuant to the provisions of law and this Deed of Trust.

Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed after recordation of such notice of default, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may, and at Beneficiary's request shall, postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary, may purchase at such sale.

After deducting all costs, fees, and expenses of Trustee and of the trust hereby created, including reasonable attorneys' fees in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums advanced or expended by Beneficiary or Trustee under the terms

hereof and all outstanding sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto.

Without limiting the generality of the foregoing, Trustor acknowledges and agrees that regardless of whether or not a default has occurred hereunder, if an Event of Default has occurred under the City Documents, and if in connection with such Event of Default Beneficiary exercises its right to foreclose on the Property, then: (i) Beneficiary shall be entitled to declare all amounts due under the Note immediately due and payable, and (ii) the proceeds of any sale of the Property in connection with such foreclosure shall be used to pay all Secured Obligations, including without limitation, the outstanding principal balance and all other amounts due under the Note.

At any foreclosure sale, any person, including Trustor, Trustee or Beneficiary, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Beneficiary may settle for the purchase price by crediting the sales price of the property against the following obligations:

a. First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Trustor is obligated to pay or reimburse Beneficiary or Trustee under Section 7.11(c); and

b. Second, the remaining balance of all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose.

8.4 Trustor's Right to Reinstate. Notwithstanding Beneficiary's acceleration of the sums secured by this Deed of Trust, Trustor shall have the right to have any proceedings begun by Beneficiary to enforce this Deed of Trust discontinued at any time prior to five days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Trustor pays Beneficiary all sums which would be then due under the Loan Documents if the Secured Obligations had no acceleration provision; (b) Trustor cures all breaches of any other covenants or agreements of Trustor contained in this Deed of Trust; (c) Trustor pays all reasonable expenses incurred by Beneficiary and Trustee in enforcing the covenants and agreements of Trustor contained in this Deed of Trust, and in enforcing Beneficiary's and Trustee's remedies as provided herein, including, but not limited to, reasonable attorney's fees; and (d) Trustor takes such action as Beneficiary may reasonably require to assure that the lien of this Deed of Trust, Beneficiary's interest in the Property and Trustor's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Trustor, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

Nothing contained in Sections 8.3 and 8.4 is intended to expand upon or limit the rights of Trustor and Beneficiary under California law regarding Beneficiary's exercise of the power of sale or Trustor's reinstatement rights.

9. Trustor's Waivers. To the fullest extent permitted by law, Trustor waives: (a) all

statutes of limitations as a defense to any action or proceeding brought against Trustor by Beneficiary; (b) the benefit of all laws now existing or which may hereafter be enacted providing for any appraisal, valuation, stay, extension, redemption or moratorium; (c) all rights of marshalling in the event of foreclosure; and (d) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Deed of Trust and of the existence, creation, or incurring of new or additional indebtedness, and demands and notices of every kind.

10. Miscellaneous Provisions.

10.1 Additional Provisions. The City Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and the Property.

10.2 Notices. Trustor requests that a copy of notice of default and notice of sale be mailed to Trustor at the address set forth below. That address is also the mailing address of Trustor as debtor under the UCC. Beneficiary's address set forth below is the address for Beneficiary as secured party under the UCC. Except for any notice required under applicable law to be given in another manner, all notices to be sent pursuant to this Deed of Trust shall be made in writing, and sent to the parties at their respective addresses specified below or to such other address as a party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- a. personal delivery, in which case notice shall be deemed delivered upon receipt;
- b. certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;
- c. nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or
- d. facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

Beneficiary: City of San Leandro
835 East 14th Street
San Leandro, CA 94577
Attention: City Manager

Trustor: WASHINGTON AVENUE, L.P., a California limited
partnership
1149 South Hill Street, Suite 700_
Los Angeles, CA 90015
Attention: Senior Vice President, Development

With a copy to:

Bank

Trustee:

10.3 Binding on Successors. The terms, covenants and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of the Trustor, Beneficiary and Trustee; provided however this Section 10.3 does not waive the provisions of Section 7.4.

10.4 Substitution of Trustee. Beneficiary may from time to time or at any time substitute a trustee or trustees to execute the trust hereby created, and when any such substitution has been filed for record in the office of the Recorder of Alameda County, it shall be conclusive evidence of the appointment of such trustee or trustees, and such new trustee or trustees shall succeed to all of the powers and duties of the Trustee named herein.

10.5 Attorneys' Fees and Costs. In any action or proceeding to foreclose this Deed of Trust or to enforce any right of Beneficiary or of Trustee, Trustor shall pay to Beneficiary and Trustee all costs of such action or proceeding, including reasonable attorneys' fees.

