

GARDEN GROVE CITY COUNCIL

RESOLUTION NO. 9294-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE AUTHORIZING AND APPROVING A COOPERATION AGREEMENT BETWEEN THE CITY AND THE GARDEN GROVE HOUSING AUTHORITY; AUTHORIZING AND APPROVING A HOME FUNDS COMMITMENT AND AGREEMENT (GARDEN GROVE UNITED METHODIST CHURCH SENIOR/MULTI-FAMILY APARTMENTS PROJECT); AMONG THE CITY, THE AUTHORITY AND THE DEVELOPER; AND MAKING CERTAIN DETERMINATIONS AND APPROVALS IN CONNECTION THEREWITH

WHEREAS, the City of Garden Grove ("City") is a California general law city and municipal corporation and a participating jurisdiction with the United States Department of Housing and Urban Development ("HUD") that has received funds ("HOME Funds") from HUD pursuant to Title II of the Cranston Gonzalez National Affordable Housing Act (42 U.S.C. 12701 12839) and the HOME Program regulations codified at 24 CFR Part 92, as amended by the "2013 HOME Final Rule" at 24 CFR Part 92 (together, "HOME Program");

WHEREAS, the HOME Program has, among its purposes, the strengthening of public-private partnerships to provide more affordable housing, and particularly to provide decent, safe, sanitary, and affordable housing, with primary attention to housing for very low income and lower income households in accordance with the HOME Program; and, the HOME Program funds are used by the City, as a participating jurisdiction, to carry out multi-year housing strategies through acquisition, rehabilitation, and new construction of housing for target income persons and families;

WHEREAS, the Garden Grove Housing Authority is a California housing authority acting under the California Housing Authorities Law, Part 2 of Division 24, Section 34200, *et seq.*, of the Health and Safety Code ("HAL"); further, Authority serves as the "housing successor" to the former Garden Grove Agency for Community Development, a dissolved redevelopment agency pursuant to Part 1.85 of Division 24 of the Health and Safety Code, in particular Sections 34176 and 34176.1 ("Dissolution Law" or "Housing Successor Law");

WHEREAS, JHC-Acquisitions LLC ("JHC-A") has entered into an Option to Lease Agreement ("Option Agreement") dated as of November 20, 2014, with the Garden Grove United Methodist Church ("UMC") for the lease of certain parcels of real property commonly known as 10882 Stanford Avenue and 12741 Main Street, Garden Grove ("Site");

WHEREAS, JHC-A has assigned or will assign in connection with such Option Agreement and the subject transaction all of its rights and obligations under the Option Agreement to an affiliate of JHC-A, Garden Grove Housing Partners LP, a California limited partnership ("Developer");

WHEREAS, Developer desires and intends to redevelop the Site by constructing, operating, managing and maintaining a 47-unit multi family, mixed use affordable housing project for Senior Citizens Households and Non-Senior/Family Households of Low Income (59% AMI) and Very Low (50% AMI), along with a new Preschool Center and ancillary commercial/retail space (initial use as the leasing office) (together, the "Project");

WHEREAS, Garden Grove Housing Partners LP, a California limited partnership and an affiliate of JHC ("Developer") will ground lease the Site from UMC for a 60-year term for development and operation of the Project;

WHEREAS, the Project will consist of two primary buildings, one building with 16 Housing Units for Senior Citizen Households and the other with 30 units for Non-Senior/Family Households, with 13 units at Affordable Rent to 50% AMI Very Low Income Households, 33 units at Affordable Rent to qualified 59% AMI Low Income Households, and 11 of the 46 Housing Units will be covenanted and designated as HOME Units, with a required allocation between Senior Citizen Housing Units and the Non Senior/Family Housing Units, all as more fully set forth in that certain HOME Funds Commitment and Agreement (Garden Grove United Methodist Church Senior/Multi-Family Apartments Project) ("HOME Agreement") of even date herewith;

WHEREAS, capitalized terms used in this resolution are as defined in the HOME Agreement or as otherwise defined herein;

WHEREAS, all or a portion of the HOME Funds to be contributed to the Project under the HOME Agreement have been reserved for investment only in housing to be owned, developed or sponsored by a community housing development organization ("CHDO") pursuant to and as defined in the HOME Regulations, and because JHC-A is a qualified CHDO and the managing member of the general partnership Developer entity;

WHEREAS, under the HOME Agreement, City and Authority desire to provide Developer several loans, including (i) the HOME Loan of \$2,010,561 sourced from the City's HOME Funds, which funds are to be transferred through the Cooperation Agreement between the City to the Authority ("HOME Loan"), and a portion of the proceeds of the HOME Loan will be advanced into Escrow to pay for ground rent or Eligible Predevelopment Expenses, (ii) the Additional Authority Loan of \$1,600,000, and (iii) the City DA Fee Deferral Loan that will defer certain City development impact fees in the amount of \$90,052;

WHEREAS, City desires to make available and transfer to the Authority by that certain "Cooperation Agreement" the sum of \$2,010,561 of HOME Funds to enable the Authority to provide and fund the HOME Loan to the Developer under the HOME Agreement;

WHEREAS, the disbursement of the HOME Loan amount by City to Authority and the agreement of Authority and City to perform under the Cooperation Agreement and HOME Agreement further the governmental interests of each of the City and the Authority;

WHEREAS, the Cooperation Agreement and HOME Agreement both further the general health, safety and welfare of the inhabitants of the City;

WHEREAS, on December 4, 2014, the Planning Commission of the City recommended approval of the land use entitlement for the Project; on January 13, 2015, the City Council adopted Resolution No. 9268-15 approving General Plan Amendment No. GPA-001-2014 changing the General Plan Use Designation from Medium Density Residential to Civic Center Mixed Use; and on January 27, 2015, the City Council approved Development Agreement No. DA-001-2014 by adoption of Garden Grove Ordinance No. 2853, with construction of the Project subject to the development standards of the Civic Center-Core (CC-3) zone; and, further, following a duly noticed Public Hearing, the City Council adopted Resolution No. 9267-15 during its meeting on January 13, 2015, adopting a Mitigated Negative Declaration and Mitigation Monitoring Program for the Project pursuant to the California Environmental Quality Act, California Public Resources Section 21000, *et seq.* ("CEQA") and CEQA's implementing guidelines, California Code of Regulations, Title 14, Sections 15000, *et seq.*, and the City has also evaluated and approved the Project under the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.* (together, "Entitlement");

WHEREAS, Developer has made application to and received both an allocation of 4% Tax Credits from the California Tax Credit Allocation Committee and an allocation for issuance of certain Housing Bonds from the California Debt Limit Allocation Committee, and with such allocations the Project will be developed, completed and made available for the 55-year Affordability Period with all of the Housing Units leased at an Affordable Rent to 50% AMI Very Low Income and 59% AMI Low Income Seniors and Non-Senior/Families;

WHEREAS, the Legislature has declared in Health and Safety Code Section 36000, *et seq.* that new forms of cooperation with the private sector, such as leased housing, disposition of real property acquired through redevelopment, development approvals, property tax exemptions, and relocation assistance, and other forms of housing assistance may involve close participation with the private sector in meeting housing needs, without amounting to development, construction or acquisition of low rent housing projects as contemplated under Article XXXIV of the State Constitution;

WHEREAS, the City Council and Authority jointly and severally desire by this Resolution to approve the HOME Agreement and Cooperation Agreement related to development and operation of the Project;

WHEREAS, the City and Authority's participation and subsidies to the Project will be in the public interest in that it will increase the number of affordable housing units within the City and carry out the objectives of the City's Housing Element of its General Plan;

WHEREAS, statutory and case law permits development of many kinds of low income housing that are not characterized as a low rent housing project and therefore do not require Article XXXIV 34 voter authorization;

WHEREAS, in particular, Health and Safety Code Section 37000, et seq. specifically exempts certain types of developments from the requirements of Article XXXIV, including without limitation: (i) replacement of existing low income housing units or units previously occupied by lower-income households (ii) improvement of an affordable housing development that is subject to a contract that provides federal or state public body assistance for the purpose of and to cause development of an affordable housing project, and (iii) providing subordinate financing secured by a deed of trust, each of which exceptions are applicable to the Project; and

WHEREAS, the City desires to approve the Cooperation Agreement and the HOME Agreement by this Resolution, and authorize the Interim City Manager and Interim Authority Director (and the City Manager and Authority Director who will be appointed after the approval of this Resolution), as and if necessary, to negotiate and enter into one or more "Implementation Agreement(s)" that may be required for implementation of the HOME Agreement, and make certain other findings.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE RESOLVES:

1. The foregoing recitals are true and correct and are a substantive part of this resolution.

2. The City and Authority's participation in the financing of the Project and the provision of replacement housing units in implementation of the Limon Judgment meet statutory exceptions to, and do not constitute development, construction or acquisition of a low-rent housing project within the meaning of, Article XXXIV of the State Constitution; in any event, this Resolution is intended to and constitutes an approval within the meaning of California Health and Safety Code Section 36005 of a development that may result in housing assistance benefiting persons of low income.

3. The City Council hereby approves the Cooperation Agreement between the City and Authority, and the HOME Agreement among the City, the Authority and the Developer, with such changes as may be mutually agreed upon by the Interim City Manager and Interim Authority Director (and the City Manager and Authority Director who will be appointed after the approval of this Resolution), and his duly authorized representative(s), the City Attorney and Special Counsel, and as to the

HOME Agreement, the Developer, respectively, as are minor and in substantial conformance with the form of the Cooperation Agreement (Attachment No. 1 hereto) and the HOME Agreement (Attachment No. 2 hereto) submitted herewith. The Mayor, Interim City Manager and City Manager, City Clerk and their duly authorized representatives (together, "Authorized Officers") are hereby authorized, as applicable, to execute and attest the Cooperation Agreement and HOME Agreement, including any related attachments, on behalf of the City. In such regard, the Authorized Officers are authorized to sign or attest the final version of the Cooperation Agreement and HOME Agreement after completion of any such non-substantive, minor revisions. Copies of the final form of the Cooperation Agreement and HOME Agreement, when duly executed and attested, shall be placed on file in the office of the City Clerk. Further, the Authorized Officers are authorized to implement the Cooperation Agreement and HOME Agreement and take all further actions and execute all documents referenced therein and/or necessary and appropriate to carry out the transaction contemplated by the Cooperation Agreement and HOME Agreement, including all exhibits thereto. The Authorized Officers are also authorized to the extent necessary during the implementation of the Cooperation Agreement and HOME Agreement to make technical or minor changes and interpretations of the Cooperation Agreement and the HOME Agreement after execution, as necessary to properly implement and carry out the Cooperation Agreement and HOME Agreement, including all exhibits thereto, provided any and all such changes shall not in any manner materially affect the rights and obligations of the City under the Cooperation Agreement and HOME Agreement.

4. The Authorized Officers, on behalf of the City, are hereby authorized and directed to take all actions necessary or convenient to implement the Cooperation Agreement and HOME Agreement.

5. The Authorized Officers are hereby authorized to negotiate and enter into one or more "Implementation Agreement(s)" that may be required in connection with the further implementation of the HOME Agreement, subject to review and approval by the City Attorney or special counsel; and, provided each Implementation Agreement, if any, shall not in any manner materially affect the rights and obligations of the City under the Cooperation Agreement and HOME Agreement, and if so then review and action by the City Council will be required.

6. The Entitlement included all necessary findings and actions required by CEQA and NEPA for the development of the Project.

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

Adopted this 23<sup>th</sup> day of June 2015.

ATTEST:

/s/ BAO NGUYEN  
MAYOR

/s/ KATHLEEN BAILOR, CMC  
CITY CLERK

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

I, KATHLEEN BAILOR, 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 the 23<sup>th</sup> day of June 2015, by the following vote:

AYES:    COUNCIL MEMBERS:   (4) BEARD, BUI, PHAN, NGUYEN  
NOES:    COUNCIL MEMBERS:   (0) NONE  
ABSENT: COUNCIL MEMBERS:   (1) JONES

/s/ KATHLEEN BAILOR, CMC  
CITY CLERK

ATTACHMENT NO. 1  
COOPERATION AGREEMENT  
(ATTACHED)

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**COOPERATION AGREEMENT**  
**(JHC/UMC Senior/Multi-Family Apartments Project)**

This **COOPERATION AGREEMENT** (JHC/UMC Senior/Multi-Family Apartments Project) (“Cooperation Agreement”) dated as of June 23, 2015 (“Date of Agreement”), is entered into by and between the **CITY OF GARDEN GROVE**, a California municipal corporation (“City”), and the **GARDEN GROVE HOUSING AUTHORITY**, a public body, corporate and politic (“Authority”).

**RECITALS**

A. City is a California general law city and municipal corporation and a participating jurisdiction with the United States Department of Housing and Urban Development (“HUD”) that has received funds (“HOME Funds”) from HUD pursuant to Title II of the Cranston Gonzalez National Affordable Housing Act (42 U.S.C. 12701 12839) and the HOME Program regulations codified at 24 CFR Part 92, as amended by the “2013 HOME Final Rule” at 24 CFR Part 92 (Complete Rule) [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title24/24cfr92\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title24/24cfr92_main_02.tpl) (together, “HOME Program”). The HOME Program has, among its purposes, the strengthening of public-private partnerships to provide more affordable housing, and particularly to provide decent, safe, sanitary, and affordable housing, with primary attention to housing for very low income and lower income households in accordance with the HOME Program. The HOME Program funds are used by the City, as a participating jurisdiction, to carry out multi-year housing strategies through acquisition, rehabilitation, and new construction of housing for target income persons and families.

B. Authority is a California housing authority acting under the California Housing Authorities Law, Part 2 of Division 24, Section 34200, *et seq.*, of the Health and Safety Code (“HAL”); further, Authority serves as the “housing successor” to the former Garden Grove City for Community Development, a dissolved redevelopment agency pursuant to Part 1.85 of Division 24 of the Health and Safety Code, in particular Sections 34176 and 34176.1 (“Dissolution Law” or “Housing Successor Law”).

C. As of the Date of Agreement, JHC-Acquisitions LLC (“JHC-A”) has entered into an Option to Lease Agreement (“Option Agreement”) dated as of November 20, 2014 with the Garden Grove United Methodist Church (“UMC”) for the lease of certain parcels of real property commonly known as 10882 Stanford Avenue and 12741 Main Street in the City (“Site”).

D. JHC-A has assigned or will assign concurrently with this Cooperation Agreement all of its rights and obligations under the Option Agreement to an affiliate of JHC-A, Garden Grove Housing Partners LP, a California limited partnership (“Developer”).

E. Developer desires and intends to redevelop the Site by constructing, operating, managing and maintaining a 47-unit multi family, mixed use affordable housing project for Senior Citizens Households and Non-Senior/Family Households of Low Income (59% AMI) and Very Low Income (50% AMI), along with a new Preschool Center and ancillary commercial/retail space (initial use as the leasing office) (together, the “Project”).

F. Garden Grove Housing Partners LP, a California limited partnership and an affiliate of JHC (“Developer”) will ground lease the Site from UMC for a 60-year term for development and operation of the Project.

G. The Project will consist of two primary buildings, one building with 16 Housing Units for Senior Citizen Households and the other with 30 units for Non-Senior/Family Households, with 13 units at Affordable Rent to 50% AMI Very Low Income Households, 33 units at Affordable Rent to qualified 59% AMI Low Income Households, and 11 of the 46 Housing Units will be covenanted and designated as HOME Units, with a required allocation between Senior Citizen Housing Units and the Non Senior/Family Housing Units, all as more fully set forth in that certain HOME Funds Commitment and Agreement (Garden Grove United Methodist Church Senior/Multi-Family Apartments Project) (“HOME Agreement”) of even date herewith.

H. Capitalized terms used in this Cooperation Agreement are as defined in the HOME Agreement or as otherwise defined herein.

I. All or a portion of the HOME Funds proposed to be contributed to the Project under the HOME Agreement have been reserved for investment only in housing to be owned, developed or sponsored by a community housing development organization (“CHDO”) pursuant to and as defined in the HOME Program. The sole member of the managing general partner of the Developer entity is Jamboree Housing Corporation, a California corporation, which is the parent corporation of both JHC-A and the Developer entity, and a qualified CHDO under the HOME Regulations.

J. Under the HOME Agreement, City and Authority will be providing Developer several loans, including (i) the HOME Loan of \$2,010,561 sourced from the City’s HOME Funds (“HOME Loan”), (ii) the Additional Authority Loan of \$1,600,000, and (iii) the City DA Fee Deferral Loan that will defer certain City development impact fees in the amount of \$90,052.

K. Authority and the City (each, a “Party” and together, the “Parties”) desire to assist with the Project. To this end, the City desires to make available and transfer to the Authority by this Cooperation Agreement \$2,010,561 of HOME Funds to enable the Authority to provide and fund the HOME Loan to the Developer under the HOME Agreement. The HOME Agreement sets forth the specific terms and conditions under which the Authority will make the HOME Loan for the Project.

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS AND CONDITIONS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:**

**Section 1. TRANSFER OF FUNDS BY CITY TO AUTHORITY.** City agrees to transfer to Authority Two Million Ten Thousand Five Hundred Sixty One Dollars (\$2,010,561) of HOME Funds (“Project Funds”) held by the City to enable the Authority to make the HOME Loan to the Developer for the Project. Subject to approval and execution of the HOME Agreement, City shall make the Project Funds available to the Authority for the Project. Authority shall not disburse the Project Funds to the Developer until the Authority has confirmed that the Developer has satisfied all of the Conditions Precedent to the disbursement of the HOME Loan pursuant to HOME Agreement; provided that the Authority Director may waive, defer or modify such Conditions Precedent in accordance with the authority granted by the Authority’s governing board.

(a) Further, Authority covenants and agrees to use the Project Funds (i) in strict conformance with Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701-12839) and the HOME Program Regulations codified at 24 CFR Part 92, as amended by the 2013 HOME Final Rule, and (ii) to implement the HOME Agreement in order to expand the supply of decent, safe, sanitary and affordable housing for Very Low Income and Low Income Senior Citizen and Non-Senior Households.

(b) This Agreement does not constitute a "commitment" of HOME Funds, as the term "commitment" is defined in 24 CFR 92.2; provided however, that the HOME Agreement is intended to be a commitment of such funds..

