

GARDEN GROVE CITY COUNCIL

RESOLUTION NO. 9109-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE
APPROVING AN AFFORDABLE HOUSING LOAN AGREEMENT BY AND BETWEEN THE
CITY OF GARDEN GROVE AND TAMERLANE ASSOCIATES, LLC, AND MAKING
CERTAIN OTHER FINDINGS IN CONNECTION THEREWITH

WHEREAS, Tamerlane Associates, LLC, a California limited liability company (Owner) has entered or will enter into an agreement or agreements to purchase a parcel of real property in the City of Garden Grove (City), generally located at 12211 Tamerlane Drive, Garden Grove, California, and described as Assessor's Parcel Number 231-471-45 (Property);

WHEREAS, Owner desires to rehabilitate and operate an apartment complex on the Property (Project), consisting of three (3) apartment units (each, a Housing Unit);

WHEREAS, Owner and City desire to enter into an Affordable Housing Loan Agreement (Agreement) pursuant to which City will provide a loan to Owner in an amount of Five Hundred Forty-Nine Thousand, Five Hundred Eighty-One Dollars (\$549,581) (City Loan) and a payment of Thirty-Two Thousand Dollars (\$32,000) in exchange for Owner's agreement to restrict the use, operation, rental, and occupancy of all three (3) of the Housing Units at the Project to Lower Income Households paying an Affordable Rent throughout a term of twenty (20) years from the date Owner acquires the Property (Affordability Period);

WHEREAS, the Agreement and the City's expenditure of Housing Funds thereunder are intended to be a "Matching Contribution" as that term is used in the HOME Investment Partnership Act, 42 U.S.C. § 12701, *et seq.*, as it now exists and as it may hereafter be amended, as implemented by the HOME Regulations (defined in the Agreement), as they now exist and as they may hereafter be amended (collectively, the HOME Program);

WHEREAS, the Agreement requires Owner to comply with all applicable requirements of the HOME Program, as it now exists or may hereafter be amended, including, without limitation, the Rehabilitation of the Housing Units shall comply with all applicable federal laws and regulations pertaining to labor standards;

WHEREAS, initially capitalized terms used herein and not expressly otherwise defined shall have the meanings ascribed to them in the Agreement;

WHEREAS, City's payment of the City Loan and the additional \$32,000 payment to Owner and Owner's operation of the Project as an affordable rental housing project throughout the twenty (20) year Affordability Period pursuant to the Agreement and in compliance with the recorded Regulatory Agreement is in the vital and best interest of the City and the health, safety, and welfare of its residents;

WHEREAS, the Project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA), California Public Resources Code Sections 21000, *et seq.* and the guidelines promulgated thereunder at 14 California Code of Regulations Section 15000, *et seq.* (CEQA Guidelines) as a "Class 1" project for the "operation, repair, maintenance, permitting, leasing, licensing or minor alteration of existing public or private structures, involving negligible or no expansion of use" pursuant to Section 15301 of the CEQA Guidelines, as a "Class 2" project for the "replacement or reconstruction of existing structures and facilities" pursuant to Section 15302 of the CEQA Guidelines, and as a "Class 32" project for "infill development consistent with the general plan on an urban parcel of up to five (5) acres with no significant effects on traffic, noise, air quality or water quality" pursuant to Section 15332 of the CEQA Guidelines; and

WHEREAS, the City has duly considered all terms and conditions of the proposed Agreement and believes that the Project is in the best interests of the City and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Garden Grove as follows:

Section 1. The foregoing recitals are true and correct and constitute a substantive part of this Resolution and are fully incorporated herein.

Section 2. The City hereby finds and determines that the Project will be of benefit to the City by providing long-term affordable housing within the city.

Section 3. The City hereby finds and determines that the Agreement is exempt from CEQA as set forth above, and directs City staff to file a Notice of Exemption with the County of Orange within five (5) days hereof.

Section 4. The City hereby approves the Agreement between City and Owner with such changes as may be mutually agreed upon by the City Manager (or his duly authorized representative), City legal counsel, and Owner; provided that such changes are minor and in substantial conformance with the form of the Agreement submitted herewith. The City Manager and the City Clerk are hereby authorized to execute and attest the Agreement, including any related attachments, on behalf of City. In such regard, the City Manager (or his duly authorized representative) is authorized to sign the final version of the Agreement after completion of any such non-substantive, minor revisions. Copies of the final form of the Agreement, when duly executed and attested, shall be placed on file in the City Clerk's Office. Further, the City Manager (or his duly authorized representative) is authorized to implement the Agreement and take all further actions and execute all documents referenced therein and/or necessary and appropriate to carry out the Project as provided for within the Agreement. The City Manager (or his duly authorized representative) is hereby authorized to the extent necessary during the implementation of the Agreement to make technical or minor

changes and interpretations thereto after execution, as necessary to properly implement and carry out the Agreement, provided any and all such changes shall not in any manner materially affect the rights and obligations of the City or the expense to the City under the Agreement approved hereby.

Section 5. In addition to the authorization of Section 4 above, the City Manager is hereby authorized, on behalf of City, to sign all other documents necessary or appropriate to carry out and implement the Agreement, including causing the issuance of warrants in implementation thereof and to administer and carry out City's obligations, responsibilities, and duties to be performed under the Agreement, subject to the provisions thereof.

Section 6. The City Clerk shall certify to the adoption of this Resolution.

Adopted this 8th day of May 2012.

ATTEST:

/s/ WILLIAM J. DALTON
MAYOR

/s/ TERESA POMEROY
DEPUTY CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, TERESA POMEROY, Deputy City Clerk of the City of Garden Grove, do hereby certify that the foregoing Resolution was duly adopted by the City Council of the City of Garden Grove, California, at a meeting held on May 8, 2012, by the following vote:

AYES: COUNCIL MEMBERS: (5) BEARD, BROADWATER, JONES, NGUYEN, DALTON
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (0) NONE

/s/ TERESA POMEROY
DEPUTY CITY CLERK

AFFORDABLE HOUSING LOAN AGREEMENT

This AFFORDABLE HOUSING LOAN AGREEMENT (the "Agreement") is entered into as of May 8, 2012 ("Effective Date"), by and between the CITY OF GARDEN GROVE, a California municipal corporation (the "City"), and TAMERLANE ASSOCIATES, LLC, a California limited liability company (the "Owner").

RECITALS

A. Owner has entered or will enter into an agreement or agreements to purchase a parcel of real property located within the City of Garden Grove, at 12211 Tamerlane Drive, which is improved with a three (3) unit (each a "Unit") apartment complex thereon (the "Property"), as particularly described in the Legal Description attached hereto as Exhibit A, and incorporated herein by reference.

B. By this Agreement, and subject to the terms and conditions herein, the City desires to provide financial assistance to Owner in the form of a loan in the principal amount of Five Hundred Forty-Nine Thousand, Five Hundred Eighty-One Dollars (\$549,581) ("City Loan:") and a payment of Thirty Thousand Dollars (\$30,000) ("Developer Fee") from City general funds.

C. Owner agrees to use the City Loan to acquire, rehabilitate and operate the Property. Such acquisition, rehabilitation and operation will herein be referred to as the "Project."

D. In consideration of the City Loan, the Owner agrees to complete the Rehabilitation and rent each Unit to households earning 80% of the median income in Orange County or less at an affordable rent for a period of at least twenty (20) years ("Operating Period") from the date of the completion of the Rehabilitation.