10.6 Governing Law; Severability; Interpretation. This Deed of Trust shall be governed by the laws of the State of California without regard to principles of conflicts of laws. Trustor agrees that any controversy arising under or in relation to this Deed of Trust shall be litigated exclusively in the jurisdiction where the Land is located (the "**Property Jurisdiction**"). The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the City Documents. Trustor irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation, and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. If any provision of this Deed of Trust is held unenforceable or void, that provision shall be deemed severable from the remaining provisions, and shall in no way affect the validity of this Deed of Trust. The captions used in this Deed of Trust are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. In this Deed of Trust, whenever the context so requires, the singular number includes the plural.

10.7 Waiver, Modification and Amendment. Any waiver by Beneficiary of any obligation of Trustor hereunder must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary or Trustee to take action on account of any default of Trustor. Consent by Beneficiary or Trustee to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's or Trustee's consent to be obtained in any future or other instance. No amendment to or modification of this Deed of Trust shall be effective unless and until such amendment or modification is in writing, executed by Trustor and Beneficiary. Without limiting the generality of the foregoing, Beneficiary's acceptance of

payment of any sum secured hereby after its due date shall not constitute a waiver by Beneficiary of its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

10.8 Action By Beneficiary. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, or consent by the Beneficiary is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by Beneficiary's Executive Director or by any person who shall have been designated by Beneficiary's Executive Director, without further approval by the governing board of Beneficiary. Beneficiary shall use reasonable best efforts to respond to requests for any such approval, notice, direction, or consent in a timely manner. In any approval, consent, or other determination by Beneficiary required hereunder, Beneficiary shall act reasonably and in good faith.

10.9 Joint and Several Liability. If Trustor consists of more than one person or entity, each shall be jointly and severally liable for the faithful performance of all of Trustor's obligations under this Deed of Trust.

10.10 Time is of the Essence. Time is of the essence for each provision of this Deed of Trust.

SIGNATURES ON FOLLOWING PAGE.

**EXHIBIT F
FINANCING PLAN**

5093892.2

**WASHINGTON AVENUE APARTMENTS
FINANCING SUMMARY**

Affordability Mix	# Units	Net Rent
Extremely Low Income Units @20% AMI - 1 BR	4	406
Extremely Low Income Units @20% AMI - 2 BR	6	455
Extremely Low Income Units @20% AMI - 3 BR	5	506
Extremely Low Income Units @30% AMI - Studio	3	633
Extremely Low Income Units @30% AMI - 1 BR	24	663
Extremely Low Income Units @30% AMI - 2 BR	6	763
Extremely Low Income Units @30% AMI - 3 BR	6	862
Very Low Income Units @40% AMI - 1 BR	2	920
Very Low Income Units @40% AMI - 2 BR	4	1,072
Very Low Income Units @40% AMI - 3 BR	4	1,219
Very Low Income Units @50% AMI - 1 BR	2	1,177
Very Low Income Units @50% AMI - 2 BR	2	1,380
Very Low Income Units @50% AMI - 3 BR	3	1,575
Manager's Units (2 BR)	1	
	72	

Unit Mix		
0 BR / 1 BA	3	4%
1 BR / 1 BA	32	44%
2 BD / 1 BA	19	26%
3 BD / 1 BA	18	25%
	72	

Development Budget	Total	Per Unit
Acquisition and Related Costs	4,229,200	58,739
Construction	40,121,253	557,240
Architecture and Engineering	1,761,600	24,467
Permits and Fees	2,460,521	34,174
Financing Costs	3,530,720	49,038
Other Soft Costs	4,892,428	67,950
	56,995,722	791,607

Sources of Financing - Permanent		
Conventional Loan	2,374,000	32,972
HCD - Multifamily Housing Program	19,763,531	274,493
County Measure A1	5,016,000	69,667
City of San Leandro	1,985,000	27,569
Accrued Deferred Interest	225,416	3,131
Deferred Developer Fee	300,000	4,167
Tax Credit Contributions	27,331,775	379,608
	56,995,722	791,607