**Section 2. LIABILITY AND INDEMNIFICATION.** In contemplation of the provision of Section 895.2 of the California Government Code imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined by Section 895.4 and 895.6 of such Code, each of the Parties, as between themselves, pursuant to the authorization contained in Section 895.4 and 895.6 of such Code, will each assume the full liability imposed on it, or any of its officers, agents, or employees by law for injury caused by negligent or wrongful act or omission occurring in the performance of this Cooperation Agreement to the same extent that such liability would be imposed in the absence of Section 895.2 of such Code.

(a) To achieve the above-stated purposes, each Party indemnifies and holds harmless the other Party for any loss, costs or expense that may be imposed upon such other Party solely by virtue of such Section 895.2. The provisions of Section 2778 of the California Civil Code are made part hereof as if fully set forth herein.

**Section 3. EFFECTIVE DATE.** This Agreement shall take effect from and after the date of approval hereof by the Authority Board and the City Council.

**Section 4. TERMINATION.** If the HOME Agreement is terminated prior disbursement of the HOME Loan proceeds, then this Cooperation Agreement shall also be terminated and neither Party shall have any obligation to the other as a result of this Cooperation Agreement.

**Section 5. REPRESENTATIONS AND WARRANTIES**

(a) *Representations and Warranties of Authority.* Authority hereby represents and warrants to City as follows:

(i) Authority of Anaheim Housing Authority. Authority represents and warrants to City it is a public body, corporate and politic, duly existing pursuant to the HAL, and it has been authorized to transact business pursuant to action of the City Council. Authority has full power and authority to execute and deliver this Cooperation Agreement and to accept the funds contemplated hereunder, to execute and deliver documents or instruments, if any, executed and delivered, or to be executed and delivered, pursuant to this Cooperation Agreement, and to perform and observe the terms and provisions of all of the above.

(ii) Authority of Persons Executing Documents. This Cooperation Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Cooperation Agreement have been executed and delivered by persons who

are duly authorized to execute and deliver the same for and on behalf of Authority, and all actions required under Authority's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Cooperation Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Cooperation Agreement, have been duly taken.

(b) *Representations and Warranties of City.* City represents and warrants to Authority that it is a general law city and municipal corporation. City has full right, power and lawful authority to enter into this Cooperation Agreement and the execution, performance and delivery of this Cooperation Agreement by City, and persons on behalf of City, have been fully authorized by all requisite actions on the part of the City Council.

**Section 6. DEFAULT AND REMEDIES.**

(a) *Events of Default.* Failure by either Party to duly perform, comply with, or observe any of the conditions, terms, or covenants of this Cooperation Agreement shall be an Event of Default. The Party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default. The injured Party shall give written notice of default to the Party in default, specifying the default complained of by the injured Party. If the default is not commenced to be cured within thirty (30) days after service of such notice of default and is not cured promptly in a continuous diligent manner in a reasonable period of time after commencement, the defaulting Party shall be liable for any damages caused by such default, and the non defaulting Party may thereafter commence action for damages with respect to such default or for specific performance of this Cooperation Agreement.

(b) *Remedies.* The occurrence of an Event of Default by Authority that is not cured within the time set forth herein shall relieve City of any obligation to disburse the Project Funds. The Authority may seek specific performance of this Cooperation Agreement for City's failure to provide the Project Funds. The non defaulting Party may seek money damages or any other remedy available at law or equity against the defaulting Party for an Event of Default hereunder.

**Section 7. MISCELLANEOUS**

(a) *Time.* Time is of the essence in this Cooperation Agreement.

(b) *Notices.* Any notice requirement set forth herein shall be deemed to be satisfied as follows: (i) three (3) days after mailing of the notice first class United States certified mail, postage prepaid, or (ii) the next business day after the notice or communication has been delivered by hand or sent by telecopy or overnight delivery service, addressed to the appropriate Party. The designated person for delivery of notices hereunder shall be as follows: (i) to the City Manager for notices to City, and (ii) to the Authority Director for notices to Authority.

(c) *Attorneys' Fees.* If either Party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder, the prevailing Party shall be entitled to recover from the other Party its costs of suit and reasonable attorneys' fees.

(d) *No Third Parties Benefited.* This Cooperation Agreement is made and entered into for the sole protection and benefit of City, its successors and assigns, and the Authority, its successors and assigns, and no other person or persons shall have the right of action hereon.

(e) *Successors and Assigns.* The terms hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, that no assignment of Authority's rights hereunder shall be made, voluntarily or by operation of law, without the prior written consent of City and that any such assignment without said consent shall be void.

(f) *Construction of Words.* Except where the context otherwise requires, words imparting the singular number shall include the plural number and vice versa, words imparting persons shall include firms, associations, partnerships and corporations, and words of either gender shall include the other gender.

(g) *Partial Invalidity.* If any provision of this Cooperation 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.

(h) *Governing Law.* This Cooperation Agreement and any instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California.

(i) *Amendment.* This Cooperation Agreement may not be changed orally, but only by agreement in writing signed by Authority and City.

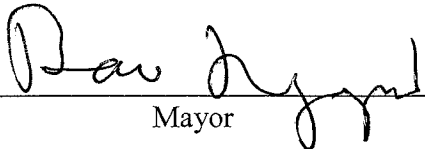
(j) *Captions and Headings.* Captions and headings in this Cooperation Agreement are for convenience of reference only, and are not to be considered in construing the Cooperation Agreement.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS COOPERATION AGREEMENT (JHC/UMC Senior/Multi-Family Apartments Project) AS OF THE RESPECTIVE DATES SET FORTH BELOW.

“CITY”

CITY OF GARDEN GROVE  
a municipal corporation

Dated: June 23, 2015

By:   
Mayor

ATTEST:

KATHLEEN BAILOR, CITY CLERK

  
City Clerk

APPROVED AS TO FORM:

WOODRUFF, SPRADLIN & SMART

  
Thomas Nixon, City Attorney

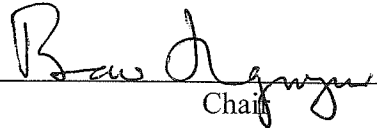
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**AUTHORITY:**

**GARDEN GROVE HOUSING AUTHORITY,**  
a public body, corporate and politic

Dated: June 23, 2015

By:   
Chair

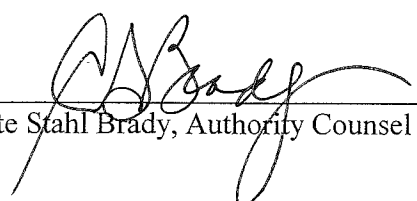
**ATTEST:**

**KATHLEEN BAILOR, AUTHORITY SECRETARY**

  
Authority Secretary

**APPROVED AS TO FORM:**

**STRADLING YOCCA CARLSON & RAUTH**

  
Celeste Stahl Brady, Authority Counsel





ATTACHMENT NO. 2

HOME AGREEMENT

(ATTACHED)

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**HOME FUNDS COMMITMENT AND AGREEMENT  
(Garden Grove United Methodist Church Senior/Multi-Family Apartments Project)**

**by and among**

**GARDEN GROVE HOUSING AUTHORITY,  
a public body, corporate and politic**

**and**

**CITY OF GARDEN GROVE,  
a municipal corporation**

**and**

**GARDEN GROVE HOUSING PARTNERS LP,  
a California limited partnership**

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**HOME FUNDS COMMITMENT AND AGREEMENT**  
**(Garden Grove United Methodist Church Senior/Multi-Family Apartments Project)**

This **HOME FUNDS COMMITMENT AND AGREEMENT (Garden Grove United Methodist Church Senior/Multi-Family Apartments Project)** (“Agreement”) is dated for reference purposes only as of June 23, 2015 (“Date of Agreement”) by and among the **GARDEN GROVE HOUSING AUTHORITY**, a public body, corporate and politic (“Authority”), the **CITY OF GARDEN GROVE**, a municipal corporation (“City”) and **GARDEN GROVE HOUSING PARTNERS LP**, a California limited partnership (“Developer”). City and Authority, together, may be referred to as “Garden Grove”.

**RECITALS**

A. City is a California general law city and municipal corporation and a participating jurisdiction with the United States Department of Housing and Urban Development (“HUD”) that has received funds (“HOME Funds”) from HUD pursuant to Title II of the Cranston Gonzalez National Affordable Housing Act (42 U.S.C. 12701 12839) and the HOME Program regulations codified at 24 CFR Part 92, as amended by the “2013 HOME Final Rule” at 24 CFR Part 92 (Complete Rule) [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title24/24cfr92\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title24/24cfr92_main_02.tpl) (together, “HOME Program”). The HOME Program has, among its purposes, the strengthening of public-private partnerships to provide more affordable housing, and particularly to provide decent, safe, sanitary, and affordable housing, with primary attention to housing for very low income and lower income households in accordance with the HOME Program. The HOME Program funds are used by the City, as a participating jurisdiction, to carry out multi-year housing strategies through acquisition, rehabilitation, and new construction of housing for target income persons and families. All or a portion of the HOME Funds proposed to be contributed to the Project have been reserved for investment only in housing to be owned, developed or sponsored by a community housing development organization (“CHDO”) pursuant to and as defined in the HOME Program.

B. Authority is a California housing authority acting under the California Housing Authorities Law, Part 2 of Division 24, Section 34200, *et seq.*, of the Health and Safety Code (“HAL”); further, Authority serves as the “housing successor” to the former Garden Grove Agency for Community Development, a dissolved redevelopment agency pursuant to Part 1.85 of Division 24 of the Health and Safety Code, in particular Sections 34176 and 34176.1 (“Dissolution Law” or “Housing Successor Law”).

C. JHC-Acquisitions LLC (“JHC-A”) and the United Methodist Church of Garden Grove, a California corporation, (“UMC”) have entered into that certain Option Agreement dated as of November 20, 2014, and concurrent with this Agreement are entering into that certain Ground Lease (as herein defined) for the Site concerning certain real property located at 10882 Stanford Avenue and 12741 Main Street, Garden Grove (together, the “Site”).

D. Developer is planning and will implement the redevelopment of the Site by constructing, operating, managing and maintaining a 47-unit multi-family, mixed use affordable housing project with a phase and component developed for qualified Senior Citizens (“Senior Households”) and a phase and component developed for qualified non-senior persons and families (“Non-Senior/Family Households”) which are “50% AMI Very Low Income Households” and “59% AMI Low Income Households” (as defined below), along with a new preschool center and

ancillary commercial/retail space (initial use as the leasing office) (together, the "Project"), as more particularly depicted and described in the "Scope of Development" as defined below. The Project will consist of two primary buildings, one for Senior Households and the other for Non-Senior/Family Households, with thirteen (13) units at Affordable Rent to 50% AMI Very Low Income Households, and (ii) thirty-three (33) units at Affordable Rent to qualified 59% AMI Low Income Households, with a required allocation of sixteen (16) Senior Citizen Housing Units and thirty (30) Non-Senior/Family Housing Units, all as more fully set forth herein. Further, eleven (11) of the 46 housing units shall be covenanted as designated HOME Program units at an Affordable Rent compliant with the HOME Regulations as more particularly set forth herein.

E. On December 4, 2014, the Planning Commission recommended approval of the land use entitlement for the Project; on January 13, 2015, the City Council adopted Resolution No. 9268-15 approving General Plan Amendment No. GPA-001-2014 changing the General Plan Use Designation from Medium Density Residential to Civic Center Mixed Use; and on January 27, 2015, the City Council approved Development Agreement No. DA 001 2014 by adoption of Garden Grove Ordinance No. 2853, with construction of the Project subject to the development standards of the Civic Center-Core (CC-3) zone. Further, following a duly noticed Public Hearing, the City Council adopted Resolution No. 9267-15 during its meeting on January 13, 2015, adopting a Mitigated Negative Declaration and Mitigation Monitoring Program for the Project pursuant to the California Environmental Quality Act, California Public Resources Section 21000, *et seq.* ("CEQA") and CEQA's implementing guidelines, California Code of Regulations, Title 14, Sections 15000, *et seq.* Garden Grove has also evaluated and approved the Project under the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.* (together, "Entitlement").

F. Developer has requested financial assistance from Garden Grove to undertake, complete and operate the Project at the Site; Garden Grove will provide the requested assistance in the form of two loans and a development agreement impact fee deferral with promissory note (respectively, HOME Loan, Additional Authority Loan, and the City DA Fee Deferral Loan Note), including: (1) the HOME Loan of \$2,010,561 sourced from HOME Program funds received by the City as a participating jurisdiction under the HOME Program, which will be a residual receipts loan in third (3<sup>rd</sup>) lien position, with repayment commencing only after full repayment of the Additional Authority Loan, and that is subordinate to the Developer's Primary Loan (as herein defined); (2) the Additional Authority Loan of \$1,600,000 to be disbursed by the Authority to Developer at the *later* to occur of (i) December 31, 2016 or (ii) completion of Construction of the Project and readiness for Conversion of the Primary Loan, which will be a residual receipts loan in second (2<sup>nd</sup>) lien position and subordinate to the Developer's Primary Loan; and (3) the City DA Fee Deferral Loan Note by which the City will allow for the deferral of certain development agreement impact fees of \$90,052 that otherwise would be paid by Developer to the City at issuance of building permits for the Project, which will be a residual receipts loan in fourth (4<sup>th</sup>) lien position and subordinate to the Developer's Primary Loan and shall be repaid from the Developer's Share of the Residual Receipts (50%); provided however, Authority acknowledges that of such 50% share Developer will be paying 40% of the 50% of Developer's Share of Residual Receipts to UMC, as landlord, under the Conforming Lease until such time that the City DA Fee Deferral Note is repaid in full. These two subordinate loans and the fee deferral are described in more detail herein, including Sections 101, 201, 202 and 208.

G. By that certain *Preliminary Award of Funding by the City of Garden Grove and the Garden Grove Housing Authority of a HOME Loan Sourced from HOME Program Funds and an Additional Subsidy Loan Sourced from LMIHAF and Other Authority Non-Federal Funds for the*

*Proposed 47-Unit Garden Grove UMC Apartments Affordable Housing Project in Garden Grove, California* dated as of March 10, 2015 from Garden Grove to Developer (“Preliminary Award Letter”), Authority confirmed its preliminary award of HOME Funds to the Project, in accordance with 24 CFR Section 92.504(c)(3), as well as the Authority’s commitment of the Additional Authority Loan and the City’s commitment to provide the City DA Fee Deferral Loan to assist Developer to acquire, construct, operate, manage and maintain the Site for the Project. Subject to the terms and conditions herein and by this Agreement, Authority desires to confirm its Commitment (defined below) of HOME Funds and the Additional Authority Loan Amount to the Project; and the City desires to confirm its acceptance of the City DA Fee Deferral Loan Note in lieu of payment of such fees at Closing.

**H.** Prior to the Date of Agreement and based on the Preliminary Award Letter, Developer submitted a funding application for, and has received an allocation of, Low Income Housing Tax Credits from the California Tax Credit Allocation Committee (“TCAC”) and an application for a bond allocation from the California Debt Limit Allocation Committee (“CDLAC”). Developer will also seek funding for the Project from other private lender(s) and investor(s).

**I.** City and Authority are concurrently entering into that certain Cooperation Agreement (Garden Grove United Methodist Church Senior/Multi-Family Apartments Project), dated as of June 23, 2015, pursuant to which the City is transferring certain HOME Funds to the Authority to enable the Authority to make the HOME Loan to the Developer for the Project under which the Authority agrees to use, and cause the Developer to agree to use, the HOME Funds received from the City in strict conformance with the HOME Program, as amended by the 2013 HOME Final Rule, and to implement this Agreement to expand the supply of decent, safe, sanitary and affordable housing for very low and low income persons and families.

**J.** Authority, as a part of its duties as the housing successor, administers that certain low and moderate income housing asset fund (“LMIHAF”) under the Dissolution Law. The source of funding of the Additional Authority Loan will be from the LMIHAF, including, as and if necessary, monies loaned by the City to the Authority pursuant to a cooperation and loan agreement between the City and Authority, for which the City and Authority, by respective actions at a public meeting on March 10, 2015, are authorized to enter into if adequate funds are not on deposit in the LMIHAF at the time of funding and disbursement of the Additional Authority Loan as more fully described herein.

**K.** This Agreement and the Regulatory Agreement (defined below) shall constitute the written agreement required by the HOME Regulations, in particular 24 CFR Sections 92.504(c)(3) and 92.2. Disbursement of the proceeds of the HOME Loan shall be subject to satisfaction of the Conditions Precedent to the disbursement of the HOME Loan pursuant to Section 401 hereof and satisfaction of the HOME Program requirements for a Commitment of HOME Funds, concurrently with the Closing. In this regard, Developer represents and warrants to Authority and City that, prior to or concurrent with the Date of Agreement, Developer has for the Project: (1) secured commitments for all necessary financing, (2) presented its budget, (3) presented an established schedule, (4) caused to be completed all necessary underwriting and subsidy layering, and (5) construction is scheduled to begin within twelve (12) months of the Date of Agreement in conformity with Section 92.2 of the HOME Regulations. The Authority additionally confirms its commitment to provide and fund the Additional Authority Loan, and the City confirms its agreement to provide the City DA Fee Deferral Loan.

L. The permitted income levels of the Senior Households and Non-Senior/Family Households tenants of each Housing Unit and the permissible rents to be charged for occupancy of each Housing Unit are set forth in detail in this Agreement and the Regulatory Agreement, in order to ensure compliance with the requirements of the HOME Program, the HAL, the Housing Successor Law, and other applicable federal, state and local laws and regulations.

M. Initially capitalized terms used in these Recitals are defined in these Recitals and in Section 101, below.

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

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants, and conditions herein contained, the parties hereto agree as follows:

#### **100. DEFINITIONS AND GENERAL TERMS.**

**101. Defined Terms.** As used in this Agreement (and in all other Project Documents, unless otherwise defined), the following capitalized terms shall have the following meanings:

“**Additional Authority Loan**” shall mean a loan of the Additional Authority Loan Amount to the Developer as described in Recital F.

“**Additional Authority Loan Amount**” shall mean the sum of One Million Six Hundred Thousand Dollars (\$1,600,000.00).