E. The Project completion of the Project is in the vital and best interest of the City and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

NOW, THEREFORE, the parties hereto agree as follows:

100. CITY ASSISTANCE

101. City Loan. The City hereby agrees to loan to the Owner and the Owner hereby agrees to borrow from the City the amount of Five Hundred Forty-Nine Thousand, Five Hundred Eighty-One Dollars (\$549,581), subject to the terms and conditions set forth in this Agreement, and subject further to the terms and conditions set forth within the documents and instruments executed by the Owner in connection with this transaction, including the "Promissory Note," in substantially the form set forth in Exhibit B, the "Deed of Trust," in substantially the form set forth in Exhibit C, the "Regulatory Agreement," and the Notice of Affordability Restrictions substantially in the form of Exhibit H in substantially the form set forth in Exhibit E, the "Option Agreement" in substantially the form set forth in Exhibit F and the Notice of Affordability Restrictions substantially in the form of Exhibit H. The obligations of the Owner under the Promissory Note shall be non-recourse.

101.1 Repayment of the City Loan. The City Loan shall accrue simple interest at the rate of three percent (3%) per annum. Payments of the City Loan shall be made on an annual

basis from seventy-five percent (75%) of the residual cash flow ("Net Profits") from the operation of the Property until the entire principal amount of the Promissory Note is repaid in full.

101.2 Review of Project Records by City. The City shall be entitled to review the books and records of the Owner pertaining to the Operating Expenses and Net Profits of the Property, during normal business hours and upon reasonable advance notice. For the purposes of this Section 101, "Net Profits" means the gross income the Owner receives from the operation of the Property ("Project Revenues"), less deposits to reserve accounts and "Operating Expenses," as hereafter defined. "Operating Expenses" shall mean actual, reasonable and customary costs, fees and expenses directly incurred and attributable to the financing, operation, maintenance, and management of the Property, including without limitation payment of debt service on the loans approved by the City as set forth herein, painting, cleaning, repairs and alterations, landscaping, utilities, rubbish removal, sewer charges, real and personal property taxes and assessments, insurance, securities, advertising, promotion and publicity, office, janitorial, cleaning and building supplies, a management fee not to exceed five percent (5%) of gross rents and other income of the Property pursuant to Section 309 hereof; purchase, repairs, servicing and installation of appliances, equipment, fixtures and furnishings, fees and expenses of accountants, attorneys, consultants and other professionals, capital repairs and improvements, and other payments by the Owner pursuant to this Agreement, including indemnity obligations; provided, however, that payments to parties related to or affiliated with Owner for Operating Expenses must not exceed market rates for comparable projects in Orange County. The Operating Expenses shall not include non-cash expenses, including without limitation, depreciation. The Operating Expenses shall be reported to the City not less than annually in annual financial statements accompanied by a certification of the Owner that such financial statements present the financial position, results of operations, and cash flows fairly and in accordance with generally accepted accounting principles. Owner shall transmit to the City copies of any audited financial statements received by Owner, if any, promptly after receipt.

101.3 Substitution of Other Sources of Funding. The City's financial assistance under this Agreement is intended to come from the City's General Funds; however, the City reserves the right, in its sole and absolute discretion, to substitute another funding source(s) for the General Funds committed by this Agreement. In the event the City changes the funding source(s), the parties hereby agree to amend this Agreement, as reasonably necessary, and to execute additional documents that may be required to comply with applicable law as a result of the change in funding source(s).

102. Disbursement of the City Loan. The City Loan shall be disbursed into the escrow established for the Acquisition of the Property. The City Loan shall be disbursed on behalf of the Owner upon satisfaction of all of the following conditions precedent (the "Conditions Precedent"):

(a) **Execution and Delivery of Documents.** Owner shall have executed and delivered into Escrow the Promissory Note, the Deed of Trust, the Regulatory Agreement, the Notice of Affordability Restrictions, the Option Agreement, and any other documents and instruments required to be executed and delivered by Owner (collectively, the "City Loan Documents"). The Deed of Trust shall not be subordinate to the lien of any other loans, mortgages or deeds of trust.

(b) **Property Appraisal.** The Owner shall have submitted to City a true and correct copy of an appraisal of the fair market value of the Property, and City shall have conducted any appraisals of the Property and/or evaluations of market data which it desires,

demonstrating to the satisfaction of the City that the purchase price to be paid by the Owner for the Property is not greater than the fair market value of the Property.

(c) **Title Insurance.** The City shall have received from a title insurance company approved by the City, a pro forma of a policy of lender's title insurance, together with such endorsements as the City may require, which shall insure the Deed of Trust as a lien upon the Property, junior and subordinate only to Bank Loan as approved pursuant to Section 211 hereof.

(d) **Title to Land.** The Owner shall, as of the closing with respect to the acquisition of the Property, have good and marketable fee title to the Property, and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens for current real property taxes and assessments not yet due and payable, the deeds of and any other matters approved in writing by the City. The Owner's acquisition of the Property shall be completed no later than one hundred eighty (180) days from the Effective Date of this Agreement.

(e) **Recordation.** The Deed of Trust, the Regulatory Agreement, the Option Agreement, and the Notice of Affordability Restrictions shall be recorded against the Property concurrently with or prior to the time of the disbursement of the City Loan.

(f) **Management Plan.** City shall have approved the Management Plan pursuant to Section 309 hereof.

(g) **No Default.** There shall exist no condition, event or act which would constitute an Event of Default (as hereinafter defined) hereunder or which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default.

(h) **Representations and Warranties.** All representations and warranties of Owner herein contained shall be true and correct.

The parties shall attempt to complete all of their pre-closing obligations as soon as possible after the execution of this Agreement, and no later than one hundred eighty (180) days from the Effective Date of this Agreement, unless the parties mutually agree to a later date. The Owner shall use a portion of the City Loan proceeds in the amount of Fifteen Thousand Dollars (\$15,000) to establish an Operating Reserve, pursuant to Section 308 hereof. The proceeds of the City Loan shall not be used for other reserve accounts, monitoring, servicing and origination fees, or for expenditures made or incurred more than one year after Property acquisition.

103. Assumption of City Loan. Except in connection with transfers approved or permitted pursuant to Section 604 hereof, the Promissory Note shall not be assignable by the Owner or assumable by successors and assigns of Owner. In no event, however, shall the Promissory Note be assigned except in connection with the conveyance of the Property to the person or entity which acquires the Promissory Note.

104. Payment of Developer's Fee. In further consideration of the obligations of Owner hereunder, the City shall pay a "Developer's Fee" in the amount of Thirty Thousand Dollars (\$30,000), payable upon Owner's acquisition of the Property to Owner or such other person or entity as Owner may direct.

105. Condition of the Property. The following requirements shall apply to the Property:

105.1 Environmental Condition Prior to City Loan Disbursement. Except as otherwise disclosed in reports obtained by or provided to the City, the Owner represents to the City that it is not aware of, to the best of its actual knowledge, and it has not received any notice or communication from any governmental City having jurisdiction over the Property, or any other person or entity, or any reports or studies, notifying it of the presence of Hazardous Materials or Hazardous Materials Contamination in, on, or under the Property, or any portion thereof, or any violation of applicable laws. The Owner further represents that it knows of no circumstances, conditions or events that may, now or with the passage of time, give rise to any environmental or other legal claim against or affecting the Property. The Owner represents that any inspection reports, environmental audits, reports or studies which concern the Property, or inspection reports from applicable regulatory authorities with respect to the Property, which the Owner has received, have been delivered to the City.