**WASHINGTON AVENUE APARTMENTS
USES OF FUNDS**

USES OF FUNDS	Total	Acq/Predev.	Construction	Permanent
Acquisition and Related Costs	4,229,200	4,229,200	-	-
Land	3,500,000	3,500,000		
Acquisition Loan and Fees	542,965	542,965		
Other Costs	186,235	186,235		
Construction	40,121,253	-	40,121,253	-
Demolition	205,200		205,200	
Hard Costs	33,101,303		33,101,303	
General Conditions	1,170,000		1,170,000	
Overhead and Profit	1,283,041		1,283,041	
Insurance and Bond	714,322		714,322	
Owner's Construction Contingency	3,647,387		3,647,387	
Architecture and Engineering	1,761,600	1,232,980	528,620	-
Architect	1,360,600	932,230	428,370	
Engineering	401,000	300,750	100,250	
Permits and Fees	2,460,521	150,000	2,310,521	-
Local Development Impact Fees	1,825,298	-	1,825,298	
Local Permits	635,223	150,000	485,223	
Financing Costs	3,530,720	543,907	2,986,813	-
Construction Loan Interest	2,278,109		2,278,109	
Bond Costs of Issuance	788,177	79,473	708,704	
Other Financing Fees	464,434	464,434	-	
Other Soft Costs	4,892,428	87,448	2,864,796	1,940,184
Insurance	139,706		139,706	-
Furnishings	181,400		181,400	-
Reserves	805,664		265,480	540,184
Legal Fees	120,500	50,000	70,500	-
Construction Management	118,000		118,000	-
Developer Fee	2,500,000		1,100,000	1,400,000
Other Soft Costs	1,027,158	37,448	989,710	
TOTAL USES OF FUNDS	56,995,722	6,243,535	48,812,003	1,940,184

20-Year Cash Flow Version: 1.4.4 Feasibility w Perm Debt

Assumptions					
Rent Increase: Residential Tenant Rent:	2.00%	Rent Increase - Section 8	2.00%	Perm Loan - % Debt Svc Yr -1	0.0%
Rent Increase: Commercial Rents	2.00%	Rent Increase - NA	2.00%	Perm Loan - % Debt Svc Yr 0	0.0%
Expenses Increase:	3.00%	Rent Increase - Test C	2.00%	Perm Loan - % Debt Svc Yr 1	16.7%
Reserve Increase:	0.00%	Rent Increase - Test D	2.00%	Perm Loan - % Debt Svc Yr 2	100.0%
				Perm Loan - % Debt Svc Yr 3	100.0%