“**Additional Authority Loan Deed of Trust**” shall mean a deed of trust substantially in the form of Attachment No. 23.

“**Additional Authority Loan Note**” shall mean a promissory note substantially in the form of Attachment No. 22

“**Affiliate**” shall mean any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Developer which, if Developer is a partnership or limited liability company, shall include each of the constituent partners or members, respectively, thereof. The term “control” as used in the immediately preceding sentence, shall mean, with respect to a person that is a corporation, the right to the exercise, directly or indirectly, of at least 50% of the voting rights attributable to the shares of the controlled corporation and, with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person.

“**Affordability Period**” shall mean the duration of the affordable housing requirements that are required by this Agreement and set forth in the Regulatory Agreement. The Affordability Period shall continue until the fifty-fifth (55<sup>th</sup>) anniversary of the date the Release of Construction Covenants is recorded for the Project.

“**Affordable Rent**” or “**Affordable Housing Cost**” shall mean the maximum amount of monthly Rent to be charged by Developer and paid by the 50% AMI Very Low Income Households

and 59% AMI Low Income Households occupying the Housing Units at the Project, which shall be determined and calculated in accordance with Section 1205.1. Attachment No. 10 lists the lowest and most restrictive "affordable rents" as of the Date of Agreement for all Housing Units (including rents for the HOME Units during the HOME Compliance Period.) In all events, Affordable Rent shall be the lowest and most restrictive among (a) CRL, or (b) the Tax Credit Rules, or (c) the HOME Regulations (but as to (c) only during the HOME Compliance Period), whichever calculation results in the most restrictive affordable rent.

**"Agreement"** shall mean this Home Funds Commitment and Agreement (Garden Grove United Methodist Church Apartments Project).

**"Annual Audited Financial Statement"** shall mean the annual financial statement of Developer for the Project using generally accepted accounting principles (GAAP), as separately accounted for this Project, including Operating Expenses and Annual Project Revenue, prepared annually and provided to Authority at Developer's expense, audited by an independent, certified public accountant reasonably acceptable to Authority. Each Annual Audited Financial Statement submitted by Developer to Authority shall include a statement and certification (and supporting documentation) of the total amount of the Developer Fee and Deferred Developer Fee for the Project, along with the cumulative amount thereof paid to date and the amount thereof paid within the applicable reporting year as reported and certified in the Annual Audited Financial Statement. In furtherance of the Federal Program Limitations and upon request by Authority, Developer shall submit true, legible, and complete copies of the source documentation supporting the Annual Audited Financial Statement and the Residual Receipts Report and other books and records as described in Section 203.3. The Authority may specify which source documentation items are required to be submitted, by reference to specific documentation or by categories of documentation. As used in this Agreement, the term "source documentation" shall include, without limitation, general ledgers, journal entries, trial balances, invoices, subsidiary ledgers, and receipts. Subject to Federal Program Limitations, the Authority estimates that it will not be requesting this source documentation more frequently than one (1) time per year during the HOME Compliance Period and not more frequently than once every three (3) years for the balance of the Affordability Period, and each such submittal may be included with and as a part of the Annual Audited Financial Statement and Residual Receipts Report.

**"Annual Project Revenue"** shall mean all gross income and all revenues of any kind from the Project in a calendar year, of whatever form or nature, whether direct or indirect, with the exception of the items excluded below, received by or paid to or for the account or benefit of Developer or any Affiliate of Developer or any of their agents or employees (provided, in no event shall amounts counted as Annual Project Revenue be double counted if paid by Developer to one or more of its Affiliates), from any and all sources, resulting from or attributable to the ownership, operation, leasing and occupancy of the Project, determined on the basis of generally accepted accounting principles applied on a consistent basis, (but expressly excluding all sublease payments paid relating to the Preschool Center, which are due, payable and remitted to UMC). In this regard, Annual Project Revenue shall include, but not be limited to: (i) gross rentals paid by tenants of the Project under leases, and payments and subsidies of whatever nature, including without limitation any payments, vouchers or subsidies from HUD (including Section 8 Program (Portable Voucher) payments by HUD, if any) or any other person or organization, received on behalf of tenants under their leases, (ii) amounts paid to Developer or any Affiliate of Developer on account of Operating Expenses for further disbursement by Developer or such Affiliate to a third party or parties, including, without limitation, grants received to fund social services at the Project (to the extent such

grants exceed the cost of providing such social services), (iii) late charges and interest paid on rentals, (iv) rents and receipts from licenses, concessions, vending machines, coin laundry and similar sources; (v) other fees, charges or payments not denominated as rental but payable to Developer in connection with the rental of office, retail, storage, or other space in the Project; (vi) consideration received in whole or in part for the cancellation, modification, extension or renewal of leases, and (vii) interest and other investment earnings on security deposits, reserve accounts and other Project accounts to the extent disbursed. Notwithstanding the foregoing, Annual Project Revenue shall not include the following items: (a) security deposits from tenants (except when applied by Developer to rent or other amounts owing by tenants); (b) capital contributions to Developer by its members, partners or shareholders (including capital contributions required to pay any Deferred Developer Fee); (c) condemnation or insurance proceeds; (d) funds received from any source actually and directly used for acquisition of the Conforming Leasehold Interest in the Site and/or initial development of the Project; (e) proceeds of the approved Primary Loan; or (f) receipt by an Affiliate of management fees, grants received for social services, or other bona fide arm-length payments for reasonable and necessary Operating Expenses associated with the Project.

**“Applicable Federal Rate”** shall mean the interest rate set by the United States Treasury from time to time pursuant to Section 1288(b) of the Internal Revenue Code. The Applicable Federal Rate is published by the Internal Revenue Service in monthly revenue rulings.

**“Area Median Income”** or **“AMI”** shall mean the area median income for Orange County, California, as published annually by TCAC.

**“Authority”** shall mean the Garden Grove Housing Authority, a public body, corporate and politic, and the housing successor under the Dissolution Law.

**“Authority Board”** shall mean the governing board of the Authority.

**“Authority Director”** shall mean the Authority Director, and, as applicable, the Interim Authority Director, and his/her authorized designee(s). Whenever the consent, approval or other action of the “Authority Director” is required herein such consent may be provided by the Authority Director or his/her authorized designee(s), or the Authority Director may submit to the Authority Board for action to approve or disapprove such request.

**“Authority Title Policy”** shall have the meaning set forth in Section 401.8 and shall be lender’s policy(ies) of title insurance insuring both the full amount of the HOME Loan and the Additional Authority Loan.

**“Authority Share of Cost Savings”** is defined in Section 500 hereof.

**“Authority’s Share of Residual Receipts”** shall mean fifty percent (50%) of Residual Receipts.

**“Basic Concept Drawings”** is defined in Section 802.1.

**“Building Permit”** or **“Building Permits”** shall mean each and all of the building permit(s) issued by the City and required to commence Construction of the Project and includes any permit or other approval required by any other public agency with jurisdiction over the Site.



**“Capital Replacement Reserve”** shall mean a separate reserve fund account to be established and maintained by Developer equal to not less than Two Hundred Fifty Dollars (\$250) per year (increased annually by 3%) for each Housing Unit in the Project (i.e., forty-seven (47) units in the Project times \$250 equals Eleven Thousand Seven Hundred Fifty Dollars (\$11,750.00) per year for the Project), to be used as the primary resource to fund capital improvements and replacement improvements. The amount of \$250 for each Housing Unit that is set aside by Developer (or its Property Manager) shall be allocated from the gross rents received from the Site and deposited into a separate interest-bearing trust account for capital repairs and replacements to the improvements, fixtures and equipment at the Site that are normally capitalized under generally accepted accounting principles, 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, showers, toilets, lavatories, sinks, and faucets; air conditioning and heating replacement; asphalt repair, replacement, and seal coating; roofing repair and replacement; landscape tree replacement; 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. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve Developer of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Site and all common areas and common improvements in the manner prescribed herein. Pursuant to the procedure for submittal of each annual Operating Budget to Authority Director by Developer, Authority Director will evaluate the cumulative amount on deposit in the Capital Replacement Reserve account and exercise his sole, reasonable discretion to determine if existing balance(s) in, proposed deposits to, shortfalls, if any, and/or a cumulative unexpended/unencumbered account balance in such Capital Replacement Reserve account are adequate or in excess of the amount needed to provide for necessary capital repairs and improvement to the Site (provided that required annual deposits thereto are not required to exceed \$250/per Housing Unit, increased annually by 3%.) To the extent the Primary Lender and/or Tax Credit Investor requires Developer to maintain a reserve fund or account for any or all of the same purposes as the Capital Replacement Reserve, Authority will allow Developer to credit any funds actually reserved for any or all of the same purposes pursuant to the requirements of the Primary Lender and/or Tax Credit Investor against Developer’s obligation to make deposits into the Capital Replacement Reserve. Notwithstanding that each of this Agreement and the three promissory notes requires Developer to set aside a capital replacement reserve, there is only one capital replacement reserve required by this Agreement for the Project, as described herein.

**“Capitalized Operating Reserve”** shall mean the capitalized operating reserve for the Project, which shall be funded by Primary Loan proceeds and Tax Credit equity in the Target Amount as provided in Section 1212, estimated as of the Date of Agreement to be approximately One Hundred Twenty Seven Thousand Dollars (\$127,000) and equivalent to three (3) months of operating expenses, reserve payments, and required debt service. The Capitalized Operating Reserve shall thereafter be replenished from Annual Project Revenue if and to the extent required by the Primary Lender or Developer’s Tax Credit Investor. Notwithstanding that each of this Agreement and the three promissory notes requires Developer to set aside an operating reserve, there is only one operating reserve required by this Agreement for the Project, as described herein.

**“CCRC”** shall mean the California Community Reinvestment Corporation.

**“Certification of Continuing Program Compliance”** shall mean the form of annual certification of the affordable housing requirements for operation of the Project, substantially in the form of Attachment No. 13 attached hereto and fully incorporated by this reference.

**“CHDO”** is defined in Recital A and in the HOME Regulations.

**“City”** shall mean the City of Garden Grove, a California municipal corporation and general law city.

**“City DA Fee Deferral Loan Deed of Trust”** shall mean a deed of trust substantially in the form of Attachment No. 25.

**“City DA Fee Deferral Loan”** shall mean a loan by the City of certain fees in the amount of the City DA Fee Deferral Loan Amount as described in Recital F, which deferral and loan is evidenced by the City DA Fee Deferral Loan Note.

**“City DA Fee Deferral Loan Amount”** shall mean the sum of Ninety Thousand Fifty Two Dollars (\$90,052.00).

**“City DA Fee Deferral Loan Note”** shall mean a promissory note substantially in the form of Attachment No. 24, which evidences the City DA Fee Deferral Loan.

**“City Manager”** shall mean the City Manager, and, as applicable, the Interim City Manager, and his/her authorized designee(s). Whenever the consent, approval or other action of the “City Manager” is required herein such consent may be provided by the City Manager or his/her authorized designee(s), or the City Manager may submit to the City Council for action to approve or disapprove such request.

**“Closing”** and **“Close of Escrow”** shall mean the close of the Escrow, including the closing of the Developer’s Primary Loan with its Primary Lender with concurrent issuance of the Housing Bonds, and recordation of the Regulatory Agreement, the HOME Loan Deed of Trust, the Additional Authority Loan Deed of Trust, and the City DA Fee Deferral Loan Deed of Trust, and related Project Documents to be recorded in the Official Records.

**“Commitment”** shall mean the commitment of HOME Funds to the Developer for the Project within the meaning of 24 CFR 92.2. This Agreement is intended to serve as Authority’s Commitment of HOME Funds to the Project to make the HOME Loan.

**“Completion Guaranty”** shall mean a guaranty to be executed by Developer and delivered to Authority at or prior to the Closing, in substantially the form attached hereto as Attachment No. 12.

**“Conditions Precedent”** shall mean the conditions precedent to the Closing and (i) the disbursement of any portion of the HOME Loan and recordation of the HOME Loan Deed of Trust, (ii) issuance of the City DA Fee Deferral Loan Note and recordation of the City DA Fee Deferral Loan Deed of Trust, (iii) the issuance of (but not disbursement) of the Additional Authority Loan and recordation of the Additional Authority Loan Deed of Trust, and commencement of the Construction, as set forth in Sections 401, *et seq.*, and 402, *et seq.*

**“Conforming Lease”** shall mean that certain Ground Lease Agreement (United Methodist Church) to be entered into between UMC, as ground lessor/landlord, and Developer (or its Affiliate), as ground lessee/tenant, for ground lease of the Site, which shall include a minimum the following business terms: (1) the period of the ground lease, the “term”, is sixty (60) years or more, (2) Developer, as ground lessee, has and maintains rights to the Leased Premises, as therein defined, sufficient to yield at least 55 years of occupancy conforming to the Regulatory Agreement, (3) permits use of the Site as provided under this HOME Agreement, (4) provides for payments to be made by Developer (or an Affiliate) to UMC at or prior to the Closing (and such other amounts due thereunder by Developer to UMC after the Closing, (5) provides to City and Authority express rights (in a form and content approved by the City Manager/Authority Director and legal counsel in their reasonable discretion) of notice(s) regarding event(s) of default, extended rights to cure event(s) of default, and rights equivalent to the ROFO. The final form of the Conforming Lease is subject to review and approval by the City Manager and Authority Director and the City’s and Authority’s legal counsels as a Condition Precedent to the Closing.

**“Conforming Leasehold Interest”** or **“Conforming Leasehold Interest in the Site”** shall mean all interest of Developer under the Conforming Lease.

**“Construction”** shall mean the entire work of construction, development and improvement of the Site which is required pursuant to this Agreement, including as set forth in the Scope of Development, Attachment No. 5.

**“Construction Contract”** shall mean the contract entered into by and between Contractor and Developer for the construction of the Project and itemized with all Construction Costs, as approved by Authority Director pursuant to this Agreement in his reasonable discretion.

**“Construction Costs”** shall mean all reasonable costs and expenses to complete the construction of the Project pursuant to the approved Scope of Development described in this Agreement and set forth in a fully itemized budget in an approved Construction Contract (or pursuant to change orders approved in accordance with the approved Construction Contract) for such work that are actually incurred by Developer for the Construction of the Project pursuant to this Agreement. The Construction Costs shall include, without limitation, the following: environmental assessment, testing, and remediation, if any; construction cost; construction and design fees; architectural and engineering costs and fees (if any); construction financing interest, fees, and “points”; property taxes and assessments; security services; off-site Improvements (if any); Building Permits; utilities fees; insurance; legal and accounting fees; title and title insurance; Escrow fees and closing costs; performance, labor and materials bonds; fees for letter(s) of credit; appraisals; and such other costs, fees and expenses, as agreed to in writing by Authority Director; provided, however, that payment to parties related to Developer for Construction Costs shall not exceed reasonable and customary market rates, as reasonably determined by Authority Director. Notwithstanding the foregoing, however, subject to Federal Program Limitations and other applicable laws, rules and regulations, any Construction Costs set forth in the Construction Contract shall be deemed to be reasonable and customary market rates.

**“Construction Drawings”** is defined in Section 802.3.

**“Contractor”** shall mean a construction contractor, duly licensed in the State of California and bonded and insured as required herein, performing the Construction work for the Project or any other Improvements that comprise the Project.

“**Conversion**” shall mean the conversion of the construction Primary Loan(s) for the Project to permanent Primary Loan(s).

“**Cost Savings**” is defined in Section 500 hereof.

“**County**” shall mean the County of Orange, California.

“**CPI**” shall mean United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers, Subgroup “All Items,” for the Los Angeles-Riverside-Orange County area, 1982-84 = 100, or successor or equivalent index in case such index is no longer published.

“**Debt Service**” shall mean payments made in a calendar year pursuant to the approved loans (including the Primary Loan and other approved financing) obtained for the acquisition of a Conforming Leasehold Interest in the Site, and construction, ownership, and operation of the Project in accordance with this Agreement, but excluding payments made pursuant to the Additional Authority Loan Note, and further excluding payments on the HOME Loan Note, that are payable from Residual Receipts.

“**Default**” shall mean the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 1500, *et seq.* hereof.

“**Deferred Developer Fee**” shall mean the portion of the Developer Fee to be paid from Project cash flow, as approved by Authority pursuant to Section 209 hereof in the amount described in Section 209.1(d), which amount as of the Date of Agreement is \$501,730.

“**Design Development Drawings**” is defined in Section 802.2.

“**Developer**” shall mean Garden Grove Housing Partners LP, a California limited partnership, and its permitted successors and assignees, which includes JHC-Garden Grove LLC, a California limited liability company, which is Developer’s managing general partner.

“**Developer Fee**” shall mean a fee in a cumulative amount not to exceed the limitations imposed thereon by TCAC, to be paid to Developer under the Partnership Agreement, which fee is compensation to perform, or to engage and supervise others to perform, services in connection with the negotiating, coordinating, and supervising the planning, architectural, engineering and construction activities necessary to complete the Project, including all other on-site and off-site improvements required to be constructed in connection therewith, in accordance with the Scope of Development and the Development Plans, as set forth in the Final Budget and approved as a part of the evidence of financing pursuant to Section 209 herein.

“**Developer’s Share of Residual Receipts**” shall mean the Developer’s fifty percent (50%) share of the Residual Receipts.

“**Development Plans**” is defined in Section 802.4.

“**Dissolution Law**” and “**Housing Successor Law**” are defined in Recital B.

**“Effective Date”** shall mean the date this Agreement is approved by the governing boards of the City and Authority, and such Agreement shall have been duly executed by the authorized officers of the Developer entity prior to such date as evidence to the City and Authority of its consent hereto.