105.2 Indemnification. Owner shall save, protect, pay for, defend, indemnify and hold harmless the City and their respective officers, employees, elected officials, consultants, attorneys, representatives and agents, from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, attorneys' fees and remedial and response costs) (the foregoing are hereinafter collectively referred to as "Liabilities") which may now or in the future be incurred or suffered by the City and/or City and their respective officers, employees, elected officials, consultants, attorneys, representatives and agents by reason of, resulting from, in connection with or arising in any manner whatsoever as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Property of any Hazardous Materials or the violation of Governmental Requirements.

105.3 Release. The Owner hereby waives, releases and discharges forever the City and the City and their respective officers, employees, elected officials, consultants, attorneys, representatives and agents, from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, fees and expenses, present and future, arising out of or in any way connected with the City's and/or the City's or the Owner's use, maintenance, ownership or operation of the Property, any Hazardous Materials on the Property, however they came to be placed there, except that arising out of the negligence or misconduct of the City and/or City and their respective officers, employees, elected officials, consultants, attorneys, representatives and agents.

The Owner acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

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

As such relates to this Section 105.3, the Owner hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

105.4 Duty to Prevent Release of Hazardous Materials. During its ownership and operation of the Property, the Owner shall take all necessary precautions to prevent the release of any Hazardous Materials into the environment on or under the Property. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. The Owner shall notify the City, and provide to the City a copy or copies, of any notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks, and the Owner shall report to the City, as soon as possible after each incident, any unusual, potentially important incidents in the event of a release of any Hazardous Materials into the environment.

105.5 Definitions. For purposes of this Section 105, "Governmental Requirements" shall mean all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the City, or any other political subdivision in which the Property is located, and of any other political subdivision, City or instrumentality exercising jurisdiction over the City, the Owner or the Property.

For purposes of this Section 105, "Hazardous Materials" means any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) methyl tertiary butyl ether, (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6901, *et seq.* (42 U.S.C. §6903) or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601, *et seq.* Hazardous Materials shall not include such products in quantities as are customarily used in the construction, maintenance, or management of multifamily residential developments or associated buildings or grounds, or typically used in multifamily residential activities in a manner typical of comparable multifamily residential developments, or substances commonly and lawfully ingested by a significant population living within the City, including without limitation alcohol, aspirin, tobacco and saccharine.

106. Timing of Acquisition. The Owner hereby covenants and agrees to acquire the Property (the "Acquisition" or "Acquire") no later than one hundred eighty (180) days from the Effective Date of this Agreement.

200. REHABILITATION OF THE PROPERTY

201. Rehabilitation of the Property. The Owner agrees to rehabilitate the Property in accordance with the Schedule of Performance which is attached hereto as Exhibit G and incorporated herein by reference, the Federal Housing Quality Standards, 24 CFR § 982.401, the City Municipal Code, and all other applicable local codes, rehabilitation standards, ordinances and zoning ordinances, and the Work Write-up which is approved by the City pursuant to Section 203 hereof (the "Rehabilitate" or "Rehabilitation"). The Rehabilitation shall be conducted on a unit-by-unit basis and in such a manner so as to avoid or minimize tenant displacement to the greatest extent feasible in accordance with the provisions of Section 210.2 below. Owner shall submit to the City one or more construction contracts with a duly licensed contractor or contractors reasonably acceptable to the City providing for the Rehabilitation of the Property in conformance with the terms of this Agreement. Each such contractor or contractors shall have provided to the City the certification required by 24 CFR § 24.510 that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from this project, and the City shall be responsible for determining whether each contractor has been debarred. The City Manager ("City Manager") or his designee shall reasonably approve such contract or contracts if the City Manager or his designee finds that such contractor or contractors have sufficient experience and expertise necessary to perform the Rehabilitation of the Property in a first class manner in accordance with all of the requirements of this Agreement.

202. Cost of Rehabilitation. The Cost of Rehabilitation shall be paid using funds allocated for Rehabilitation, as set forth in the Pro Forma attached hereto as Exhibit I and incorporated herein by reference, which estimates a cost of Fourteen Thousand, Eight Hundred Forty-Two Dollars (\$14,842) per unit, in the total amount of Forty-Four Thousand, Five Hundred Twenty-Six Dollars (\$44,526) plus a contingency of Four Thousand, Four Hundred Fifty Three Dollars (\$4,453) and a construction management fee payable to Owner of Four Thousand, Four Hundred Fifty-Three Dollars (\$4,453) (the "Rehabilitation Allocation"). In the event the Rehabilitation Allocation is insufficient to pay for the total cost of Rehabilitation, the Owner shall locate and utilize another funding source(s) for the remainder of such costs. The Owner shall submit to the City a final line item budget for any proposed Rehabilitation of the Property, which budget shall include without limitation a description of uses by phase and total cost of Rehabilitation. The City shall reasonably approve such budget if the budget is reasonably calculated to fund the Rehabilitation of the Property in accordance with Federal Housing Quality Standards and all of the requirements of this Agreement.

203. Work Write-up. Within thirty (30) days after the Effective Date of this Agreement, the Owner shall submit to the City detailed plans, materials and drawings describing the Rehabilitation of the Property (collectively, the "Work Write-up"), and the City shall have the right to review and approve or disapprove, in its reasonable discretion, the Work Write-up. During the preparation of the Work Write-up, staff of the City and the Owner shall communicate and consult informally as frequently as necessary to coordinate the preparation and review of the Work Write-up. If the Owner desires to propose any revisions to the City-approved Work Write-up, it shall submit such proposed changes to the City and the City shall review the proposed change and notify the Owner in writing within thirty (30) days after submission to the City as to whether the proposed change is approved or disapproved. The City shall not be responsible either to the Owner or to third parties in any way for any defects in the Work Write-up, nor for any structural or other defects in any work done according to the approved Work Write-up, nor for any delays reasonably caused by the review and approval processes established by this Section 203. The Owner shall hold harmless,

indemnify and defend the City of Garden Grove and their respective officers, employees, elected officials, consultants, attorneys, representatives and agents from and against any claims, suits for damages to property or injuries to persons arising out of or in any way relating to defects in the Work Write-up, including without limitation the violation of any laws, and for defects in any work done according to the approved Work Write-up.

204. Timing of Rehabilitation. The Owner hereby covenants and agrees to commence the Rehabilitation of the Property within the time set forth in the Schedule of Performance. The Owner further covenants and agrees to diligently prosecute to completion the Rehabilitation of the Property in accordance with the approved Work Write-up and to file a Notice of Completion pursuant to California Civil Code Section 3093 within the time set forth in the Schedule of Performance. Notwithstanding the Schedule of Performance, the deadlines for performance under this Agreement set forth therein may be extended if the completion of Rehabilitation according to the Schedule of Performance would displace a resident, unless the resident can be transferred to another unit on the Property, or by mutual written agreement of the parties.

205. City and Other Governmental Agency Permits. Before commencement of the Rehabilitation for the Property, the Owner shall secure or cause its contractor to secure any and all permits which may be required by the City or any other governmental agency affected by such construction, including without limitation building permits. The Owner shall pay all necessary fees and timely submit to the Agency final drawings with final corrections to obtain such permits.

206. Right of the City to Satisfy Other Liens on the Property After City Loan Disbursement. After the disbursement of the City Loan and prior to the completion of the Rehabilitation of the Property, and after the Owner has had written notice and has failed after a reasonable time, but in any event not less than forty-five (45) days, to challenge, cure, adequately bond against, or satisfy any liens or encumbrances on the Property which are not otherwise permitted under this Agreement, the City shall have the right but not the obligation to satisfy any such liens or encumbrances. Notwithstanding the above, the Owner shall have the right to contest the validity or amounts of any tax, assessment, or encumbrance applicable to the Owner in respect thereto.