	Credit Period Year:	(1)	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
		2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045
GROSS POTENTIAL INCOME - RESIDENTIAL		0	0	442,304	672,302	685,748	699,463	713,452	727,721	742,276	757,121	772,264	787,709	803,463	819,532	835,923	852,642	869,694	887,088	904,830	922,927	941,385	960,213	979,417
Incremental Income: Section 8		0	0	275,888	419,350	427,737	436,291	445,017	453,918	462,996	472,256	481,701	491,335	501,162	511,185	521,409	531,837	542,474	553,323	564,390	575,677	587,191	598,935	610,913
Misc. Income		0	0	2,304	3,502	3,572	3,644	3,716	3,791	3,867	3,944	4,023	4,103	4,185	4,269	4,354	4,441	4,530	4,621	4,713	4,808	4,904	5,002	5,102
Vacancy Loss - Residential	5.0%	0	0	(22,230)	(33,790)	(34,466)	(35,155)	(35,858)	(36,576)	(37,307)	(38,053)	(38,814)	(39,591)	(40,382)	(41,190)	(42,014)	(42,854)	(43,711)	(44,585)	(45,477)	(46,387)	(47,314)	(48,261)	(49,226)
Vacancy Loss - Section 8	10.0%	0	0	(27,589)	(41,935)	(42,774)	(43,629)	(44,502)	(45,392)	(46,300)	(47,226)	(48,170)	(49,134)	(50,116)	(51,119)	(52,141)	(53,184)	(54,247)	(55,332)	(56,439)	(57,568)	(58,719)	(59,893)	(61,091)
GROSS EFFECTIVE INCOME		0	0	670,677	1,019,429	1,039,817	1,060,614	1,081,826	1,103,462	1,125,532	1,148,042	1,171,003	1,194,423	1,218,312	1,242,678	1,267,531	1,292,882	1,318,740	1,345,115	1,372,017	1,399,457	1,427,446	1,455,995	1,485,115
Operating Expenses w/ Standard Inflator	3.0%	0	0	422,491	646,412	665,804	685,778	706,352	727,542	749,368	771,849	795,005	818,855	843,421	868,723	894,785	921,629	949,277	977,756	1,007,088	1,037,301	1,068,420	1,100,473	1,133,487
TOTAL EXPENSES		0	0	422,491	646,412	665,804	685,778	706,352	727,542	749,368	771,849	795,005	818,855	843,421	868,723	894,785	921,629	949,277	977,756	1,007,088	1,037,301	1,068,420	1,100,473	1,133,487
Total Expenses - Residential	3.0%	0	0	422,491	646,412	665,804	685,778	706,352	727,542	749,368	771,849	795,005	818,855	843,421	868,723	894,785	921,629	949,277	977,756	1,007,088	1,037,301	1,068,420	1,100,473	1,133,487
NET OPERATING INCOME		0	0	248,185	373,017	374,013	374,835	375,474	375,920	376,163	376,193	375,998	375,568	374,891	373,955	372,746	371,254	369,462	367,359	364,928	362,156	359,026	355,523	351,628
REPLACEMENT RESERVE	43,200	0	0	28,800	43,200	43,200	43,200	43,200	43,200	43,200	43,200	43,200	43,200	43,200	43,200	43,200	43,200	43,200	43,200	43,200	43,200	43,200	43,200	43,200
Mandatory Annual HCD Payment	0.42%	0	0	13,834	83,007	83,007	83,007	83,007	83,007	83,007	83,007	83,007	83,007	83,007	83,007	83,007	83,007	83,007	83,007	83,007	83,007	83,007	83,007	83,007
NET REMAINING INCOME		0	0	205,551	246,810	247,806	248,629	249,268	249,714	249,956	249,986	249,791	249,361	248,684	247,748	246,540	245,047	243,256	241,152	238,722	235,949	232,819	229,316	225,421
PERM LOAN - TRANCHE A	Conventional Perm Loan - A Tranche																							
Principal Balance (Ending)	2,374,000	0	0	2,368,557	2,301,255	2,230,150	2,155,027	2,075,658	1,991,804	1,903,211	1,809,611	1,710,722	1,606,244	1,495,862	1,379,242	1,256,031	1,125,857	988,327	843,025	689,511	527,321	355,966	174,926	0
Annual Issuer Fee	2,500	0	0	0	2,961	2,877	2,788	2,694	2,595	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500
Trustee	4,000	0	0	0	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000
Series A Bond P&I	196,126	0	0	16,344	196,126	196,126	196,126	196,126	196,126	196,126	196,126	196,126	196,126	196,126	196,126	196,126	196,126	196,126	196,126	196,126	196,126	196,126	196,126	196,126
Interest Payment		0	0	10,901	128,825	125,021	121,003	116,757	112,272	107,533	102,527	97,237	91,648	85,744	79,506	72,916	65,953	58,596	50,824	42,612	33,937	24,771	15,087	4,856
Principal Payment		0	0	5,443	67,302	71,105	75,123	79,369	83,854	88,593	93,600	98,889	104,478	110,382	116,620	123,211	130,174	137,530	145,303	153,514	162,190	171,355	181,039	174,926
TOTAL SERIES A DEBT SERVICE		0	0	16,344	203,087	203,003	202,914	202,820	202,721	202,626	202,626	202,626	202,626	202,626	202,626	202,626	202,626	202,626	202,626	202,626	202,626	202,626	202,626	186,282
NET CASH FLOW		0	0	189,207	43,723	44,804	45,715	46,447	46,993	47,330	47,360	47,165	46,735	46,058	45,122	43,913	42,420	40,629	38,526	36,095	33,323	30,193	26,689	39,139
Debt Service Coverage Ratio (All Debt)		N/A	N/A	1.15	1.22	1.22	1.23	1.23	1.23	1.23	1.23	1.23	1.23	1.23	1.22	1.22	1.21	1.20	1.19	1.18	1.16	1.15	1.13	1.21

DISTRIBUTION OF CASH FLOW																								
LP AMF 1	Annual Amt: 5,000 Inflator: 0.00%	0	0	833	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
GP PMF 2	Annual Amt: 20,000 Inflator: 0.00%	0	0	3,333	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000
DDF	Annual Amt: 300,000 Interest Rate: 0.00%	0	0	185,040	18,723	19,804	20,715	21,447	21,993	12,278	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Residual Receipts Loans	Total % 50.00%																							
HCD MHP	73.84%	0	0	0	0	0	0	0	0	3,711	8,255	8,184	8,025	7,775	7,429	6,983	6,432	5,770	4,994	4,097	3,073	1,917	624	5,220
County Measure A1	18.74%	0	0	0	0	0	0	0	0	942	2,095	2,077	2,037	1,973	1,886	1,772	1,632	1,465	1,267	1,040	780	487	158	1,325
City of San Leandro	7.42%	0	0	0	0	0	0	0	0	373	829	822	806	781	746	701	646	580	502	411	309	193	63	524
Sponsor Distribution (50%)	Annual Amt: 1 NCF %: 100.00%	0	0	0	0	0	0	0	0	5,026	11,180	11,083	10,868	10,529	10,061	9,457	8,710	7,815	6,763	5,548	4,162	2,597	845	7,070