**“Eligible Predevelopment Expenses”** shall mean costs actually and lawfully contracted for and incurred by JHC, as a CHDO, or by the Developer entity only for eligible pre-development and Project-specific activities pursuant to the HOME Regulations, in particular Section §92.301(a)(2), including: (i) professional and other consultants’ services that are limited to engineering and/or architectural services related to the Scope of Development for and construction of the Project; (ii) the Site appraisal, (iii) the Environmental Reports conducted on the physical condition of the Site; (iv) physical needs assessment, and (v) an option payment or earnest money deposit(s) under the Option Agreement or the Conforming Lease for the Site, so long as not expended prior to or in violation of NEPA requirements pursuant to applicable federal laws and regulations. No other costs, fees, or expenses shall be eligible for payment or reimbursement as Eligible Predevelopment Expenses to Developer, and in no event shall any of JHC, JHC-A, Developer, or any Jamboree Affiliate Entity’s general operational expenses, in-house personnel, or day-to-day staffing be categorized, allowable, or payable as Eligible Predevelopment Expenses. Developer agrees to provide to the Authority Director verifiable supporting documentation for all monies expended for Eligible Predevelopment Expenses; in this regard, Developer agrees, represents and warrants that such supporting documentation submitted to the Authority Director shall be either originals or complete, legible and true copies of the original invoice(s), bill(s), or other reasonable evidence of the incurred expense.

**“Escrow”** shall mean the escrow established for the disposition and Ground Lease of the Site by UMC to the Developer entity.

**“Escrow Holder”** shall mean the holder of the Escrow.

**“Federal Program Limitations”** shall mean compliance with the HOME Program and HOME Regulations, as amended by the 2013 HOME Final Rule, as applicable to the Project, and also includes any and all other applicable federal regulations relating to fair housing and non-discrimination applicable to the Project. Developer covenants, acknowledges, and agrees it is subject to the HAL, Dissolution Law, and all Federal Program Limitations, including (with respect to the HOME Units) the HOME Program and HOME Regulations (whichever are most restrictive and to the extent applicable to the Project), in connection with its performance under this Agreement, and agrees it shall endeavor to cause the use and operation of the Site to conform to the Federal Program Limitations.

**“Final Budget”** shall mean the final budget for the Construction of the Project, including all hard and soft costs therefor, as approved by Authority pursuant to Sections 209.2(a) and 401.3.

**“Former Agency”** shall mean the Garden Grove Agency for Community Development, which as of February 1, 2012 became and remains a dissolved community redevelopment agency under Parts 1.8 and 1.85, Division 24 of the California Health and Safety Code.

**“Governmental Requirements”** shall mean all laws, ordinances, statutes, codes, rules, regulations, orders, and decrees of the United States, the state, the County, the City, the Authority, or any other political subdivision in which the Site are located, and of any other political subdivision, agency, or instrumentality exercising jurisdiction over Developer or the Project.

**“Ground Lease”** shall mean and refer to the Conforming Lease.

**“HAL”** is defined in Recital B.

**“High Quality”** shall mean and refer to the condition of the Project and the standard of maintenance and upkeep of the improvements (interior and exterior), hardscape, and landscaping commensurate with the highest quality rental housing developments in Orange County, specifically including apartment complexes owned and operated by The Related Companies of California and JHC or other highly reputable owners and developers of high quality apartment complexes in the County. When determining comparable apartment complexes, the age of the improvements shall be considered. Further, comparable High Quality apartment complexes shall be those that are subject to enhanced maintenance and property management standards comparable to those set forth in Sections 1208 and 1209 of this Agreement, and which are managed by experienced, professional property management companies.

**“HOME Compliance Period”** shall mean the period of time commencing upon the date the first HOME Unit is rented to a tenant household and ending on the twentieth (20<sup>th</sup>) anniversary of the issuance of the final certificate of occupancy for the Project by the City.

**“HOME Loan”** is defined in Recital F.

**“HOME Loan Deed of Trust”** shall mean a deed of trust securing the HOME Loan Note and other obligations of Developer hereunder substantially in the form of Attachment No. 4, attached hereto and fully incorporated herein by this reference.

**“HOME Loan Initial Advance Portion”** shall mean the sum of Five Hundred Seventy-Five Thousand Dollars (\$575,000) of the HOME Loan proceeds that on or before June 30, 2015 shall be advanced and paid out by Authority to the credit and benefit of Developer provided that such monies shall be immediately and directly deposited into the Escrow and Escrow Holder shall deposit such funds into an interest bearing passbook account established by the Escrow Holder, with such funds to be used and disbursed only for and toward: (i) a portion of the capital pre-payment of ground rent and only released to UMC, as landlord/ground lessee under the Conforming Lease; and (ii) Eligible Predevelopment Expenses (as the term is herein defined) allowable for payment or reimbursement pursuant and subject to compliance with the HOME Regulations. Authority intends to deliver and expend the full amount of \$575,000 by June 30, 2015 for Developer’s eligible expenses as described above in this definition.

**“HOME Loan Note”** shall mean the promissory note, substantially in the form of Attachment No. 3 attached hereto and fully incorporated herein by this reference, which evidences the HOME Loan.

**“HOME Matching Requirement”** shall mean the requirement to expend moneys at the Project which satisfy the HOME matching contribution requirement set forth in 24 CFR 92.218 through 24 CFR 92.222 of the HOME Regulations.

**“HOME Program”** is defined in Recital A.

**“HOME Regulations”** or **“HOME Regs”** shall mean the implementing regulations of the HOME Program set forth at 24 CFR §92.1, *et seq.* as such regulations now exist (as amended by the

2013 HOME Final Rule) and as they may hereafter be amended, to the extent applicable to the Project. Developer covenants hereunder to comply with the HAL and all applicable HOME Regulations in the performance of this Agreement, whichever are more restrictive. In implementation of these requirements, this Agreement, the Project, and all eligible contributions and expenditures hereunder shall conform to the following:

a. The housing developed hereunder does and shall qualify as affordable housing under 24 CFR §92.252 because each Housing Unit shall be rented at an Affordable Rent; and

b. This Agreement serves as the written agreement that imposes and enumerates (by meeting or exceeding) all of the affordability requirements from 24 CFR §92.252; the property standards requirements of 24 CFR §92.251; and income determinations made in accordance with 24 CFR §92.203.

**“HOME Units”** shall mean eleven (11) of the Housing Units specifically: five (5) one-bedroom units, three (3) two-bedroom units, and three (3) three-bedroom units, with the allocation of such 11 units between Senior Citizen Housing Units and Non-Senior/Family Housing Units as follows: (i) four Senior and one Non-Senior/Family one-bedroom units, (ii) two Senior and one Non-Senior/Family two-bedroom units, and (iii) three Non-Senior/Family Housing Units three-bedroom units. Developer shall designate the foregoing 11 units as HOME Units that are subject to all applicable HOME Regulations. All 50% AMI HOME Units shall be “Low HOME” units and all 59% AMI HOME Units shall be “High HOME” units both pursuant to the HOME Regulations. The HOME Units may be “floating” HOME Units, such that the specific Housing Units designated as HOME Units may change as long as the requirements set forth in the immediately preceding sentences relating to the number and type of [one, two and three]-bedroom Housing Units required to be designated as HOME Units (both Senior Citizen and Non-Senior/Family Housing Units) are at all times complied with (subject to allowable increases in tenant income pursuant to Section 1205.3 hereof). The designation of Housing Units as HOME Units shall terminate at the end of the HOME Compliance Period, unless extended by agreement of the Authority and the Developer.

**“Housing Bonds”** shall mean those certain multi-family housing revenue bonds issued by the California Municipal Financing Authority (“CMFA”) in an original principal amount of \$12,000,000 for the funding of the Project.

**“Housing Unit”** or **“Housing Units”** shall mean the forty-seven (47) individual Senior Citizen apartment units and Non-Senior/Family apartment units at the Site to be constructed, leased, managed, and operated by Developer as long term affordable housing and in implementation of the Project (inclusive of the HOME Units).

**“HUD”** is defined in Recital A.

**“Improvements”** shall mean all improvements, improvements pertaining to the realty, fixtures, works of improvement to be constructed at the Site and all work of construction at the Site, including, without limitation, buildings; landscaping, trees and plant materials; and offsite improvements, including, without limitation, streets, curbs, storm drains, and adjacent street lighting, which will be caused to be undertaken by Developer in completion of the Project pursuant to this Agreement and all other Project Documents.

**“Indemnitees”** shall mean the City, the Authority, the Successor Agency, and their elected officials, officers, employees, attorneys, contractors, elective and appointive boards and commissions, representatives, agents, and volunteers.

**“JHC-A”** means JHC-Garden Grove Housing LLC, a California limited liability company.

**“JHC”** means Jamboree Housing Corporation, a California non-profit corporation, which is a qualified CHDO.

**“Legal Description”** shall mean the legal description of the Site set forth as Attachment No. 1, which is attached hereto and fully incorporated herein by this reference.

**“Material Adverse Change”** shall mean any event any occurrence of which is reasonably likely to have a material adverse effect on Developer’s ability to fulfill its obligations under any Transaction Document, including without limitation:

(a) a voluntary or involuntary bankruptcy of Developer (which is not dismissed within ninety (90) days of institution);

(b) a court order placing Developer under receivership;

(c) a sale of all or substantially all of the assets held by Developer, except any such sale made in accordance with the terms of this Agreement;

(d) any violation of Developer or other failure of Developer to comply at all times with any applicable law, statute, ordinance, code, rule, regulation, judgment, order, ruling, condition or other requirement of a statutory, regulatory, administrative, judicial or quasi-judicial nature or any other legal or governmental requirement of whatever kind or nature related to the Project, which violation is likely to have a material adverse effect on the ability of Developer to perform its duties and obligations under any Transaction Document; and/or

(e) Developer incurs one or more liabilities, contingent or otherwise, or pending or threatened litigation or any asserted claim or unasserted claim known to the Developer exists against Developer with respect to the Project, which would have a material adverse effect on its ability to perform its duties and obligations under any Transaction Document.

**“Maturity Date”** is defined in Section 202.

**“Maximum Property Management Fee”** shall mean fifty dollars (\$50) per Housing Unit (inclusive of the on-site manager’s unit), increased annually by 3% beginning the year following the issuance of the first certificate of occupancy for the Project.

**“Municipal Code”** shall mean the Garden Grove Municipal Code as it may be amended from time to time.

**“Non-Senior/Family”** and **“Non-Senior Family Household”** shall mean a person, family or household that is not a Senior Household.

**“Official Records”** shall mean the official land records for the county maintained by the County Recorder.



**“Operating Budget”** shall mean the annual operating budget for the Project that sets forth the projected Operating Expenses for the upcoming year that is submitted to and reviewed and approved by Authority Director in his reasonable discretion (and which may also be subject to review by Lender, if required by the Primary Loan documents). The Operating Budget is further described in Section 1211. The Operating Budget shall be in substantially the form attached hereto as Attachment No. 17 and incorporated herein, or such other form as may be required by Authority from time to time.

**“Operating Expenses”** shall mean actual, reasonable and customary (for comparable High Quality, multi-family rental housing developments in Orange County) costs, fees and expenses directly incurred and attributable to the operation, maintenance, and management of the Project in a calendar year, which are in accordance with the Operating Budget (or any amendments thereto) approved by Authority through the Authority Director pursuant to Section 1211 of this Agreement, and not a part or paid as a part of the Construction of the Site, including, without limitation, Debt Service; painting, cleaning, repairs, alterations, landscaping; utilities, refuse removal, certificates, permits and licenses, sewer charges, taxes, filing fees, assessments, insurance, security, advertising and promotion, janitorial services, cleaning and building supplies, purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings which are not paid from the Capital Replacement Reserve, fees and expenses of property management (not exceeding the Maximum Property Management Fee) and common area expenses, fees and expenses of accountants, attorneys and other professionals, the cost of social services for the tenant households of the Senior Citizen Housing Units and Non-Senior/Family Housing Units in an amount equal to \$25,000 (subject to annual increases of 3%), and other actual, reasonable and customary operating costs which are directly incurred and paid by Developer, but which are not paid from reserve accounts, and provided however that any fees incurred or services provided by Developer or any Affiliate shall not exceed fair market fees or rates for goods or services that are customary and prevailing in the City for such fees, goods, or services. To the extent Developer’s only asset is the Project, Operating Expenses shall include actual, reasonable and customary costs, fees and expenses paid to unaffiliated third parties for the operation of Developer, including administrative, accounting and legal fees and expenses. Operating Expenses may include costs, fees or expenses paid to unaffiliated third parties that were not set forth in the approved Operating Budget to the extent such costs, fees or expenses were not foreseen at the time the applicable Operating Budget was created, but nonetheless were actual, reasonable and customary for comparable developments; provided, evidence of such expenses must be submitted to Authority Director for verification purposes prior to payment thereof (except in emergency situations, in which case evidence of such expenses must be submitted to Authority Director for verification purposes as soon as reasonably practicable).

The term “Operating Expenses” shall not include any of the following: (i) salaries of employees of Developer or Developer’s general overhead expenses, or expenses, costs and fees paid to an Affiliate of Developer, to the extent any of the foregoing exceed the expenses, costs or fees that would be payable in a bona fide arms’ length transaction between unrelated parties in the City for the same work or services; (ii) any amounts paid directly by a tenant of the Project to a third party in connection with expenses which, if incurred by Developer, would be Operating Expenses; (iii) optional or elective payments with respect to any financing senior to the HOME Loan unless approved by Authority, which approval shall not be unreasonably withheld or delayed; (iv) any payments with respect to any Project-related loan or financing other than Debt Service; (v) expenses, expenditures, and charges of any nature whatsoever arising or incurred by Developer prior to completion of the Construction of the Project with respect to the development, maintenance and upkeep of the Project, or any portion thereof, including, without limitation, all costs and expenses

incurred by Developer in connection with the acquisition of the Conforming Leasehold Interest in the Site, all pre-development and pre-Construction activities conducted by Developer in connection with the Project, including without limitation, the preparation of all plans and the performance of any tests, studies, investigations or other work, and the Construction of the Project and any on-site or off-site work performed in connection therewith; (vi) depreciation, amortization, and accrued principal and interest expense on deferred payment debt; (vii) any Partnership Related Fees/Expenses to the extent they are not paid as capitalized expenses; (viii) ground rent paid under the Ground Lease for the Conforming Leasehold Interest in the Site, and (ix) other expenses not related to the operation, maintenance, or management of the Project.

**“Outside Closing Date”** shall mean October 16, 2015.

**“Outside Completion Date”** shall mean eighteen (18) months following the Commitment.

**“Parties”** shall mean Authority and Developer.

**“Partnership Agreement”** shall mean the agreement which sets forth the terms of Developer’s limited partnership, as such agreement may be amended from time to time (so long as any and all amendments that materially affect the contribution of capital or the cash flow priorities are consistent with this Agreement and subject to prior submission to Authority Director for review and approval), which approval shall not be unreasonably withheld or delayed). The Partnership Agreement shall include provisions which incorporate, defer to or otherwise substantially conform to the cash flow priorities included in the definition of “Residual Receipts” set forth in this Agreement.

**“Partnership Related Fees/Expenses”** shall mean fees and expenses of the Developer entity (or partners or Affiliates thereof pursuant to the Partnership Agreement) actually incurred, which are reasonable and customary to developer/owner entities (other than Developer Fees) for similar projects in Southern California, and may include, but shall not exceed:

(i) a general partner asset management fee payable to the general partner(s) not to exceed Fifteen Thousand Dollars (\$15,000) per year, increased annually by 3%; and

(ii) a limited partner administrative fee payable to the Tax Credit Investor not to exceed Ten Thousand Dollar (\$10,000) per year, increased annually by 3%.

In no event shall the fees for (i) and (ii) above cumulatively exceed Twenty-Five Thousand Dollars (\$25,000) in any one year (increased annually by 3%). In the event insufficient Annual Project Revenues exist to provide for payment of all or part of the specific Partnership Related Fees/Expenses listed above, no interest shall accrue on the unpaid portions of such Partnership Related Fees/Expenses, but the unpaid balance will be added to the Partnership Related Fees/Expenses due in the following year. In the event that the State (or HUD) were to disallow, or cap, or reduce the 3% escalation of the Partnership Related Fees/Expenses in connection with its/their review or actions relating to the federal and state funding sources hereunder, then Developer acknowledges and agrees that such cap, limitation or reduction will also apply to the definition of “Partnership Related Fees/Expenses” under this Agreement and the HOME Loan Note.

**“Permitted Refinancing”** is a refinancing of the Primary Loan during the Permitted Refinancing Period that (i) will not result in an increase in the outstanding principal amount owed, except to the extent necessary to pay (a) reasonable and customary costs and expenses incurred in

connection with the refinancing; (b) the balance, if any, of the Deferred Developer Fee; (c) the balance of permitted or authorized loans to the Project made by the partners of Developer for development or operating deficits (as approved by Authority after review and verification by Authority Director of documentation provided by Developer showing the propriety of such loans), amounts expended to maintain compliance with the Tax Credit Regulatory Agreement, or permitted contributions for capital expenditures in excess of available Project revenues, if any (as approved by Authority after review and verification by Authority Director of documentation provided by Developer showing the propriety of such loans), including interest at the Applicable Federal Rate; (d) the return of capital contributions, if any, to the Project made by Developer that were used to pay the Deferred Developer Fee; (e) payment of unpaid Tax Credit adjustment amounts or reimbursement of Tax Credit adjustment amounts paid by the administrative and/or managing general partners and/or the guarantors to the Project pursuant to the approved Partnership Agreement, if any; (f) the payment to the administrative general partner of Developer's limited partnership entity of a refinancing fee, as set forth in the Partnership Agreement, which fee shall not exceed six percent (6%) of the amount of the Permitted Refinancing; (g) any unpaid Operating Expenses; (h) the amount of proceeds required to be reserved for the Construction of the Project; (i) the amount of proceeds required for necessary repairs or rehabilitation to the Project; (j) payment of any amount outstanding under the City DA Fee Deferral Loan; and (k) the payment of any unpaid Partnership Related Fees/Expenses, and (ii) is made by an institutional lender on then-market terms (including without limitation an interest rate that does not exceed then-market interest rates on similar refinancing loans), specifically including compliance with Sections 1107 and 1108 below. Developer hereby agrees to provide not fewer than thirty (30) days' notice to Authority of the proposed terms of such refinancing and Developer acknowledges and agrees that Authority shall have the right to approve the terms of such refinancing as being consistent with then-market terms provided by an institutional lender, which approval will not be unreasonably withheld. Authority further acknowledges and agrees that the Conversion of the Primary Loan from construction financing to permanent financing terms as described in the loan agreement(s) for the Primary Loan and the assignment of the Primary Loan to CCRC, at the Conversion shall constitute a Permitted Refinancing hereunder.