207. Release of Construction Covenants. Promptly after the completion of the Rehabilitation of the Property in conformity with this Agreement (as reasonably determined by the City Manager or his designee), upon the written request of the Owner, the City shall furnish the Owner with a Release of Construction Covenants (in the form attached hereto as Exhibit D) which evidences and determines the satisfactory completion of the Rehabilitation, in accordance with this Agreement. The issuance and recordation of the Release of Construction Covenants shall not supersede, cancel, amend or limit the continued effectiveness of any obligations relating to the maintenance, or uses, or payment of monies, or any other obligations, except for the obligation to complete the Rehabilitation as of the time of the issuance of the Release of Construction Covenants.

208. Insurance and Indemnity.

208.1 Commencement of Work. Owner shall not commence work under this Agreement until all certificates and endorsements have been received and approved by City. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify City of any material change, cancellation, or termination at least thirty (30) days in advance.

208.2 Workers Compensation. For the duration of this Agreement, Owner and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable. Coverage shall include a waiver of subrogation waiving subrogation rights against City, its officers, officials, agents, employees, and volunteers.

208.3 Insurance Amounts. The owner shall take out and maintain or shall cause its contractor to take out and maintain during the term of the Affordability Period (as set fourth in Section 301 hereof) the following insurance coverage:

(a) Commercial general liability in the amount of \$4,000,000 per occurrence; Coverage shall have no exclusions for Excavation, Collapse, or Underground (XCU); (claims made and modified occurrence policies are not acceptable); Insurance companies must be acceptable to City and have a Best's Guide Rating of A-Class VII or better, as approved by City.

(b) Automobile liability in the amount of \$2,000,000 combined single limit, including mobile equipment, if any, and contractual liability; (claims made and modified occurrence policies are not acceptable); Insurance companies must be acceptable to City and have a Best's Guide Rating of A-Class VII or better, as approved by City.

(c) Commercial crime/theft in the amount of \$250,000. Insurance companies must be acceptable to City and have a Best's Guide Rating of A-Class VII or better, as approved by City. (Claims made and modified occurrence policies are not acceptable.)

(d) In the event asbestos remediation is required during the Rehabilitation, Owner shall cause the general contractor and/or asbestos abatement subcontractor to secure, during such period, an asbestos policy in an amount not less than \$2,000,000 per occurrence. Insurance companies must be acceptable to City and have a Best's Guide Rating of A- Class VII or better, as approved by City. (Claims made and modified occurrence policies are not acceptable.)

(e) Builder's All Risk in an amount equal to the replacement value of the property. Insurance companies must be acceptable to City and have a Best's Guide Rating of A-Class VII or better, as approved by City. (Claims made and modified occurrence policies are not acceptable.)

(f) Excess Liability Policy in an amount not less than \$3,000,000 for any underlying policies that do not meet contractual policy limits. Insurance companies must be acceptable to City and have a Best's Guide Rating of A- Class VII or better, as approved by City. (Claims made and modified occurrence policies are not acceptable.)

An Additional Insured Endorsement, ongoing and completed operations, for the policy under Section 208.3(a) shall designate City, and its officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the Owner. Owner shall provide to City proof of insurance and endorsement forms that conform to City's requirements, as approved by City. (Forms CG 20 26 07 04 or equivalent and CG 20 37 07 04 or equivalent)

An Additional Insured Endorsement for the policy under Section 208.3(b) shall designate City, and its officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned, leased, hired, or borrowed by the Owner. Owner shall provide to City proof of

insurance and endorsement forms that conform to City's requirements, as approved by City. (Form CA 20 48 02 99 or equivalent for the auto mobile liability policy, and the mobile equipment coverage by separate endorsement.)

A Loss Payee Endorsement for the policy under Section 208.3(c) shall designate City as Loss Payee.

An Additional Insured Endorsement, asbestos policy, for the policy under Section 208.3(d) shall designate City, and its officers, officials, employees, agents, and volunteers as additional insureds. Owner shall provide to City proof of insurance and endorsement forms that conform to City's requirements, as approved by City.

An Additional Insured Endorsement, builders' all risk policy, for the policy under Section 208.3(e) shall designate City, and its officers, officials, employees, agents, and volunteers as additional insureds. Owner shall provide to City proof of insurance and endorsement forms that conform to City's requirements, as approved by City.

An Additional Insured Endorsement, excess liability policy, for the policy under Section 208.3(f) shall designate City, and its officers, officials, employees, agents, and volunteers as additional insureds. Contractor shall also provide the schedule of underlying policies and state on the insurance certificate that the excess policy follows from Owner shall provide to City proof of insurance and endorsement forms that conform to City's requirements, as approved by City.

A waiver of subrogation for all policies shall be provided against the City, and its officers, officials, agents, employees, and volunteers.

For any claims related to this Agreement, Owner's insurance coverage shall be primary insurance as respects City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, agents, or volunteers shall by excess of the Owner's insurance and shall not contribute with it.

209. Entry by the City. Owner shall permit the City, through its officers, agents or employees, at all reasonable times to enter onto the Property and inspect the work of Rehabilitation to determine that the same is in conformity with the Work Write-up and all the requirements hereof. Owner acknowledges that the City is under no obligation to supervise, inspect, or inform Owner of the progress of construction, and Owner shall not rely upon the City therefor. Any inspection by the City is entirely for the purpose of determining whether Owner is in default under this Agreement and is not for the purpose of determining or informing Owner of the quality or suitability of construction. Owner shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers.

210. Compliance With Laws. The Owner shall carry out the Project in conformity with all applicable laws, including all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City 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.*

210.1 Taxes and Assessments. The Owner shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Property, subject to the Owner's right to contest in good faith any such taxes or to receive an exemption from the payment of such taxes.

210.2 Relocation. Owner shall conduct and submit to the City a tenant survey, completed by each tenant household currently residing on the Property and such other information as reasonably required by City to evaluate the relocation obligations, if any, required by federal, state and/or local law with respect to the Project. The acquisition and Rehabilitation, if applicable, shall be conducted in such a manner as to prevent, to the maximum extent feasible, any displacement of existing tenants in accordance with applicable law. The Owner and the City shall attempt to obtain Section 8 certificates or other housing subsidies as necessary to provide relocation assistance to the existing tenants of the Property who are not participants in the Owner's program (as hereinafter described). Immediately after the execution of this Agreement, the City and Owner shall cooperate in sending notices (the "Lease Notice") to the existing tenants of the Property notifying and advising such tenants of their right to lease and occupy a unit in the Property, for reasonable terms and conditions, including, but not limited to: (i) term of lease not less than one year, (ii) monthly rent and estimated average utility costs that do not exceed the greater of: (a) the tenant's monthly rent before this Agreement and estimated average monthly utility costs; or (b) Rent calculated pursuant to HOME Program requirements if the tenant is low income, or 30% of gross income if the tenant is not low income. In addition, if any existing tenant is required to move temporarily from the Property and will not be permanently displaced, such tenant(s) will receive temporary relocation assistance and benefits set forth in HOME Regulations Section 92.353(b) ("HOME Regulations" shall mean 24 C.F.R. Part 92. The form of such notice shall be approved by the City prior to its delivery to the tenants. The Owner shall enter into a written lease with each tenant, in a form approved by the City, that shall implement the monthly rent limit set forth in the Lease Notice. In the event that any permanent displacement of tenants of the Property occurs, the City shall provide relocation assistance in accordance with the HOME Regulations Section 92.353, Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. § 4601, *et seq.*, the California Relocation Assistance Law, Government Code Section 7260, *et seq.*, and the regulations adopted pursuant thereto by the State of California and the City (collectively, the "Relocation Laws"), and in a manner approved by the City to each displaced tenant household required to temporarily or permanently vacate a unit within the Property as a result of the Owner's acquisition of the Property or for purposes of completing the Rehabilitation of the Property. In the event of permanent displacement of existing tenants due to the implementation of this Agreement, despite the Owner's efforts to prevent such displacement as provided above, the City shall be fully responsible for administering determinations of eligibility and payments pursuant to the Relocation Laws. The City shall bear the cost of such relocation.

210.3 Liens and Stop Notices. The Owner shall not allow to be placed on the Property or any part thereof any lien or stop notice. If a claim of a lien or stop notice is given or recorded affecting the Property the Owner shall within thirty (30) days of such recording or service or within five (5) days of the City's demand, whichever last occurs: pay and discharge the same; or effect the release thereof by recording and delivering to the City a surety bond in sufficient form and amount, or otherwise; or provide the City with other assurance which the City deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of City from the effect of such lien or bonded stop notice.

210.4 HOME Matching Contribution. This Agreement and the City expenditures hereunder are intended to be a "Matching Contribution" as that term is used in the HOME

Investment Partnership Act, 42 U.S.C. § 12701, *et seq.*, as it now exists and as it may hereafter be amended, as implemented by the HOME Regulations, as they now exist and as they may hereafter be amended (the "HOME Program"). Accordingly, the Owner shall comply with all applicable requirements of the HOME Program, as it now exists or may hereafter be amended. Specifically, without limitation, the Rehabilitation shall comply, to the extent applicable, with the requirements of the Davis-Bacon Act (40 U.S.C. §276a - 276a-5), and as applicable, the Contract Work Hours and Safety Standards Act (40 U.S.C. §3701 *et seq.*), and other applicable federal laws and regulations pertaining to labor standards. Upon request, the City shall provide to the Owner a copy of applicable HOME Program requirements.

210.5 Prevailing Wage Requirements. The City and Owner believe that the California prevailing wage laws are not implicated by this Agreement and the Rehabilitation work to be performed hereunder because the Project meets the requirements of Section 1720(c)(6)(E) of the Labor Code which exempts from the prevailing wage laws affordable housing projects receiving public funding in the form of below-market interest rate loans for a project in which occupancy of at least forty percent (40%) of the units is restricted for at least twenty (20) years, by deed or regulatory agreement, to individuals or families earning no more than eighty percent (80%) of AMI. Notwithstanding the immediately preceding sentence, Owner hereby expressly acknowledges and agrees that the City has not previously affirmatively represented to the Owner or its contractor(s), if any, for the Rehabilitation of the Property, in writing or otherwise, that the Rehabilitation to be performed by Owner and covered by this Agreement is not a "public work," as defined in Section 1720 of the Labor Code.

210.6 City Parking Programs and Requirements. The Owner shall comply with all ordinances and other requirements or programs established by the City with respect to parking, including, without limitation, any ordinances, building code provisions or housing code provisions which require that the garages in the Property shall not be used for human habitation or commercial uses.

211. Financing of the Property. Until the City Loan is repaid in full, the Owner shall not enter into any financing for the Property without the prior written approval of the City, which approval City agrees to give if such proposed financing is provided by a responsible financial institution and the ratio of total debt and equity financing (including the City Loan) to the purchase price of the Property does not exceed One Hundred Percent (100%). The City's approval of such financing shall not be unreasonably withheld or delayed. Upon the request of the Owner, the City Loan Deed of Trust shall be made subordinate to the Bank Loan provided that the Bank Loan meets the requirements of Section 312.

211.1 Holder Performance of Rehabilitation. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated by the provisions of this Agreement to perform the Rehabilitation of the Property, or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement be construed so to obligate such holder. Whenever the City may deliver any notice or demand to Owner with respect to any breach or default by the Owner in completion of Rehabilitation of the Property, the City may at the same time deliver to each holder of record of any mortgage or deed of trust authorized by this Agreement a copy of such notice or demand. Each such holder shall (insofar as the rights granted by the City are concerned) have the right, at its option, within thirty (30) days after the receipt of the notice, upon expressly assuming the Owner's obligations to the City by written agreement reasonably satisfactory to the City, to cure or remedy or commence to cure or remedy and thereafter to pursue with due

diligence the cure or remedy of any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage.

300. OPERATION OF HOUSING

301. Affordable Units. The Owner agrees to make the Units available to Lower Income Households at an Affordable Rent (collectively, the "Affordable Units"), pursuant to the terms set forth below and in the Regulatory Agreement and Notice of Affordability Restrictions (the "Operation" or "Operate").

For purposes of this Agreement, "High HOME Income Households" (hereinafter termed "Lower Income Households") shall mean those households with incomes that do not initially exceed eighty percent (80%) of Orange County median income, adjusted for family size, as established and amended from time to time by the United States Department of Housing and Urban Development ("HUD") or such lesser income as may be set forth in Health & Safety Code Section 50079.5 as amended from time to time.

Upon the Owner's acquisition of the Property, and annually thereafter, the Owner shall submit to the City a completed income computation and certification form, in a form to be provided by the City. The Owner shall obtain such certification prior to the rental or lease of any Affordable Unit in the Properties to a new tenant, and within a reasonable time after the Owner's acquisition of the Properties with respect to existing tenants, and annually thereafter. No new tenants shall be permitted to lease an Affordable Unit unless such certification demonstrates that such prospective tenant is a Low Income HOME Household and meets the eligibility requirements established for the Affordable Unit.

The Owner shall initially determine annual income in accordance with HOME regulations at 24 CFR 92.203 (a)(1)(i) by examining the source documents evidencing annual income (e.g. wage statement, interest statement, unemployment compensation statement) for the household and subsequently determine income during the period of affordability by obtaining a written statement and certification of annual income from each Low Income HOME Household established at 24 CFR 92.203(a)(1)(ii) and in accordance 24 CFR 92.252(h). Such income certification shall be available for inspection and copying by the City upon reasonable and advance notice during normal business hours. The Owner shall verify the income of each proposed and existing tenant of the Affordable Units in the Property at least annually.

The Property shall be subject to the requirements of this Section 300 from the date of the Owner's acquisition of the Property until the twentieth (20th) anniversary of such date. The duration of this requirement shall be known as the "Affordability Period."

302. Affordable Rent. The maximum Monthly Rent chargeable for the Affordable Units shall be annually determined by the City in accordance with the following "Affordable Rent" requirements.

The Affordable Units shall be "Fixed HOME Units" rented to Lower Income Households at "maximum HOME Rent limits" each as defined under 24 CFR 92.252 as the lesser of (a) the fair market rent for comparable housing units in the area as determined by HUD under 24 CFR 888.111, or (b) a rent that does not exceed thirty percent (30%) of sixty-five percent (65%) of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the Unit,

less the monthly allowance for utilities and services to be paid by each tenant ("Affordable Rent"). Notwithstanding the foregoing, however, if after the tenant's initial occupancy of the Unit, the tenant's income increases to a level greater than maximum income for Lower Income Households, adjusted for family size, the rent charged by Owner shall not exceed thirty percent (30%) of the family's adjusted income.