**"Permitted Refinancing Period"** shall mean the first thirty (30) years following the date(s) the HOME Loan Deed of Trust and Additional Authority Loan Deed of Trust are recorded against the Site in the Official Records.

**"Portable Voucher"** or **"Section 8 Program"** shall mean Section 8 tenant-based vouchers, certificates of family participation under 24 CFR part 882 (Rental Certificate Program), rental vouchers under 24 CFR part 887 (Rental Voucher Program), and comparable documents evidencing participation in a program pursuant to the HOME Investment Partnership Act, 42 U.S.C. §12701, *et seq.* and the implementing regulations located at 24 CFR part 92, as such now exist and as may hereafter be amended, or other tenant-based rental assistance programs.

**"Primary Loan"** shall mean the initial loan for the acquisition of the Conforming Leasehold Interest in the Site and Construction of the Project obtained by Developer from Primary Lender, and each Permitted Refinancing thereof during the Permitted Refinancing Period, and the subsequent permitted refinancing or permitted modification thereof to the extent permitted pursuant to Sections 1107 and 1108 of this Agreement. Developer anticipates that Primary Lender will provide construction and permanent financing for the Project in the form of loans in the estimated and approximate principal amounts set forth in Section 209.1(c). Authority hereby approves the Primary Loan from US Bank to Developer in the original principal amount of Twelve Million Dollars (\$12,000,000).

**“Primary Lender”** shall mean US Bank as the construction lender and CCRC as the permanent lender, or other approved federal or state chartered financial institution that provides the Primary Loan, first the construction loan and then at Conversion the permanent loan, as reasonably approved by Authority Director.

**“Project”** shall mean the Garden Grove UMC Apartments, consisting of forty-seven (47) Housing Units to be constructed at the Site, and thereafter managed and operated by Developer as long term, affordable rental housing for 50% AMI Very Low Income Households and 59% AMI Low Income Households in accordance with this Agreement and the Regulatory Agreement.

**“Project Documents”** shall mean the following documents evidencing the HOME Loan and Additional Authority Loan, and City DA Fee Deferral Loan Note required as consideration for Authority to provide such financial assistance to the Developer: (i) this Agreement, (ii) the HOME Loan Note; (iii) the HOME Loan Deed of Trust; (iv) the Regulatory Agreement; (v) the Security Agreement (UCC-1 Financing Statement); (vi) the Request for Notice of Default; (vii) the Additional Authority Loan Note; (viii) the Additional Authority Loan Deed of Trust; (ix) the City DA Fee Deferral Loan Note; (x) the City DA Fee Deferral Loan Deed of Trust; (xi) the City Development Agreement; and (xii) any other agreement, document, or instrument that Authority may reasonably require Developer to execute in connection with the execution of this Agreement or the provision of the HOME Loan or the Additional Authority Loan or the City DA Fee Deferral Loan Note to Developer or otherwise, from time to time, to effectuate the purposes of and to implement this Agreement.

**“Property Manager”** is defined in Section 1209.1.

**“Refinancing Net Proceeds”** shall mean the proceeds of any approved refinancing of any of the Primary Loans or other approved financing secured by the Site, net of: (i) the amount of the financing which is satisfied out of such proceeds; (ii) reasonable and customary costs and expenses incurred in connection with the refinancing; (iii) the balance, if any, of the Deferred Developer Fee; (iv) the balance of permitted or authorized loans to the Project made by the partners of Developer for development or operating deficits (as approved by Authority after review and verification by Authority Director of documentation provided by Developer showing propriety of such loans), amounts expended to maintain compliance with the Tax Credit Regulatory Agreement, or permitted contributions for capital expenditures in excess of available Project revenues, if any, including interest at the Applicable Federal Rate (as approved by Authority, after review and verification by Authority Director of documentation provided by Developer showing propriety of such loans); (v) the return of capital contributions, if any, to the Project made by Developer that were used to pay the Deferred Developer Fee; (vi) payment of unpaid Tax Credit adjustment amounts or reimbursement of Tax Credit adjustment amounts paid by the administrative and/or managing general partners and/or the guarantors to the Project pursuant to the approved Partnership Agreement, if any; (vii) the payment to the administrative general partner of Developer’s limited partnership entity of a refinancing fee, as set forth in the Partnership Agreement, which fee shall not exceed six percent (6%) of the amount of the approved refinancing; (viii) any unpaid Operating Expenses; (ix) the amount of proceeds required to be reserved for the Construction of the Project; (x) the amount of proceeds required for necessary repairs or rehabilitation to the Project as reasonably approved by the Authority Director; (xi) the amount necessary to satisfy the City DA Fee Deferral Loan Note; and (xii) the payment of any unpaid Partnership Related Fees/Expenses.

**“Regulatory Agreement”** shall mean the Regulatory Agreement with Right of First Offer that is to be recorded as an encumbrance to the Project, in accordance with this Agreement. The Regulatory Agreement includes conditions, covenants, and restrictions relating to the long term use, operation, management, and occupancy of the Site, touches and concerns the land that comprises the Site, and is intended to run with the land for the entire term of the Affordability Period provided therein. The Regulatory Agreement is attached hereto as Attachment No. 11 and fully incorporated by this Reference.

**“Release of Construction Covenants”** shall mean Attachment No. 6 attached hereto and fully incorporated herein by this reference.

**“Relocation”** or **“Relocation Laws”** shall mean all applicable federal and state relocation laws and regulations, including without limitation, (i) the relocation obligations of the HOME Program and HOME Regulations, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“URA”), 42 U.S.C. 4601–4655, and the implementing regulations thereto set forth in 49 CFR Part 24, (ii) the California Relocation Assistance Act, Government Code Section 7260, *et seq.* and the implementing regulations thereto set forth in Title 25, Section 6000, *et seq.* of the California Code of Regulations, and (iii) any other applicable federal, state or local enactment, regulation or practice providing for relocation assistance, benefits, or compensation for moving and for property interests (including without limitation goodwill and furnishings, fixtures and equipment, and moving expenses), and (iv) any federal law or regulation prohibiting payment of relocation benefits or assistance to persons ineligible for relocation benefits or assistance. Developer shall be solely responsible for payment of all costs, expenses, and payments required to be made and/or incurred pursuant to any and all applicable Relocation Laws; Authority shall not incur any costs or expenses as a result of the application of the Relocation Laws to the Project or this Agreement.

**“Remediation”** is defined in Section 303.

**“Rent”** shall mean the total of monthly payments by the tenants (inclusive of any and all payments attributable to rental subsidies, or other public subsidies by any local, state, or federal governmental agency) of a Housing Unit for use and occupancy for the Housing Unit and facilities associated therewith, including a reasonable allowance for utilities for an adequate level of service as defined in Title 25 California Code of Regulations §6918.

**“Request for Notice of Default”** shall mean a request for notice of default to be recorded against the Site in connection with the Escrow, substantially in the form of Attachment No. 8, attached hereto and fully incorporated by this reference.

**“Reserve Deposits”** shall mean any payments to the Capital Replacement Reserve and/or the Capitalized Operating Reserve accounts as required hereunder.

**“Residual Receipts”** shall mean Annual Project Revenue less the sum of:

- (i) Operating Expenses;
- (ii) Debt Service;
- (iii) Reserve Deposits to the Capital Replacement Reserve;

- (iv) Reserve Deposits to the Capitalized Operating Reserve;
- (v) Partnership Related Fees/Expenses;
- (vi) payment of unpaid Tax Credit adjustment amounts or reimbursement of Tax Credit adjustment amounts paid by the administrative and/or managing general partners and/or the guarantors to the Project pursuant to the approved Partnership Agreement, if any (after review and verification by Authority Director of documents provided by Developer showing propriety of such amounts and payments);
- (vii) repayment of loans, if any, made by the limited partner(s) of Developer's limited partnership entity, including interest as set forth in the Partnership Agreement;
- (viii) Deferred Developer Fee for the Project which remains unpaid, if any, including interest at the Applicable Federal Rate; and
- (ix) repayment of outstanding development and operating loans and/or contributions for capital expenses for which no Project revenues are available, if any, made by the administrative and/or managing general partners and/or the guarantors to the Project, including interest at the Applicable Federal Rate (as approved by Authority after review and verification by Authority Director of documentation provided by Developer showing the propriety of such loans).

Developer's annual loan payments on the Additional Authority Loan and, upon satisfaction thereof, the HOME Loan, shall be paid by Developer to Authority and shall include:

The Authority's Share of Residual Receipts received from operation of the Project shall be paid to Authority on an annual basis until payment in full of the Additional Authority Loan and upon satisfaction thereof, the HOME Loan. The Developer's Share of Residual Receipts received from the operation of the Project shall be retained by Developer or used by Developer to pay any fees or charges not specifically deducted from Annual Project Revenues above.

In the event any calculation of Annual Project Revenue less subsections (i) through (ix) inclusive above results in a negative number, then Residual Receipts shall be zero (\$0) for that year.

In addition, none of the fees, costs, expenses, or items described above in calculation of Residual Receipts shall include any duplicate entry/item, or double accounting for a cost item. For example, an audit fee incurred by Developer (or any partner of Developer or an Affiliate) and deducted or included above in category/subsection (i) Operating Expenses shall not also be deducted or included in category/subsection (v) Partnership Related Fees in the calculation of Residual Receipts.

**"Residual Receipts Report"** shall mean the report in substantially the form attached hereto as Attachment No. 18 and incorporated herein, which shall be completed by Developer and submitted annually to Authority for the Project in accordance with Section 203.1. Residual Receipts shall be calculated using cash basis accounting.

It is understood the Residual Receipts Report is subject to all of the terms and conditions set forth in this Agreement. The summary of the items in the Residual Receipts Report is not intended to supersede or modify the more complete description in this Agreement; in the event of any

inconsistency between the Residual Receipts Report and this Agreement, this Agreement shall govern.

“**Right of First Offer**” or “**ROFO**” is defined in Section 211.

“**Schedule of Performance**” shall mean that certain Schedule of Performance attached hereto as Attachment No. 2 and incorporated herein by this reference, which generally sets forth the time for performing the various obligations of this Agreement.

It is understood the Schedule of Performance is subject to all of the terms and conditions set forth in the Agreement. The summary of the items of performance set forth in the Schedule of Performance is not intended to supersede or modify the more complete description in the text of the Agreement; in the event of any inconsistency between the Schedule of Performance and the text of the Agreement, the text shall govern.

The time periods set forth in the Schedule of Performance for Authority approval of submittals, including without limitation any plans and drawings, submitted to Authority by Developer shall only apply and commence upon Developer’s complete submittal of all the required information. In no event shall an incomplete submittal by Developer trigger any of Authority Director’s obligations of review and/or approval hereunder; provided, however, that the Authority Director shall notify Developer of an incomplete submittal as soon as is practicable.

“**Scope of Development**” shall mean the scope of work for the Construction of the Site, as set forth in the Scope of Development, Attachment No. 5, attached hereto and fully incorporated by this reference, and such Scope of Development shall be automatically amended and updated to include the final Development Plans approved by Authority, as herein further described.

“**Section 3 Clause**” and “**Section 3**” shall mean and refer to Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, as amended. Authority has prepared a Section 3 “checklist” and other forms related to Section 3 compliance, attached hereto as Attachment No. 20 and fully incorporated by this reference; and as provided by Authority to Developer, Contractor, subcontractor(s), or other contractor(s), as applicable, such forms shall be utilized in all contracts and subcontracts to which Section 3 applies and to the extent required by 24 CFR part 135. For purposes of this Section 3 Clause and compliance thereto, whenever the word “contractor” is used it shall mean and include, as applicable, Developer, Contractor, other contractor(s), and subcontractor(s).

Developer hereby acknowledges and agrees the responsibility for compliance with all Section 3 Clause federal requirements as to Developer, its Contractor, or other contractor(s), subcontractor(s), and other agents is the primary obligation of Developer. Developer shall provide or cause to be provided to its Contractor, and each of its other contractor(s), subcontractor(s) and agents a checklist for compliance with Section 3 federal requirements, to obtain from such Contractor, and other contractor(s), subcontractor(s), and agents all applicable items, documents, and other evidence of compliance with the items, actions, and other provisions within the checklist, and to submit all such completed Section 3 documentation and proof of compliance to the Authority Director.

The particular text to be utilized in any and all contracts of any contractor doing work covered by Section 3, and to the extent required by 24 CFR part 135, shall be in substantially the form of the following, as reasonably determined by Authority Director, or as directed by HUD or its representative, and shall be executed by the applicable contractor under penalty of perjury:

“(i) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (“Section 3”). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to income eligible persons inclusive of 50% AMI Very Low Income Households, and 59% AMI Low Income Households served by the Project (as defined in the Affordable Housing Agreement and Regulatory Agreement), particularly persons who are recipients of HUD assistance for housing.

“(ii) The parties to this contract agree to comply with HUD’s regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

“(iii) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the contractor’s commitments under this Section 3 clause, and will post copies of notices in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number of job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

“(iv) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

“(v) The contractor will certify that any vacant employment positions, including training positions, that are filled (a) after the contractor is selected but before the contract is executed, and (b) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor’s obligations under 24 CFR part 135.

“(vi) Noncompliance with HUD’s regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

“(vii) With respect to work performed in connection with Section 3 covered Indian Housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible, (a) preference and opportunities for training and employment shall be given to Indians, and (b) preference in the award of



contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b)."

After the foregoing Section 3 Clause, Developer and/or Contractor, as applicable, shall add the signature block of Contractor (or other contractor(s) and subcontractor(s), as applicable) and add the following text immediately above the signature block: "The contractor/provider by this his signature affixed hereto declares under penalty of perjury that contractor has read the requirements of this Section 3 Clause and accepts all its requirements contained therein for all of his operations related to this contract."

"**Section 3 Plan**" shall mean the City's Section 3 Economic Opportunities Plan, the current version of which is attached hereto as Attachment No. 20.

"**Section 8 Program**" shall mean 42 U.S.C. 1437f(o)(13) and the federal regulations promulgated thereunder set forth at 24 CFR Part 983.

"**Security Agreement**" and "**Financing Statement**" shall mean the Security Agreement and attached financings statements (including necessary UCC-1 form or forms) attached hereto as Attachment No. 9 and fully incorporated by this reference to be executed by Developer in substantially the form thereof, the filing of which will give Authority a perfected security interest in Developer's tangible personal property and fixtures located on or about the Site.

"**Senior Citizen**" and "**Senior Households**" shall mean a household where at least one (1) person in residence is fifty-five (55) years of age or older and who intends to reside in the unit as his or her primary residence on a permanent basis, and any other person residing in the unit is a "qualified permanent resident" or a "permitted health care resident" as provided in California Civil Code Section 51, *et seq.*, or in the Federal Fair Housing Act, 42 U.S.C. Section 3607, and any other applicable federal, state or local laws and regulations governing the use and occupancy of the Project.

"**Senior Citizen Housing Units**" shall mean sixteen (16) of the total Housing Units in the Senior Citizen building of the Project allocated as to unit and income types as follows: (i) four (4) one-bedroom Housing Units at 50% AMI Very Low Income, (ii) one (1) two-bedroom Housing Units at 50% AMI Very Low Income, (iii) ten (10) one-bedroom Housing Units at 59% AMI Low Income, and (iv) one (1) two-bedroom Housing Unit at 59% AMI Low Income.

"**SERAF**" shall mean the Supplemental Educational Revenue Augmentation Fund payments as prescribed by Chapter 21, Statutes of 2009, and as such funds are required to be, and will be, repaid to the Successor Agency and transferred to the Authority, as housing successor, pursuant to Part 1.85, Division 24 of the California Health and Safety Code, in particular Sections 34191.4, 34176 and 34176.1.

"**Site**" is defined in Recital C. The Site is more fully and legally described in the Legal Description attached hereto as Attachment No. 1 and incorporated herein.

"**Successor Agency**" shall mean the Successor Agency to the Garden Grove Agency for Community Development, a separate public body, existing and operating on and after

February 1, 2012 under Parts 1.8 and 1.85, Division 24 of the California Health and Safety Code, in particular and as defined in Section 34173(g).

“**Target Amount**” is defined in Section 1212.

“**Tax Credit Equity**” is defined in Section 209.1(a).

“**Tax Credit Investor**” shall mean the investor limited partner of Developer. The initial Tax Credit Investor is Boston Financial Investment Management, LP.

“**Tax Credit Rules**” or “**Tax Credit Regulations**” shall mean the provisions of Section 42 of the Internal Revenue Code and/or, if applicable, California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Section 50199, *et seq.*, as the foregoing may be amended from time to time, to the extent applicable to the Project and the rules and regulations implementing the foregoing, including the regulations set forth in Title 4 Cal. Code Regs. Section 10300, *et seq.*

“**Tax Credit Regulatory Agreement**” shall mean the regulatory agreement that may be required to be recorded against the Site with respect to the Project’s allocation of Tax Credits.

“**Tax Credits**” shall mean federal 4% low income housing tax credits granted pursuant to Section 42 of the Internal Revenue Code and/or, if applicable, State tax credits pursuant to California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Sections 50199, *et seq.*

“**TCAC**” is defined in Recital H.

“**Third Party Costs**” is defined in Section 1626.1.

“**Title Company**” shall mean First American Title Company or another title insurer mutually acceptable to Authority and Developer. The named Title Company shall in no event be changed by either party without first obtaining the express written consent of the other party. If either party changes the Title Company and any third party expenses are incurred due to such change, for example additional review and clearance of title exceptions, then the party who changed the Title Company shall be fully indebted to the other party for any and all out of pocket expenses incurred due to such change in Title Company.

“**Transaction Documents**” shall mean all Project Documents and any and all financing documents in connection with the Primary Loan or other financing sources for the Project.