For purposes of this Agreement, "Monthly Rent" means the total of monthly payments for (a) use and occupancy of each Affordable Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by the Owner which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Owner.

303. Lease Requirements. Prior to disbursement of the City Loan, the Owner shall submit a standard lease form to the City for the City's approval. The City shall reasonably approve such lease form upon finding that such lease form is consistent with this Agreement and contains all of the provisions required pursuant to the Community Redevelopment Law, Health & Safety Code Sections 33000 *et seq.* ("CRL") and the HOME Program and the HOME Regulations. The Owner shall enter into a written lease, in the form approved by the City, with each tenant of an Affordable Unit. Each lease shall be for a period of not less than one year, and shall not contain any of the provisions which are prohibited pursuant to 24 CFR 92.253(a) of the HOME Regulations.

304. Affirmative Marketing. The rental of the Affordable Units shall be conducted in accordance with the affirmative marketing requirements which have been adopted by the City and the requirements of Section 92.351, or successor regulation, of the HOME Regulations and other applicable HOME Program requirements.

305. Selection of Tenants. Each Affordable Unit shall be leased to tenants selected by the Owner who meet all of the requirements provided herein. The City may, from time to time, assist in the leasing of the Property by providing to the Owner names of persons who have expressed interest in renting Affordable Units. The Owner shall adopt a tenant selection system in conformance with Section 92.253(d) of the HOME Regulations, which shall be approved by the City in its reasonable discretion, which establishes a chronological waiting list system and/or random lottery system for selection of tenants. The Owner shall not refuse to lease to a holder of a certificate of family participation under 24 CFR part 882 (Rental Certificate Program) or a rental voucher under 24 CFR part 887 (Rental Voucher Program) or to the holder of a comparable document evidencing participation in a HOME Program, Section 8 program or other tenant-based assistance program, who is otherwise qualified to be a tenant in accordance with the approved tenant selection criteria; provided that Owner shall not be required to give any priority or preference to participants in the foregoing programs.

306. Occupancy Standards. Notwithstanding other applicable requirements, occupancy of one bedroom Housing Units shall be limited to three persons, occupancy of two bedroom Housing Units shall be limited to five persons, and occupancy of three bedroom Housing Units shall be limited to seven persons. Notwithstanding the foregoing, however, no current residents of Housing Units as of the date of this Agreement shall be evicted from their apartment units solely because the household does not meet the occupancy requirements of this Section 306.

307. Maintenance. The Owner shall maintain or cause to be maintained the interior and exterior of the Property in a decent, safe and sanitary manner, in accordance with the HUD Housing Quality Standards and the maintenance standards required by Section 92.251 of the HOME Regulations, and the standard of maintenance of similar housing units within Orange County, California. If at any time Owner fails to maintain the Property in accordance with this Agreement and such condition is not corrected within five days after written notice from the City with respect to graffiti, debris, waste material, and general maintenance, or thirty days after written notice from the City with respect to landscaping and building improvements, then the City, in addition to whatever remedy it may have at law or at equity, shall have the right to enter upon the applicable portion of the Property and perform all acts and work necessary to protect, maintain, and preserve the Property and landscaped areas on the Property, and to attach a lien upon the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the City and/or costs of such cure, including a reasonable administrative charge, which amount shall be promptly paid by Owner to the City, as appropriate, upon demand.

308. Reserve Requirements. The Owner shall set aside in a separate interest-bearing account, commencing upon the Owner's acquisition of the Property, the sum of Fifteen Thousand Dollars (\$15,000) (the "Operating Reserve"), and shall thereafter retain such amount in the Operating Reserve to cover shortfalls between Property income and actual Property operating expenses. The Owner shall replenish the Operating Reserve to the full amount from Project Revenues within sixty (60) days of its use to cover any such shortfall. The Owner shall provide, no less than once per every twelve (12) months, evidence reasonably satisfactory to the City of compliance herewith.

Concurrently with the establishment of the Operating Reserve as set forth herein, the Owner shall also set aside, on a monthly basis, in a separate interest-bearing account, two percent (2%) of the gross rents received from the Property (the "Capital Replacement Reserve"). When funds in the Capital Replacement Reserve equal the amount of Twelve Thousand Dollars (\$12,000), the Owner may cease depositing additional appropriations to the Capital Replacement Reserve until twenty-four (24) months after the Owner's acquisition of the Property, after which time the Owner shall continue making monthly deposits of two percent (2%) of the gross rents received from the Property. Funds in the Capital Replacement Reserve shall be used for capital replacements to the Property fixtures and equipment which are normally capitalized under generally accepted accounting principles. As capital repairs and improvements of the Property become necessary, the Capital Replacement Reserve shall be the first source of payment therefor. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve the Owner of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Property in the manner prescribed in this Agreement. Not less than once per year, Owner, at its expense, shall submit to the City an accounting for the Capital Replacement Reserve. Capital repairs to and replacement of the Property shall include only those items with a long useful life of five or more years, including without limitation the following: carpet and drape replacement; appliance replacement; exterior painting, including exterior trim; hot water heater replacement; plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement and irrigation pipe and controls replacement; gas line pipe replacement; lighting fixture replacement; elevator replacement and upgrade work; miscellaneous motors and blowers; common area furniture replacement, and common area repainting.

In the event that Owner provides evidence reasonably satisfactory to City that there are insufficient funds in the Capital Replacement Reserve and/or from Net Profits for Owner to undertake necessary capital repairs and improvements as required in this Agreement, the City shall advance such funds, provided that the amount shall be added to the Promissory Note. The Deed of Trust, referencing the new amount will be recorded again, reflecting the new principal amount, junior only to the Bank Loan.

309. Long Term Management of the Property. The parties acknowledge that the City is interested in the long term management and operation of the Property and in the qualifications of any person or entity retained by the Owner for that purpose (the "Property Manager"). The Owner shall, upon the date of acquisition of the Property, either contract with an experienced and reputable party to be the Property Manager or Owner shall itself serve as the Property Manager. During the term of the Affordability Period, the City may from time to time review and evaluate the identity and performance of the Property Manager of the Property as it deems appropriate. If the City determines that the performance of the Property Manager is deficient based upon the standards and requirements set forth in this Agreement, the City shall provide notice to the Owner of such deficiencies and the Owner shall use its best efforts to correct such deficiencies. In the event such deficiencies have not been cured within the time set forth in Section 501 hereof, the City shall have the right to require the Owner to immediately remove and replace the Property Manager and to appoint another property manager or property management company which is reasonably acceptable to the City, which is not related to or affiliated with the Owner, and which has not less than five (5) years experience in property management, including significant experience managing affordable multifamily residential developments of the size, quality and scope of the Property.

In addition, prior to the acquisition of the Property the Owner shall submit for the approval of the City a "Management Plan" which sets forth in detail the Owner's property management duties, the affirmative marketing procedures in accordance with Section 304 hereof, the tenant selection process in accordance with Section 305 hereof, a security system and crime prevention program, the procedures for the collection of rent, the procedures for monitoring of occupancy levels, the procedures for eviction of tenants, the rules and regulations of the Property and manner of enforcement, a standard lease form in accordance with Section 303 hereof, the identity of the Property Manager, and other matters relevant to the management of the Property. The Management Plan shall require the Property Manager to adhere to a fair lease and grievance procedure and provide a plan for tenant participation in management decisions. The management of the Property shall be in compliance with the Management Plan which is approved by the City.