“**Transfer Net Proceeds**” shall mean the proceeds of any transfer, in whole or in part, of Developer’s interest in the Site or any sale, assignment, sublease, or other transfer, in whole or in part of Developer’s interests in the Site, net only of (i) the reasonable and customary costs and expenses incurred in connection with such transfer; (ii) the amount of the financing which is satisfied out of such proceeds, (iii) the balance, if any, of the Deferred Developer Fee, (iv) the balance, if any, of permitted or authorized loans to the Project made by the limited partners of Developer for development or operating deficits (as approved by Authority after review and verification by Authority Director of documentation provided by Developer showing propriety of such loans), including interest thereon as provided in the Partnership Agreement (as approved by Authority after review and verification by Authority Director of documentation provided by Developer showing the

propriety of such loans), (v) the balance, if any, of operating loans or development loans made by the general partners of Developer, including interest thereon as provided in the Partnership Agreement (as approved by Authority after review and verification by Authority Director of documentation provided by Developer showing the propriety of such loans), (vi) the return of capital contributions, if any, to the Project made by the general partners of Developer that were used to pay the Deferred Developer Fee (as approved by Authority after review and verification by Authority Director of documentation provided by Developer showing the propriety of such contributions), (vii) the payment of any unpaid Partnership Related Fees/Expenses, and (viii) the payment of any unpaid Operating Expenses.

“**UMC**” shall mean the United Methodist Church of Garden Grove, a California corporation, the current owner of the Site, as referenced in Recital C, and the ground lessor/landlord under the Conforming Lease.

“**2013 HOME Final Rule**” is defined in Recital A.

“**50% AMI Very Low Income Households**” shall mean those households earning not greater than fifty percent (50%) of Orange County Area Median Income, adjusted for household size, as determined in accordance with Health and Safety Code Sections 50052.5 and 50053 (“CRL”) (and in the absence of such regulation, as determined in accordance with TCAC Regulations) and subject to the requirement that the lowest and most restrictive of (a) CRL, or (b) the Tax Credit Rules, or (c) the HOME Regulations (but as to (c) only during the HOME Compliance Period), whichever calculation results in the most restrictive affordable rent.

“**59% AMI Low Income Households**” shall mean those households earning not greater than fifty-nine percent (59%) of Orange County Medium Income, adjusted for family size, as determined in accordance with Health and Safety Code Sections 50052.5 and 50053 (and in the absence of such regulation, as determined in accordance with TCAC Regulations) and pursuant to the lowest and most restrictive of (a) CRL, or (b) the Tax Credit Rules, or (c) the HOME Regulations (but as to (c) only during the HOME Compliance Period), whichever calculation results in the most restrictive affordable rent and calculated and adjusted to 59% AMI Affordable Rent.

## **200. FINANCING.**

**201. Additional Authority Loan and Additional Authority Loan Terms.** The Authority hereby commits and agrees, subject to the terms and provisions of this Agreement, to make the Additional Authority Loan to Developer, and Developer hereby agrees to borrow the Additional Authority Loan Amount from Authority, subject to the terms and conditions set forth in this Agreement, and subject further to the terms and conditions set forth within the Project Documents, including the “Additional Authority Loan Note,” the “Additional Authority Loan Deed of Trust,” and the “Regulatory Agreement.” The Additional Authority Loan shall be evidenced by the Additional Authority Loan Note and secured by the Additional Authority Loan Deed of Trust and the Security Agreement, which shall be recorded against the Site in the Official Records of the County in a position junior and subordinate to the Primary Loan but prior and senior to the Home Loan and the City DA Fee Deferral Loan. The Authority has contemplated obtaining moneys to fund the Additional Authority Loan from moneys to be made through the Successor Agency to the Former Agency under Health and Safety Code Section 33334.2(k) regarding the SERAF. However, to address the possibility that such moneys do not become available to the Authority through the Successor Agency by the time necessary to fund disbursements under the Additional Authority Loan,

the Authority has authorized the Interim Authority Director (and Authority Director), and the City has authorized the Interim City Manager (and City Manager) to enter into an a cooperation and loan agreement, as and when necessary, if at all, pursuant to which the City will advance and loan to the Authority such moneys as are necessary to make disbursements hereunder as the Additional Authority Loan.

The Additional Authority Note shall be for a term commencing upon the date of initial disbursement of funds thereunder and continuing until the fifty-fifth (55<sup>th</sup>) anniversary of the date the Release of Construction Covenants is recorded for the Project ("Maturity Date"). The Additional Authority Loan Note shall bear simple interest at the rate of three percent (3%) per annum from the date of disbursement of Additional Authority Loan proceeds. The Additional Authority Loan Note shall be repaid through an annual Residual Receipts calculation based on operation of the Project. The Additional Authority Loan Note shall be payable from the Authority's Share of Residual Receipts from the Project in annual installments to be made by Developer beginning April 30 in the year following the year during which the Conversion occurs and annually thereafter, until the Additional Authority Loan Note has been paid in full. In addition, Developer shall pay to Authority seventy-five percent (75%) of the Refinancing Net Proceeds until the Additional Authority Loan has been satisfied in full, as a credit against the Additional Authority Loan immediately upon any refinancing of the Project (or any part thereof) and, as applicable and until repayment in full of the Additional Authority Loan, seventy-five percent (75%) of the Transfer Net Proceeds immediately upon any transfer or conveyance, in whole or in part, of the Project. Any remaining balance of the Additional Authority Loan shall be due in full on the Maturity Date. The terms of the Additional Authority Loan are more particularly described in the Additional Authority Loan Note. Payments towards the Additional Authority Loan shall be applied first to accrued interest, and then to principal. Notwithstanding anything herein or in the Additional Authority Loan Note to the contrary, no Refinancing Net Proceeds will be payable hereunder or under the Additional Authority Loan Note as a result of the Conversion of the Primary Loan and assignment thereof to CCRC.

**202. HOME Loan and HOME Loan Terms.** The Authority hereby commits and agrees, subject to the terms and provisions of this Agreement, to make the HOME Loan to Developer, and Developer hereby agrees to borrow the HOME Loan from Authority, in an amount not to exceed Two Million Ten Thousand Five Hundred Sixty One Dollars (\$2,010,561), subject to the terms and conditions set forth in this Agreement, and subject further to the terms and conditions set forth within the Project Documents, including the "HOME Loan Note," the "HOME Loan Deed of Trust," and the "Regulatory Agreement." In no event shall Authority be obligated to use any source of funding other than HOME Program funds to make the HOME Loan to Developer. The HOME Loan shall be evidenced by the HOME Loan Note and secured by the HOME Loan Deed of Trust and the Security Agreement, which shall be recorded against the Site in the Official Records of the County in a position junior and subordinate to the Primary Loan and the Additional Authority Loan but prior and senior to the City DA Fee Deferral Loan.

The HOME Loan Note shall be for a term commencing upon the date of initial disbursement of funds thereunder and continuing until the fifty-fifth (55<sup>th</sup>) anniversary of the date the Release of Construction Covenants is recorded for the Project ("Maturity Date"). The HOME Loan Note shall bear simple interest at the rate of three percent (3%) per annum from the date of disbursement of HOME Loan proceeds. The HOME Loan Note shall be repaid through an annual Residual Receipts calculation based on operation of the Project with payments commencing after the Additional Authority Loan has been satisfied in full. Subject to the foregoing sentence, the HOME Loan Note shall be payable from the Authority's Share of Residual Receipts from the Project in annual

installments to be made by Developer beginning April 30 in the year following the year during which the Conversion occurs and annually thereafter, until the HOME Loan Note has been paid in full; provided that the Additional Authority Loan must be repaid in full before Residual Receipts are applied to pay the HOME Loan. In addition, Developer shall pay to Authority seventy-five percent (75%) of the Refinancing Net Proceeds immediately upon any refinancing of the Project (or any part thereof) and seventy-five percent (75%) of the Transfer Net Proceeds immediately upon any transfer or conveyance, in whole or in part, of the Project, less amounts paid to Authority to Developer as the Authority's share of (seventy-five percent [75%]) of Refinancing Net Proceeds and Transfer Net Proceeds toward retirement of the Additional Authority Loan under Section 201 of this Agreement (and after repayment in full of that loan, such share of proceeds shall be applied to repayment of the HOME Loan.) Any remaining balance of the HOME Loan shall be due in full on the Maturity Date. The terms of the HOME Loan are more particularly described in the HOME Loan Note. Payments towards the HOME Loan shall be applied first to accrued interest, and then to principal. Notwithstanding anything herein or in the Additional Authority Loan Note and in the HOME Loan Note to the contrary, no Refinancing Net Proceeds will be payable hereunder or under the Additional Authority Loan Note or the HOME Loan Note as a result of the Conversion of the Primary Loan and assignment thereof to CCRC.

On or before June 30, 2015, Authority shall deposit the HOME Loan Initial Advance Portion into the Escrow for the benefit of the Developer to pay for or reimburse Developer for expenses described and allowed for and defined as the HOME Loan Initial Advance Portion. This may include payment(s) by Developer or by a Jamboree Affiliate Entity to UMC at or prior to the Closing for monies due under the Conforming Lease as ground rent payments thereunder and for payments or reimbursements of Eligible Predevelopment Expenses. Developer represents and warrants that all payments made by the Escrow Holder and remitted to Developer shall be for either a partial payment of ground rent due under the Conforming Lease for the Site or for Eligible Predevelopment Expenses that are evidenced by Developer to have been lawfully and actually incurred for the Project, and all subject to the HOME Regulations. Amounts delivered as the HOME Loan Initial Advance Portion shall constitute a portion of the HOME Loan and repayment shall be accomplished as specifically set forth in the HOME Loan Note. The remaining portion of the HOME Loan proceeds to be disbursed by the Escrow Holder at Closing will be \$1,435,561 ( $\$2,010,561 - \$575,000 = \$1,435,561$ ).

### **203. Reporting Requirements; Audit.**

**203.1 Residual Receipts Report.** Developer shall annually, on or before each April 30, commencing in the first year after the issuance of the first certificate of occupancy for the Project is issued by City's building official, submit to Authority a Residual Receipts Report for the Project, which shall provide the basis for Developer's payment of Residual Receipts to Authority. Until the City DA Fee Deferral Loan Note has been satisfied in full, the Developer shall also submit to the City a Residual Receipt Report at the same time such Report is submitted to the Authority.

**203.2 Annual Audited Financial Statement.** Developer shall also annually submit to Authority, on or before each April 30, commencing in the first year after the issuance of the first certificate of occupancy for the Project, Annual Audited Financial Statements for the Project that have been audited by an independent certified public accountant, together with an expressed written opinion of the certified public accountant that such Annual Audited Financial Statement presents the financial position, results of operations, and cash flows fairly and in accordance with GAAP, as to the Project. Each Annual Audited Financial Statement submitted by Developer shall include a statement and certification (and supporting documentation) of the total amount of the Developer Fee

and Deferred Developer Fee for the Project, along with the cumulative amount thereof paid to date and the amount thereof paid within the applicable reporting year as reported and certified in the Annual Audited Financial Statement.

**203.3 Right to Audit.** Pursuant to Section 1213 and Attachment No. 19, Developer shall keep full and accurate books of account, records and other pertinent data with respect to operations of the Project. Such books of account, records, and other pertinent data shall be kept for a period of five (5) years after the end of each Developer's fiscal year (or longer if required by Attachment No. 19), and shall be made available for review or audit by the Authority or its designees with a three (3) day written notification to Developer. If any audit results in Developer restating Residual Receipts upward for any year, then Developer shall accompany delivery of such audit report to Authority with the additional payment to the Authority resulting from said restatement. If any such audit report results in Developer restating Residual Receipts downward for any year, the Developer shall carry forward the overpayment made to the Authority as a credit against payments under the Additional Authority Loan and/or the HOME Loan in subsequent years.

(a) If any annual payment required pursuant to this Section 203.3 above is not received by Authority within ten (10) calendar days after payment is due (or payment is made in an amount less than the amount due, as reflected in an audit conducted by the Authority or otherwise), Developer shall pay to Authority a late charge of five percent (5%) of such payment, such late charge to be immediately due and payable without demand by Authority. Further, if an underpayment amounts to more than five percent (5%) of the total amount due to the Authority, then Developer shall pay the Authority's reasonable costs and expenses incurred in connection with the audit.

(b) Authority shall be entitled within five (5) years after the end of each Developer fiscal year to inspect and examine all Developer's books of account, records, and other pertinent data. Developer shall cooperate fully with Authority in making the inspection. Authority shall also be entitled, also within five (5) years after the end of each Developer fiscal year, to an independent audit of Developer's books of account, records, and other pertinent data; the cost of such audit shall be an Operating Expense of the Project.

Authority's right to audit Developer's records shall include the right to audit Developer's documentation and records maintained in accordance with Section 1213 and Attachment No. 19.

**204. Security for Authority Loans.** The Additional Authority Loan shall be secured by the Additional Authority Loan Deed of Trust, which shall be recorded against the Site in the Official Records. In addition, Developer hereby grants to Authority a security interest in all of Developer's right, title and interest in and to the Collateral as defined in and substantially in the form of the Security Agreement, and Financing Statements attached thereto, if any. Developer shall execute the Security Agreement, the Financing Statements attached thereto upon request therefor, and such other documents requested by Authority to the extent necessary to perfect and maintain the security interest in the Collateral granted to Authority thereby.

**205. Disbursement of Additional Authority Amount Loan Proceeds, HOME Loan Proceeds and City DA Fee Deferral Loan.** Subject to satisfaction by Developer or waiver by Authority of each and every Condition Precedent set forth in Sections 401 and 402, as applicable, the proceeds of the HOME Loan shall be disbursed concurrent with the closing of the Primary Loan, and

the proceeds of the Additional Authority Loan shall be disbursed at the later to occur of (i) December 31, 2016, or (ii) the completion of Construction and readiness for Conversion of the Primary Loan, provided that Authority's obligation to make any disbursement of the Additional Amount Loan and the HOME Loan proceeds is also subject to the fulfillment by Developer or waiver by Authority of the Conditions Precedent set forth in Section 400, *et seq.* Advance of the City DA Fee Deferral Amount shall be deemed to occur at the earlier to occur of (i) the issuance of building permits for the Project, and (ii) the initial disbursement of HOME Loan Proceeds or Additional Authority Loan proceeds.

**206. Consent Required for Assignment and Assumption.** Except for Transfers permitted pursuant to Section 1215.1 below, the HOME Loan Note, the Additional Authority Loan Note and the City DA Fee Deferral Loan Note shall not be assignable or assumable by any successor or assignee of Developer without the prior written consent of Authority, which consent may be withheld in the sole and absolute discretion of Authority Director.

**207. [Reserved].**

**208. City Subsidies; City DA Fee Deferral Loan.**

**208.1 City DA Fee Deferral Loan.** The City shall be deemed to make the City DA Fee Deferral Loan as of the *earlier* to occur of (i) the pulling of building permits for the Improvements or (ii) the initial disbursement of the HOME Loan. The City DA Fee Deferral Loan shall be evidenced by the City DA Fee Deferral Loan Note and secured by the City DA Fee Deferral Loan Deed of Trust.

**209. Additional Financing.**

**209.1 Sources of Financing.** Developer and Authority anticipate the following funding sources to be obtained for the Project and utilized by Developer in addition to the HOME Loan, the Additional Authority Loan and the City DA Fee Deferral Loan. The final sources and amounts of funding for the Project as well as the final cost estimates with respect to the ground leasing, Construction and operation of the Project shall be set forth in the Final Budget which is required to be submitted to Authority as a Condition Precedent pursuant to Section 401.

(a) Tax Credit Equity and Housing Bonds. Developer shall use its reasonable and best efforts to apply for and secure an allocation of federal 4% Tax Credits in an amount not less than reasonably expected to yield \$6,250,000 in equity from the Tax Credit Investor, subject to adjustment as set forth in the Partnership Agreement ("Tax Credit Equity") and to cause the issuance of the multifamily Housing Bonds by California Municipal Financing Authority (CMFA) in an original principal amount of \$12,000,000 for the funding of the Project. Neither the Authority nor the City has any responsibilities, duties or liabilities, whether legal, financial, or otherwise, under the Housing Bonds or in connection with the issuance thereof by CMFA. In the event Developer does not receive such an allocation of Tax Credits and the allocation from CDLAC for the Housing Bonds in response to Developer's first application, this Agreement, at the election of the Authority, shall terminate and be of no further force and effect.

(b) Primary Loan. Developer shall use its reasonable and best efforts to apply for and obtain the Primary Loan (in connection with the Housing Bonds), including construction and permanent financing, from the Primary Lender, in an amount of not less than

\$4,180,000 for the construction loan and a permanent loan or such other amount as is reasonably necessary in the reasonable discretion of the Authority Director, as determined in accordance with the approved Final Budget submitted by Developer to Authority.

(c) Deferred Developer Fees. Developer currently estimates that \$501,730 is the “Deferred Developer Fee” of the total Developer Fee of \$1,400,000 payable in connection with the Project (the Developer Fee has been calculated in accordance with the Tax Credit Rules) and as of the Date of Agreement the deferred amount is \$501,730. The Developer Fee shall be disbursed to Developer pursuant to the schedule set forth in the Partnership Agreement.

**209.2 Required Financing Submittals.** Within the time established therefor in the Schedule of Performance, and as a Condition Precedent to the disbursement of any portion of the HOME Loan or the Additional Authority Loan pursuant to Section 401, *et seq.*, Developer shall submit to Authority evidence that Developer has obtained sufficient equity capital and firm and binding commitments (subject to customary conditions) for financing necessary to undertake the acquisition of the Conforming Leasehold Interest in the Site, Construction at the Site, and completion and operation of the Project in accordance with this Agreement. Such evidence of financing shall include all of the following:

(a) Final Budget. An updated pro forma and Final Budget for the Project showing all sources, uses, costs for ground leasing the Site, Construction Costs, Relocation Costs, estimated Operating Expenses, and all anticipated construction and permanent financing and funding sources and amounts thereof. Authority Director shall have the right to approve or disapprove the Final Budget (and any specific line items therein) for the Project in his reasonable discretion.

(b) Tax Credits and Housing Bonds. Developer shall submit the following documents to Authority:

(i) The draft Partnership Agreement or funding commitment letter from the equity investors in the Project and Site that demonstrates Developer has sufficient funds for acquisition of a Conforming Leasehold Interest and the Construction and operation of the Project, and that includes provisions conforming to the cash flow priorities provided herein, and that such investor funds have been committed to the acquisition of a Conforming Leasehold Interest, Construction and operation of the Project, and a current financial statement of Developer and any entities providing Developer’s other sources of equity capital.

(ii) A copy of a preliminary reservation letter from TCAC notifying Developer that an allocation of Tax Credits has been reserved for the acquisition of a Conforming Leasehold Interest, Construction, and operation of the Project.

(iii) A copy of applications to and financing approvals received (if any) with respect to any other affordable housing subsidy programs from which Developer has applied to obtain financial subsidies, including for Tax Credits and the Housing Bonds.

(iv) Other documentation reasonably satisfactory to Authority as evidence of other sources of capital, all of which together are sufficient to demonstrate that Developer has adequate funds, together with the proceeds of any other financing, to acquire a Conforming Leasehold Interest, construct and operate the Project.



(c) Primary Loan. A copy of the Primary Lender's binding commitment obtained by Developer for the Primary Loan and copies of all loan documents evidencing the Primary Loan. The Primary Loan commitment for financing shall be in such form and content reasonably acceptable to Authority and shall provide reasonably satisfactory evidence of a legally binding, firm and enforceable commitment, subject only to the Primary Lender's customary and normal conditions and terms. The commitment also shall state the terms and requirements, if any, by the Primary Lender relating to subordination of each of the HOME Loan, the Additional Authority Loan and the City DA Fee Deferral Loan, and, if applicable, the Regulatory Agreement subject to the requirements of Section 1107 hereinafter. Developer shall provide written certification to Authority that the loan documents submitted are correct copies of the actual loan documents to be executed by Developer concurrently with the close of Escrow for the acquisition of a Conforming Leasehold Interest. If the Primary Lender requires a subordination agreement, the suggested form of such agreement(s) shall be submitted by Developer to Authority and Authority's legal counsel for review and comment in a reasonable and sufficient time for review, comment, and negotiation of mutually acceptable terms and conditions thereof. Execution of any subordination agreement or any reaffirmation thereof shall be subject to the provisions of Section 1107 and the form and content of any such subordination agreement or reaffirmation thereof shall be reasonably satisfactory to the Authority Director and Authority's legal counsel. All costs incurred for the review, negotiation, and completion of a mutually acceptable subordination agreement and any amendment, modification or other reaffirmation thereof shall be expressly subject to Developer (or Lender or other third party, but in no event Authority) paying all Third Party Costs incurred by Authority in connection therewith, with payment of such incurred costs a condition precedent to any obligation of Authority to sign and deliver such subordination document, except as to the first subordination agreement provided at the Closing, for which Authority will assume the costs.

(d) Current Financial Statement. A current financial statement of the Developer entity (and all partners and members thereof, except Tax Credit Investor) and/or other documentation reasonably satisfactory to Authority Director as evidence of other sources of capital sufficient to demonstrate that Developer has adequate funds to cover the difference, if any, between acquisition of the Conforming Leasehold Interest in the Site, Construction, and operating expenses, and the financing secured by Developer, including the Tax Credit Equity, the Housing Bonds, the HOME Loan, the Additional Authority Loan, the City DA Fee Deferral Loan, and the Primary Loan; and

(e) Construction Contract. Drafts of all contracts to be executed between Developer and each Contractor for the Construction of the Improvements, certified by Developer to be true and correct copies thereof, and which shall include reference to this Agreement and such Contractor's specific obligation to carry out the construction and completion of the Construction (or part thereof) in conformity with the HOME Regulations, HAL, and other applicable federal, state, and local laws and regulations. Such Construction Contract(s) shall include: (i) a full recitation of the Section 3 Clause with an express acknowledgement and agreement by each Contractor to fully comply with the Section 3 Clause, (ii) specifications in the form provided by the Authority relating to compliance with Section 3, a requirement to include such specifications in every subcontract entered into between the Contractor and each subcontractor, and an express reference to the City's Section 3 Plan, (iii) an express acknowledgement and agreement by each Contractor that as a condition precedent to the final payment under its contract, Contractor and each subcontractor performing work at the Project shall provide written evidence and a certification (substantially in the forms attached hereto as Attachment No. 14) to Authority, showing that Contractor and each subcontractor has complied with the Section 3 Clause in completing the Construction, and (iv) express reference to all

other applicable federal regulations and laws to which such Contractor must comply in undertaking the work of the Construction for Developer; provided, it is understood by the parties that it is and shall remain Developer's primary obligation to obtain and submit all required Section 3 Clause documentation. In furtherance of evidencing Section 3 Clause compliance during the Construction, Developer expressly acknowledges and agrees under this Agreement that it shall cause each Contractor to provide evidence, in a form reasonably satisfactory to Authority Director and/or HUD, that the Section 3 Clause checklist(s) and other forms related thereto (as such forms may be provided by Authority to Developer) have been fully completed and all back up information has been submitted to the Authority Director. The form of each Construction Contract shall be reasonably satisfactory to Authority Director and shall be approved within the applicable time periods set forth in the Schedule of Performance.

**209.3 Approval of Evidence of Financing.** If Developer has submitted all evidence of financing required by Section 209.2 within the time established therefor in the Schedule of Performance, Authority shall reasonably approve or disapprove such evidence of financing within twenty (20) days of submission by Developer to Authority of all complete items required by this Section 209, *et seq.* If Authority disapproves any such evidence of financing, Authority shall do so by written notice to Developer stating the reasons for such disapproval and Developer shall promptly obtain and submit to Authority new evidence of financing. If Developer's submission of new evidence of financing is timely and provides Authority with adequate time to review such evidence within the time established in this Section 209.3, Authority shall approve or disapprove such new evidence of financing in the same manner and within the same times established in this Section 209.3 for the approval or disapproval of the evidence of financing as initially submitted to Authority. The evidence of financing shall be deemed to be an ongoing representation by Developer that, based on information then available to Developer, the sum total of all sources of financing are equal to and not greater than the amount of the approved Project costs as set forth in the Final Budget for the Project. Once the evidence of financing is approved by Authority, Developer shall promptly notify Authority in writing of any change in or additional sources of financing, including without limitation, the award of Tax Credits. The representations made by Developer with respect to the sources of financing for the Project are the basis used by Authority to negotiate the financial terms of each of the Additional Authority Loan and the HOME Loan and any substantial change in such sources of Project financing shall, at the sole discretion of Authority, because to renegotiate the financial terms of, or withdraw the Commitment of, the HOME Loan and the Additional Authority Loan and, subject to such renegotiation and/or the provisions of Section 200, *et seq.*, may require payments by Developer to reduce the outstanding principal balance of each of the Additional Authority Loan and the HOME Loan.

**210. Tax Credit Equity.** The following requirements must be satisfied in order for the equity financing for Tax Credit funding to be approved by Authority pursuant to this Agreement (which requirements may be waived in the sole and absolute discretion of Authority Director):

(a) The equity investment of the limited partners of the limited partnership shall not be less than the approximate prevailing price for Tax Credits at such time, taking into consideration all relevant factors such as timing of required payments and amount of the Tax Credits.

(b) The identity of the syndicator and the initial limited partners of the limited partnership shall be reasonably acceptable to Authority.

(c) In connection with the formation of such limited partnership for the equity financing, Developer or an Affiliate of Developer shall be the managing general partner of the limited partnership at all times.

(d) Developer or its affiliates shall be entitled to a developer fee from the equity financing of not greater than the Developer Fee set forth in the approved financing plan. Developer acknowledges that the Deferred Developer Fee is required to be deferred until after the completion of the Construction and commencement of operation of the Project in order to ensure that sufficient funds are available for completion of the Project and stabilized operation thereof.

**211. Right of First Offer.** Developer, on behalf of itself and all its successors in interest (referred to herein collectively, as "Developer"), hereby irrevocably grants to Authority a right of first offer ("ROFO" or "Right of First Offer") to purchase the Conforming Lease of the Site and the Project located thereon (all land, Improvements and intangibles, all of which are collectively referred to in this Section 211, *et seq.*, as the "Site") from Developer pursuant to the terms and conditions set forth below in this Section 211, *et seq.*, and the Regulatory Agreement. Except as provided below in this Section 211, Developer shall not, during the ROFO Period (defined below), enter into any Sale (defined below) without first complying with Authority's ROFO.

#### **211.1 Notice; Revised Notice.**

(a) In the event Developer desires to enter into any Sale, Developer shall so notify Authority in writing ("Notice"), including a copy of the following terms and conditions of the proposed Sale: (i) the purchase price, (ii) the maximum length of time for the due diligence period, (iii) the minimum deposit, and (iv) the maximum escrow period. Authority shall have a period of thirty (30) days from delivery of the Notice within which to advise Developer, in writing, of Authority's potential interest in acquiring the Conforming Lease of the Site and the Project on the terms and conditions specified in the Notice. If Authority rejects the acquisition of the Conforming Lease of the Site and the Project on the terms and conditions specified in the Notice, or fails to respond, in writing, to the Notice within thirty (30) days, then Developer shall be entitled to proceed with a Sale, subject to the terms of subdivision (c) of this Section 211.1.

(b) If Authority advises Developer, in writing, that Authority is potentially interested in acquiring the Conforming Lease of the Site and the Project on the terms and conditions specified in the Notice, then Authority shall have an additional period of thirty (30) days from the expiration of the 30-day period referenced above within which to negotiate and execute a letter of intent to purchase the Conforming Leasehold Interest in the Site consistent with the Notice ("Letter of Intent"). The parties intend that the Letter of Intent will include sufficient terms and conditions to enable the Authority Director to enter into a PSA as described in Section 211.2 below. If the parties are unable to reach agreement on a Letter of Intent within such additional 30-day period provided in this subdivision (b), Developer shall be entitled to proceed with a Sale based on the terms set forth in the Notice, subject to the terms of subdivision (c) of this Section 211.1.

(c) If (a) Developer has not closed escrow for the Sale within twelve (12) months from the date of the earliest to occur of (i) Authority's rejection of the acquisition of Conforming Lease of the Site and the Project, or (ii) thirty (30) days following the Notice if Authority fails to respond to the Notice or (iii) sixty (60) days following the Notice if Authority responds to the Notice stating Authority's potential interest in acquiring the Conforming Lease and the Project but the parties fail to execute a Letter of Intent within such time period, or (b) Developer

wishes to enter into a Sale for a price less than ninety-five percent (95%) of the sales price specified in the Notice, or on terms and conditions materially more favorable to a buyer than those specified in such Notice, Developer shall be required to notify Authority in writing, specifying such modified terms ("Revised Notice") and Authority shall have the opportunity to respond to the Revised Notice in accordance with the process outlined above in this Section 211.1.

(d) At any time after Authority has rejected acquisition of the Conforming Lease and the Project or failed to timely respond, in writing, to a Notice or Revised Notice, Authority will confirm its rejection of the terms of the Notice or Revised Notice, as applicable, in writing to the Developer upon request by the Developer; provided, Authority's written confirmation to Developer pursuant to this Sentence shall not waive Authority's right to respond to a Revised Notice as provided above.

**211.2 Escrow and Completion of Sale.** If Authority has timely elected to exercise the ROFO pursuant to the process set forth in Section 211.1, the Parties shall endeavor to negotiate the terms of a purchase and sale agreement (a "PSA") on the terms and conditions specified in the Notice or Revised Notice (as applicable). Upon execution of the PSA, the Parties shall promptly open an escrow with the Escrow Holder and shall provide the Escrow Holder with a copy of the PSA, and the Parties shall endeavor to close the escrow in accordance with the terms of the PSA. The PSA shall require, in addition to other customary provisions including, without limitation, the provisions set forth below in this Section 211.2, that Authority deliver funds into the escrow sufficient for payment of the purchase price (including the HOME Loan Note, if cancellation of the HOME Loan Note is required, the Additional Authority Loan, if cancellation of the Additional Authority Loan is required, and the City DA Fee Deferral Loan, if cancellation of the City DA Fee Deferral Loan is required) not later than one (1) business day prior to the anticipated close of escrow date. The obligation of Authority to close escrow shall be subject to Authority's reasonable approval during the due diligence period set forth in the PSA of a then-current preliminary title report and, at the option of Authority, inspections, studies, tests and investigations of the physical and environmental condition of the Site and other site testing. The PSA shall provide for distribution of closing, escrow and title costs equally between the Authority and Developer, unless otherwise specifically stated in the Notice or Revised Notice. If the Parties are unable to reasonably agree to the terms of a PSA within sixty (60) days following the date the Letter of Intent is executed by the Authority and the Developer, then Developer shall be entitled to proceed with a Sale, subject to the terms of subdivision (c) of Section 211.1.

**211.3 Termination of Authority's Right of First Offer.** Notwithstanding the foregoing or anything in this Agreement to the contrary, unless terminated earlier in accordance with the terms of this Section 211, Authority's Right of First Offer shall terminate and be of no further force or effect on the earliest of (a) the date this Agreement is terminated by either Authority or Developer, (b) the conclusion of a Sale, or (c) the expiration or earlier termination of the Regulatory Agreement. Upon the termination of Authority's Right of First Offer, as set forth in this Section 211.3, Authority shall execute a termination or quitclaim document reasonably requested by Developer and/or a reputable title company to remove Authority's Right of First Offer as a cloud on title as to the Conforming Lease.

#### **211.4 Definitions.**

(a) For purposes of this Agreement, "Sale" shall mean each of the following, unless excluded below: (a) any sale or transfer of legal title to the Conforming Lease (and

the Project); or (b) any sale or transfer of direct or indirect ownership interests in Developer that, taken alone or together with prior transfers of direct or indirect ownership interests in Developer, effects a change in Control (as defined below) of Developer, or (c) marketing or offering the Project, including the Conforming Leasehold Interest in the Site for Sale. "Sale" excludes any Transfer permitted pursuant to Section 1215.1 below.

(b) As used herein, "Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

(c) As used herein, the "ROFO Period" shall mean the period of time beginning upon the expiration of the fifteen (15) year Tax Credit compliance period and ending on the fifty-fifth (55<sup>th</sup>) anniversary of the date the Release of Construction Covenants is recorded for the Project.

**211.5 Purchase Price Offset.** Notwithstanding anything to the contrary set forth in this Agreement, the purchase price to be paid by Authority for acquisition of the Conforming Lease and the Project pursuant to the ROFO shall be offset by all amounts, if any, that remain outstanding under each of the Additional Authority Note, the City DA Fee Deferral Loan Note and the HOME Loan Note.

**211.6 Assignment of Right of First Offer.** Authority may assign the ROFO to City without obtaining Developer's approval or consent to such assignment. No other assignment of the ROFO shall be permitted without Developer's prior written approval or consent.

**211.7 Sale Subject to CHDO Requirements.** Notwithstanding anything to the contrary set forth in this Section 211, any Sale of the Site (other than a sale to the Authority) shall be conditioned on the requirement that the Project shall continue to be owned/ground leased, developed or sponsored by a CHDO at all times during the HOME Compliance Period.

### **300. CONDITION OF PROPERTY.**

**301. Developer Representations to Authority re Existing Condition of Site.** Except as disclosed in the following environmental reports: (1) "*HGEI Project NO. 14-01-3263: Preliminary Geotechnical Investigation for Site Development and Design and Construction of Affordable Housing Project at Garden Grover United Methodist Church, 12741 Main Street, Garden Grove, CA*" prepared by Harrington Geotechnical Engineering, Inc. for Jamboree Housing Corporation and dated as of July 8, 2014; (2) Phase 1 Environmental Assessment Report by Barr & Clark dated March 5, 2015; and (3) the Asbestos Inspection Report by Barr & Clark dated February 11, 2015; and, (4) Lead-Based Paint Inspection Report by Barr & Clark dated February 12, 2015 (including the exhibit thereto titled EDR Radius Map Report by Environmental Data Resources Inc. dated February 5, 2015) (together, the "Environmental Reports"), Developer represents, to and for the benefit of Authority, to the best of its knowledge, that the Environmental Report are the only reports provided to and existing related to the environmental condition of the Site for the Project, and further Developer is not aware of and it has not received any notice or communication from any governmental agency having jurisdiction over the Site, UMC, or any other person or entity, notifying it of the presence of Hazardous Materials or Hazardous Materials Contamination (both as hereinafter defined) in, on, or under the Site, or any portion thereof, or the violation of any Environmental Laws (hereinafter defined). Developer represents that any inspection reports with respect to the Site,

environmental audits, reports and studies which concern the Site, or inspection reports from applicable regulatory authorities with respect to the Site, which Developer has received, have been delivered to the Authority. Developer knows of no circumstances, conditions or events that may, now or with the passage of time, give rise to any Environmental Claim (hereinafter defined) against or affecting the Site. As and when obtained or received by Developer from the current owner or from any other person or entity, true and correct copies of internal inspection reports with respect to the Site, environmental audits, reports and studies which concern the Site, and inspection reports from applicable regulatory authorities with respect to the Site, if any, shall be promptly delivered to Authority.

Developer acknowledges that Developer located and selected the Site without any assistance from (or involvement by) Authority; prior to the Effective Date, Developer has independently conducted all necessary and appropriate due diligence and determined that the condition of the Site and all improvements located thereon are suitable for the development and operation of the Project; and all such due diligence and Developer's investigations of the condition of the Site were conducted independently and not in consultation with Authority or Authority's officers, employees, agents, or consultants. Authority's reasonable approval of the environmental condition of the Site is a Condition Precedent, as set forth in Section 401.

As used in this Agreement, phrases regarding Developer's knowledge, including, without limitation, "to the best of its knowledge", "to the best of Developer's knowledge", to "Developer's best knowledge", "Developer knows", "it is not aware of", or "so far as is known to Developer", shall mean and refer to the actual knowledge of Laura Archuleta, John Okura, Belinda Lee, and Welton Smith, without duty of inquiry or investigation.

**302. Environmental Condition Prior to Loan Disbursements.** As set forth herein as a Condition Precedent to the disbursement of proceeds under the Additional Authority Loan or the HOME Loan, Developer shall evidence to Authority that it is prepared to take the steps necessary to undertake and complete, upon the conveyance of the Conforming Leasehold Interest in the Site to Developer, any necessary and recommended remediation of Hazardous Materials (which remediation has not been completed by UMC prior to the conveyance of a Conforming Leasehold Interest) in full conformity with all Environmental Laws.