Until the City Loan has been fully repaid, the Owner shall annually submit to the City for its reasonable approval a budget for the operation of the Property. The fee paid to Property Manager shall not exceed five percent (5%) of the gross income of the Property per annum. Other fees and payments shall be consistent with prevailing market rates for the services performed and goods provided in consideration for such fees and payments. The Owner shall ensure that the expenses of operating the Property do not materially exceed the budget which has been approved by the City. The Owner shall annually provide to the City a detailed accounting of operating expenses and shall make its books and records available to the City for inspection and copying, upon reasonable advance notice during its normal hours of business.

310. Monitoring and Recordkeeping. Throughout the Affordability Period, Owner shall comply with all applicable recordkeeping and monitoring requirements set forth in Section 92.508 (or successor regulation) of the HOME Regulations and Health & Safety Code Section 33418 and

shall annually complete and submit to City a Certification of Continuing Program Compliance in the form provided by the City. Representatives of the City shall be entitled to enter the Property, upon at least twenty-four (24) hours notice, to monitor compliance with this Agreement, to inspect the records of the Property with respect to compliance herewith, and to conduct an independent audit or inspection of such records. The Owner agrees to cooperate with the City in making the Property available for such inspection or audit. If for any reason the City is unable to obtain the Owner's consent to such an inspection or audit, the Owner understands and agrees that the City may obtain at Owner's expense an administrative inspection warrant or other appropriate legal order to obtain access to and search the Property. Owner agrees to maintain records in businesslike manner, and to maintain such records for the term of this Agreement.

311. Non-Discrimination Covenants. Owner covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land. All deeds, leases or contracts relating to the Housing Units or the Site, or any part thereof, shall contain or be subject to substantially the following non-discrimination or non-segregation clauses:

(a) *In deeds:* "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(b) *In leases:* "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: "That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

(c) *In contracts:* "There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

312. Compliance with Equal Opportunity and Fair Housing. Owner shall also comply with the equal opportunity and fair housing requirements set forth in Section 92.350 of the HOME Regulations. The covenants established in this Section 311 shall, without regard to technical classification and designation, be binding for the benefit and in favor of City and its successors and assigns, and shall remain in effect in perpetuity.

313. Regulatory Agreement. The requirements of this Agreement which are applicable after the disbursement of the City Loan are set forth in the Regulatory Agreement and Notice of Affordability Restrictions. The execution and recordation of the Regulatory Agreement is a Condition Precedent to the disbursement of the City Loan, as set forth in Section 102 hereof. The Regulatory Agreement shall run with the land and shall be subordinate to the lien of the Bank Loan approved by the City pursuant to Section 211 hereof, provided that the City finds that an economically feasible method of financing for the acquisition and operation of the Property, without the subordination of the covenants as may be set forth in this Agreement and the Regulatory Agreement, is not reasonably available. Upon making such a finding, the City Manager (or designee) is hereby authorized to execute such subordination agreements and/or such other documents as may be necessary to evidence such subordination, provided that such subordination agreements contain written commitments which the City Manager (or designee) finds are reasonably designed to protect the City's investment in the event of default, such as any of the following: (a) a right of the City to cure a default on the loan prior to foreclosure, (b) a right of the City to negotiate with the lender after notice of default from the lender and prior to foreclosure, (c) an agreement that if prior to foreclosure of the loan, the City takes title to the property and cures the default on the loan, the lender will not exercise any right it may have to accelerate the loan by reason of the transfer of title to the City, and (d) a right of the City to purchase the Property from the Owner at any time after a default on the loan.

400. OPTION TO PURCHASE

401. Option. The Owner hereby grants to the City, and the City shall have, subject to any deeds of trust which have been approved pursuant to Section 211 of this Agreement, an option (the "Option") to purchase the Property from Owner at the purchase price set forth in the Option (the "Option"). The City shall have the right but not the obligation to exercise the Option at any time commencing upon the date of the Owner's acquisition of the Property (the "Option commencement date"). If the Option has not been exercised by March 19, 2030, it shall automatically expire. Upon such expiration, the City shall, upon receipt of request therefor by the Owner, provide written confirmation in recordable form that such Option no longer remains in effect. The terms and conditions of the Option shall be set forth in an Option Agreement substantially in the form of Exhibit F, which is attached hereto and incorporated herein, which shall be executed by the parties to

the Option and recorded as an encumbrance to the Property concurrently with the Owner's acquisition of the Property.

500. DEFAULT AND REMEDIES

501. Events of Default. A failure by any party to perform any action or covenant required by this Agreement, the Regulatory Agreement, the Promissory Note, the Deed of Trust, or any loan or deed of trust for the Property which is senior to the City Loan, within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other parties specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party cures such default within thirty (30) days from receipt of such notice of such Default hereunder. However, in the event that such Default is other than a failure to pay money and is of such a nature that it cannot reasonably be cured within thirty (30) days from receipt of such notice, the claimant shall not institute any proceeding against the other party, and the other party shall not be in Default if such party immediately upon receipt of such notice, with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy with diligence as soon as reasonably possible thereafter. In the event that the Owner is in default on any loan or deed of trust senior to the City Loan, the Owner shall immediately deliver to the City a copy of such notice of default. Even if the holder of such loan or deed of trust has not exercised its rights or remedies with respect to such default, the City shall each have the right (but not be obligated) to cure such default. In such event, the City shall be entitled to reimbursement from the Owner of all costs and expenses it has actually incurred in curing such default. The City shall be entitled to add the amount incurred by it to the amounts owing pursuant to the Promissory Note, and secured by the Deed of Trust.

502. Remedies. The occurrence of any Event of Default shall give the nondefaulting party the right to proceed with any and all remedies set forth in this Agreement and/or the Promissory Note, Deed of Trust or Regulatory Agreement (collectively, the "City Loan Documents"), including an action for damages, an action or proceeding at law or in equity to require the defaulting party to perform its obligations and covenants under the City Loan Documents or to enjoin acts or things which may be unlawful or in violation of the provisions of the City Loan Documents, and the right to terminate this Agreement. In addition, the occurrence of any Event of Default by Owner will relieve the City of any obligation to perform hereunder, including without limitation to make or continue the City Loan, and the right to cause all indebtedness of the Owner to the City under this Agreement and the Promissory Note, together with any accrued interest thereon, to become immediately due and payable.

503. Force Majeure. Subject to the party's compliance with the notice requirements as set forth below, performance by either party hereunder shall not be deemed to be a default hereof, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to causes beyond the control and without the fault of the party claiming an extension of time to perform, which may include the following: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, assaults, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, acts or omissions of the other party, acts or failures to act of any public or governmental entity (except that the City's acts or failure to act shall not excuse performance of the City hereunder). An extension of the time for

any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Inability to obtain financing for the acquisition or operation of the Property shall not constitute an event beyond the control of the Owner for purposes of this Section 503.

504. Attorneys' Fees. In addition to any other remedies provided hereunder or available pursuant to law, if either party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder or under any of the City Loan Documents, the prevailing party shall be entitled to recover from the other party its costs of suit and reasonable attorneys' fees.

505. Remedies Cumulative. No right, power, or remedy given to the City by the terms of this Agreement or the City Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of any such instrument, or by any statute or otherwise against Owner and any other person.

506. Waiver of Terms and Conditions. The City may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

507. Non-Liability of City Officials and Employees. No member, official, elected official, consultant, attorney, representative, employee or agent of the City shall be personally liable to the Owner, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Owner or its successors, or on any obligations under the terms of this Agreement.

600. GENERAL PROVISIONS

601. Time. Time is of the essence in this Agreement.

602. Notices. Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below, or at any other address as that party may later designate by Notice:

Owner: Tamerlane Associates, LLC
14 Corporate Plaza, Suite 100
Newport Beach, CA 92660
Attention: Charles Fry

City: City of Garden Grove
11222 Acacia Parkway
P.O. Box 3070
Garden Grove, California 92842
Attn: City Manager

Such addresses may be changed by notice to the other party given in the same manner as provided above.

603. Representations and Warranties of Owner. Owner hereby represents and warrants to the City as follows:

(a) *Organization.* Owner is a duly organized, validly existing limited liability company in good standing under the laws of the State of California and has the power and authority to own property and conduct such business as now being conducted.

(b) *Authority of Owner.* Owner has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the City Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, to acquire and operate the Property, and to perform and observe the terms and provisions of all of the above.

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

(d) *Pending Proceedings.* Owner is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Owner, threatened against or affecting Owner or the Property, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Owner, materially affect Owner's ability to repay the City Loan or impair the security to be given to the City pursuant hereto.

(e) *Layering Review.* The Owner acknowledges that a layering review was performed in accordance with 24 CFR 92.250 (b). The Owner hereby represents and certifies to the City that no government assistance other than the City Loan, comprised of the General Funds and the Set Aside Funds, has been obtained or is contemplated to be obtained for the acquisition of the Property. The Owner agrees to notify the City in the event that it applies for or proposes to use other governmental funds for the Property prior to the end of the Affordability Period.

604. Limitation Upon Change in Ownership, Management and Control of the Property.

(a) *Prohibition.* The identity and qualifications of Owner as an experienced and successful operator of multifamily housing are of particular concern to the City. It is because of this identity and these qualifications that the City has entered into this Agreement with the Owner. No voluntary or involuntary successor in interest of the Owner shall acquire any rights or powers under this Agreement by assignment or otherwise, nor shall Owner make any total or partial sale, transfer, conveyance, encumbrance to secure financing, assignment or lease of the whole or any part of the Property without the prior written approval of the City pursuant to Subparagraph (c) hereof, except as expressly set forth herein, which approval shall not be unreasonably withheld.

(b) *Permitted Transfers.* Notwithstanding any other provision of this Agreement to the contrary, City approval of an assignment or transfer of this Agreement, the City Loan, the Promissory Note, the Deed of Trust, the Regulatory Agreement, or conveyance of the Property or any part thereof pursuant to subparagraph (c) of this Section 604, shall not be required in connection with any of the following (the "Permitted Transfers"):

(i) Subject to the restrictions of Sections 301 through 312 of this Agreement and the Regulatory Agreement, the lease of units within the Property to qualified tenants.

(ii) Assignment for financing purposes, subject to such financing being considered and approved by the City pursuant to Section 211 hereof.

(iii) Assignment of this Agreement and the conveyance of the Property to family members or a trust for estate planning purposes, or transfer of this Agreement and the Property to an entity in which Owner owns not less than fifty percent (50%) of the beneficial interest in the Property, and is under the management and control of the Owner, and the transferee entity executes an agreement reasonably acceptable to the City assuming all of the obligations under this Agreement.

In the event of an assignment by Owner not requiring the City's prior approval, Owner nevertheless agrees that at least ten (10) days prior to such assignment or transfer it shall give written notice to City of such assignment or transfer.

(c) *City Consideration of Requested Transfer.* The City agrees that it will not unreasonably withhold approval of a request made pursuant to this Section 604, provided (a) the Owner delivers written notice to the City requesting such approval, and (b) the proposed assignee or transferee possesses comparable operational experience and capability with respect to the operation of similar types of multifamily rental property, and comparable net worth and resources as necessary to operate the Property, and (c) the proposed assignee or transferee assumes the obligations of the Owner under this Agreement and the Promissory Note in a form which is reasonably acceptable to the City. Such notice shall be accompanied by evidence regarding the proposed assignee's or purchaser's qualifications and experience and its financial commitments and resources sufficient to enable the City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 604(c) and other criteria as reasonably determined by the City. The City shall approve or disapprove the request within thirty (30) days of its receipt of the Owner's notice and all information and materials required herein. In no event, however, shall the City be obligated to approve the assignment or transfer of the City Loan, Promissory Note or Deed of Trust pursuant to this Section 604, except to an approved transferee or assignee of the Owner's rights in and to the Property.

(d) *Successors and Assigns.* This Agreement shall run with the land, and all of the terms, covenants and conditions of this Agreement shall be binding upon the Owner and the permitted successors and assigns of the Owner. Whenever the term "Owner" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

605. No Third Parties Benefited. This Agreement is made and entered into for the protection and benefit of the City, its successors and assigns, and Owner, its permitted successors and assigns, and no other person or persons, except that the City and Housing Authority shall be third party beneficiaries of this Agreement, including but not limited to the Affordability covenants and

the covenants against discrimination contained in this Agreement, the Regulatory Agreement, and the Notice of Affordability Restrictions and shall have the right to enforce such covenants.

606. Partial Invalidity. If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

607. Governing Law. This Agreement and the City Loan Documents and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto.

608. Amendment. This Agreement may not be changed orally, but only by agreement in writing signed by Owner and the City.

609. Approvals. Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing. Where this Agreement requires an approval or consent of the City, such approval may be given on behalf of the City by the City Manager or his or her designee. The City Manager or his or her designee is hereby authorized to take such actions as may be necessary or appropriate to implement this Agreement on behalf of the City, including without limitation the execution of such documents or agreements as may be contemplated by this Agreement, and amendments which do not substantially change the uses or restrictions hereunder, or substantially add to the costs of the City hereunder.

[Signature block begins on page 23.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth below.

OWNER:

TAMERLANE ASSOCIATES, LLC,
a California limited liability company

By:

Chad H. Long

Its:

Manager

CITY:

CITY OF GARDEN GROVE, a California
municipal corporation

By:

Steven Emery for

City Manager

ATTEST:

Musa Pomroy, Deputy
City Clerk

APPROVED AS TO FORM:

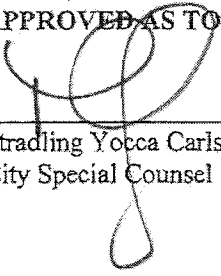

Stradling Yocca Carlson & Rauth
City Special Counsel

EXHIBIT A
LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of Orange, and described as follows:

Lot 4 of Tract No. 3050, in the City of Garden Grove, County of Orange, State of California, as shown on a map recorded in Book 92 Page(s) 31 and 32 of Miscellaneous Maps, in the office of the County Recorder of said County.

Except therefrom all minerals, ores, precious and useful metal substances and hydrocarbons of every kind and character, including petroleum, oil, gas, asphaltum and tar that may now or hereafter be found, located, contained, developed or taken on, in, under or from said land, as reserved by Beatrice Durkee Watson, Ruth Durkee Bell and Florence Durkee in deed recorded September 14, 1955, in book 3208, page 261, Official Records, and in deed from Ella H. Collman, a widow, and George Albertus Collman, her son, recorded July 14, 1955, in book 3138, page 552, Official Records, which deeds provide as follows: "but without the right to use the surface of said land for any such purpose, or to enter upon the surface of the demised land for any such purpose, or to penetrate or enter upon the demised and in any way at a depth from the surface thereof less than 500 feet."

APN: 231-471-45