**303. Developer's Obligation to Investigate and Remediate the Site after Loan Disbursement.** After the disbursement of all or any portion of the HOME Loan, the Additional Authority Loan or the City DA Fee Deferral Loan to or on behalf of Developer, and notwithstanding the obligation of Developer to indemnify each of City and Authority pursuant to Section 304 herein or any other obligations of Developer pursuant to this Agreement, Developer shall, at its sole cost and expense, promptly take all actions required by any federal, state or local governmental agency or political subdivision or any Environmental Laws with respect to the Site, which actions, requirements or necessity arise from the presence upon, about or beneath the Site of any Hazardous Materials or Hazardous Materials Contamination in violation of Environmental Laws regardless of when such Hazardous Materials or Hazardous Materials Contamination were introduced to the Site and regardless of who is responsible for introducing such Hazardous Materials or Hazardous Materials Contamination to the Site, or portion thereof ("Remediation"). Remediation shall include, but not be limited to, an initial investigation of the environmental condition of the Site, the preparation of any feasibility studies or reports and the performance of any cleanup, remediation, abatement, removal, or restoration work required. Developer shall take all actions necessary to restore promptly the Site to an environmentally sound condition for uses, ownership, and occupancy contemplated by this

Agreement, notwithstanding any lesser standard of remediation allowable under applicable Environmental Laws. Developer's obligations under this Section 303 shall survive the issuance of the Release of Construction Covenants but shall automatically terminate on the transfer of the Conforming Leasehold Interest as a result of any of the following: (i) trustee's sale, (ii) judicial foreclosure sale, (iii) deed in lieu of foreclosure, or Authority's exercise of its Right of First Offer (any of the foregoing, an "Involuntary Transfer").

**304. Environmental Indemnification.** Developer shall save, protect, pay for, defend (with counsel acceptable to Authority), indemnify and hold harmless the Indemnitees 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) (for purposes of this Section 300, *et seq.*, the foregoing shall be collectively referred to as "Liabilities") which may now or in the future be incurred or suffered by the Indemnitees by reason of, resulting from, in connection with, or arising in any manner whatsoever as a direct or indirect result of (i) the ownership or operation of all or any part of the Conforming Leasehold Interest or any other interest of Developer in the Site, (ii) any act or omission on the part of Developer, or its agents, employees, representatives, agents, contractors, occupants, or invitees, (iii) the presence on, under, or about, or the escape, seepage, leakage, spillage, discharge, emission or release from the Site of any Hazardous Materials or Hazardous Materials Contamination in violation of Environmental Laws, (iv) the environmental condition of the Site, and (v) any Liabilities incurred under any Environmental Laws relating to Hazardous Materials. Developer's obligations hereunder shall survive this Agreement and the issuance of the Release of Construction Covenants, and shall be a covenant running with the land in perpetuity, binding on all successors and assigns of Developer's interest in either this Agreement or any part of the Site. Developer may assign its obligations hereunder to an approved or permitted successor or assignee of Developer's interest in this Agreement or the Conforming Leasehold Interest and Developer's obligations hereunder shall automatically transfer to a transferee that acquires title to the Conforming Leasehold Interest as a result of an Involuntary Transfer, for those events or conditions related to the requirements in this Section that may occur subsequent to Developer's conveyance to such successor or assign, provided that Developer shall remain liable for all of its obligations hereunder to the extent related to events occurring prior to such assignment. Notwithstanding the foregoing, Developer shall not have any obligation to indemnify, defend or hold harmless the Indemnitees to the extent the Liabilities have arisen as a result of the negligence or willful misconduct of any of the Indemnitees. At the request of Developer, Authority shall cooperate with and assist Developer in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense; provided that Authority shall not be obligated to incur any expense in connection with such cooperation or assistance.

**305. Release of Authority by Developer.** Developer hereby waives, releases and discharges forever Authority, City and their respective employees, officers, agents and representatives, 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 Developer's Conforming Lease of the Site (and the Project), improvement and/or disposition of the Conforming Lease and the Project, any Hazardous Materials on the Site, or the existence of Hazardous Materials Contamination in any state on the Site, however they came to be located there.

**305.1 Civil Code 1542 Release.** Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code that provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

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

**Developer Initials:** \_\_\_\_\_

Notwithstanding the foregoing, the releases provided under Section 305 shall not be effective to the extent the presence or release of Hazardous Materials on the Site occurs as a result of the negligence or willful misconduct of any of the Indemnitees.

**306. Duty to Prevent Hazardous Material Contamination.** Upon the execution of this Agreement and after the Closing, Developer shall take such actions as may be necessary or prudent to prevent the release of any Hazardous Materials into the environment in, on, under, or about the Site in violation of Environmental Laws. Such precautions shall include reasonable means to prevent or discourage dumping or other releases of Hazardous Materials on the Site in violation of Environmental Laws by third parties and trespassers, including without limitation the erection of a fence surrounding the Site, if warranted. In the event any Remediation is required on the Site prior to the disbursement of any portion of the HOME Loan, the Additional Authority Loan or the City DA Fee Deferral Loan, such Remediation shall be conducted in accordance with this Section.

During Construction on the Site, Developer shall take all reasonably necessary precautions to prevent the release of any Hazardous Materials (with particular regard to any asbestos, or asbestos-containing materials, or lead-based paint or other lead containing products which are regulated by the HOME Program) into the environment or onto or under the Site in violation of Environmental Laws. Such precautions shall include compliance with all Environmental Laws with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with applicable Environmental Laws and then-prevailing industry standards as respects the disclosure, storage, use, abatement, removal and disposal of Hazardous Materials.

**307. Environmental Inquiries.** Developer shall notify each of City and Authority, and provide to each of City and Authority a copy or copies, of the following environmental permits, disclosures, applications, entitlements or inquiries relating to the Site: 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 Developer shall report to Authority, as soon as possible after each incident, all material information relating to or arising from such incident, including but not limited to, the following:



- (a) All required reports of releases of Hazardous Materials, including notices of any release of Hazardous Materials as required by any Governmental Requirement;
- (b) All notices of suspension of any permits;
- (c) All notices of violation from Federal, State or local environmental authorities;
- (d) All orders under the State Hazardous Waste Control Act and the State Hazardous Substance Account Act and corresponding federal statutes, concerning investigation, compliance schedules, clean up, or other remedial actions;
- (e) All orders under the Porter Cologne Act, including corrective action orders, cease and desist orders, and clean up and abatement orders;
- (f) Any notices of violation from OSHA or Cal OSHA concerning employees' exposure to Hazardous Materials;
- (g) All complaints and other pleadings filed against Developer and/or Authority relating to Developer's storage, use, transportation, handling or disposal of Hazardous Materials on the Site; and
- (h) Any and all other notices, citations, inquiries, orders, filings or any other reports containing information which would have a material adverse effect on the HOME Loan, the Site or Authority's liability or obligations.

In the event of a release of any Hazardous Materials into the environment, Developer shall, as soon as possible after the release, furnish to each of City and Authority a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of Authority or City, Developer shall furnish to Authority or, as applicable, City a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Site including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential.

**308. Definitions.** For the purposes of this Section 300, *et seq.*, the following terms shall have the meanings herein specified:

- (a) As used in this Agreement, the term "**Hazardous Material**" or "**Hazardous Materials**" shall mean and include 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," "acutely hazardous waste," "restricted hazardous waste," or "extremely 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 "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) asbestos and/or asbestos containing materials; (vii) lead-based paint or any lead based or lead products; (viii) polychlorinated biphenyls, (ix) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.* (42 U.S.C. Section 6903), (xi) Methyl-tert Butyl Ether; (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 *et seq.* (42 U.S.C. Section 9601); (xiii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any "Environmental Laws" (as defined in Paragraph (c) of this Section 308) either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as "hazardous" or harmful to the environment; and/or (xiv) lead based paint pursuant to and defined in the Lead-Based Paint Poisoning Prevention Act, Title X of the 1992 Housing and Community Development Act, 42 U.S.C. §4800, *et seq.*, specifically §§4821-4846, and the implementing regulations thereto. Notwithstanding the foregoing, "Hazardous Materials" shall not include such products in quantities as are customarily used in the construction, maintenance, rehabilitation, management, operation and residence of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the Project, including without limitation alcohol, aspirin, tobacco and saccharine.

(b) The term "**Hazardous Materials Contamination**" shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in or of the Site by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time (whether before or after the Effective Date) emanating from the Site.

(c) The term "**Environmental Laws**" as used in this Agreement shall mean all laws, ordinances and regulations relating to Hazardous Materials, including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401, *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, *et seq.*; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901, *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986), 42 U.S.C. Section 9601, *et seq.*; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601, *et seq.*; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, *et seq.*, the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Section 11001, *et seq.*; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801, *et seq.*; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f, *et seq.*; all comparable state and local laws, laws of other jurisdictions or orders and regulations; and 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 Site are located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over Authority, Developer, or the Site.

(d) The term "**Environmental Claim**" shall mean (i) any judicial or administrative enforcement actions, proceedings, claims, orders (including consent orders and decrees), directives, notices (including notices of inspection, notices of abatement, notices of noncompliance or violation and notices to comply), requests for information or investigation

instituted or threatened by any governmental authority pursuant to any Governmental Requirement; or, (ii) any suits, arbitrations, legal proceedings, actions or claims instituted, made or threatened that relate to any damage, contribution, cost recovery, compensation, loss or injury resulting from the release or threatened release (whether sudden or non-sudden or accidental or non-accidental) of, or exposure to, any Hazardous Materials, or the violation or alleged violation of any Governmental Requirement, or the general, manufacture, use, storage, transportation, treatment, or disposal of Hazardous Materials.

#### **400. LOAN DISBURSEMENTS; CONDITIONS PRECEDENT.**

##### **401. Conditions Precedent to HOME Loan, City DA Fee Deferral Loan, and Additional Authority Loan.**

**401.1 Conditions Precedent to Disbursement of HOME Loan Proceeds and Close of Escrow.** Except as to the Authority payment and deposit into Escrow of the HOME Loan Initial Advance Portion, Authority's obligation to disburse the remaining proceeds of the HOME Loan and the City's obligation to provide the fee deferral (and Authority's obligation to provide the Additional Authority Loan as provided in 401.2 below) are subject to the fulfillment by Developer or waiver by Authority (or City, as applicable) of each and all of the Conditions Precedent described in this Section 401.1 as to the HOME Loan and City DA Fee Deferral Loan (and Section 401.2 as to the Additional Authority Loan), which are solely for the benefit of Authority and City, and each of which, if it requires action by Developer, shall also be a covenant of Developer, and any of which may be waived by the Authority Director/City Manager in his sole and absolute discretion.

(a) **Outside Closing Date.** The close of Escrow for the acquisition of the Conforming Leasehold Interest and the initial disbursement each of the HOME Loan and the City DA Fee Deferral Loan shall have occurred on or before the Outside Closing Date and as set forth in the Schedule of Performance, unless modified in writing by Authority and Developer.

(b) **Project Documents.** Not later than one (1) day prior to the date set for the close of Escrow for Developer's acquisition of the Conforming Leasehold Interest and initial disbursement of the proceeds of any of the HOME Loan and the City DA Fee Deferral Loan, Developer shall have executed and delivered to the Escrow Holder, in recordable form where required, each of the Project Documents required hereunder in connection with the HOME Loan, the Additional Authority Loan, the City DA Fee Deferral Loan, and the acquisition of the Conforming Leasehold Interest and Construction of the Improvements on the Site by Developer.

(c) **Final Budget.** Developer shall have submitted to Authority for its approval an updated and final pro forma and detailed Final Budget for the acquisition of the Conforming Leasehold Interest, Construction and operation of the Project (consistent with the Scope of Development) as required by Section 209.2(a), and Authority Director shall have approved the Final Budget in his reasonable discretion. The use of HOME Loan proceeds shall be consistent with the approved Final Budget.

(d) **Lease/Rental Agreement.** Developer shall have submitted to Authority, and Authority shall have approved the standard form lease/rental agreement in conformance with the Regulatory Agreement for rental of the Housing Units to eligible tenants in accordance with the terms of this Agreement, which approval shall not be unreasonably withheld or delayed. Developer shall include certain terms in the standard form lease/rental agreement which

clearly describe the requirements of qualification and rental to 50% AMI Very Low Income Households, and 59% AMI Low Income Households including without limitation: (i) the obligation to provide complete and timely income verifications, as and when reasonably requested by Developer and/or Authority, but not less frequently than prior to initial occupancy and then annually during the term of tenancy, (ii) a description of the Affordable Rent for the 50% AMI Very Low Income Households, and 59% AMI Low Income Households as applicable, (iii) the rules and regulations for use, occupancy, and quiet enjoyment of the Housing Units and the Site, (iv) tenant protections relating to notices, eviction, and such other matters as required by the HOME Program, and (v) such other terms as Developer and/or Authority deem reasonably necessary. In the event Developer desires to use a different form lease/rental agreement for the HOME Units than for the remaining non-HOME Units, Developer shall submit both proposed form lease/rental agreements to Authority for Authority's approval of each such document, which approval shall not be unreasonably withheld or delayed.

(e) **Evidence of Financing.** Developer shall have provided written proof reasonably acceptable to Authority that Developer has obtained a commitment for equity contributions, affordable housing subsidies and loans, subject to customary conditions, for construction and permanent financing of the Project, and Authority shall have reasonably approved such financing commitments pursuant to Section 209.3.

(i) Certificate of Limited Partnership; Partnership Agreement. In addition as a part of the evidence of financing, a Partnership Agreement in form and content reasonably acceptable to Authority (and Authority's legal counsel and economic advisor) in accordance with this Agreement shall have been executed and a Certificate of Limited Partnership shall have been filed with the California Secretary of State, under which Developer's limited partners are committed (subject to conditions set forth in the Partnership Agreement) to make equity contributions in an amount which together with the proceeds of the Primary Loan, the Additional Authority Loan Amount, the City DA Fee Deferral Loan, Tax Credit Equity, the HOME Loan, and any additional affordable housing subsidies and loans, is sufficient to finance the Project. In addition, Developer shall have certified in writing to Authority that the HOME Loan, together with the Primary Loan, Tax Credit Equity, the Additional Authority Loan, the City DA Fee Deferral Loan and other affordable housing subsidies and required equity contributions, are together projected to be sufficient to pay for the acquisition of the Conforming Leasehold Interest and Construction of the Improvements through completion of the Project.

(f) **Readiness for Concurrent Closing of the Bonds.** Developer shall evidence to Authority the satisfaction of all conditions precedent and readiness to close the Bonds to be issued by California Municipal Financing Authority (CMFA).

(g) **Insurance.** Authority shall have received evidence that all of the insurance policies, certificates, and endorsements required by this Agreement have been duly obtained and such insurance policies, certificates and endorsements are and remain in full force and effect.

(h) **Title to Site.** Developer shall, as of the close of Escrow, have an insurable leasehold interest under the Conforming Lease to the Site and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than the financing approved by Authority pursuant to Sections 401.5 and 209.3 and liens for current real property taxes and assessments not yet due and payable, and any other matters approved

in writing by the Authority. Authority shall have no obligation to make the HOME Loan or the Additional Authority Loan and the City shall have no obligation to make the City DA Fee Deferral Loan to or for the benefit of Developer unless and until title to the Site conforms to this Section 401.7 and is reasonably acceptable to Authority.

(i) Preliminary Report. Within five (5) days of the Effective Date, Developer shall submit to Authority a true copy of an up to date (not older than thirty (30) days) preliminary report issued by the Title Company and shall include and attach thereto legible copies of back-up documents for each of the title exceptions set forth in said preliminary report. Developer acknowledges that Authority must be reasonably satisfied concerning the exceptions to title. All monetary encumbrances and exceptions to title are hereby objected to by Authority, and Developer is on notice to cause the title company to remove such monetary exceptions (other than liens for current real property taxes and assessments not yet due and payable.)

(ii) Condition of Title; Preapproved Exceptions. Authority shall be reasonably satisfied that upon the close of Escrow Developer shall have an insurable leasehold interest under the Conforming Lease to the Site and there will exist on title or on the Conforming Leasehold Interest or with respect thereto no mortgage, lien, pledge, encroachment, exception, or other encumbrance of any character whatsoever, EXCEPT the following:

(A) liens for current real property taxes and assessments not yet due, payable or ascertainable;

(B) the deed of trust for the Primary Loan approved by Authority, subject to Authority's right to review and approve such document, which approval shall not be unreasonably withheld or delayed;

(C) subordination agreement(s), subject to Authority's right to review and approve such document(s), which approval shall not be unreasonably withheld or delayed;

(D) any other matters approved in writing by Authority.

(i) **Title Insurance.** Authority shall have received (or Title Company shall be ready to issue) one or more 2006 ALTA lender's policies of title insurance excluding any survey or arbitration exceptions, or one or more pro forma policies and evidence of a commitment therefor, reasonably satisfactory to Authority Director ("Authority Title Policies") relating to the HOME Loan and the Additional Authority Loan. Such Authority Title Policies shall have a liability limit of not less than the full amount of the Additional Authority Loan or the HOME Loan, as applicable, and shall insure Authority's respective interests under each of the Additional Authority Loan Deed of Trust and the HOME Loan Deed of Trust as a valid lien or charge upon the Site with the priority required by this Agreement. The Authority Title Policies shall include mechanics' lien coverage and such other endorsements as Authority may reasonably require, and except as provided above in Section 401.7, the Authority Title Policy shall contain only such exceptions from coverage as shall have been approved in writing by Authority Director. A similar title policy ("City Title Policy") shall be provided to City at Developer's cost insuring City's interest under the City DA Fee Deferral Loan Deed of Trust.

(j) **Recordation.** At the close of Escrow, the Escrow Holder shall be prepared to record the Additional Authority Loan Deed of Trust, the HOME Loan Deed of Trust, the City DA Fee Deferral Loan Deed of Trust, the Regulatory Agreement, the Request for Notice, and any other documents required to be recorded against the Site pursuant to the terms of this Agreement and the Project Documents.

(k) **Environmental Compliance.** All Governmental Requirements including all Environmental Laws applicable to the Project, including without limitation, the National Environmental Policy Act of 1969, Public Law 91-190 as amended, 42 U.S.C. Sections 4321-4347, and §§92.352, 92.355 of the HOME Regulations, shall have been satisfied if and to the extent such satisfaction is required prior to disbursement of HOME Loan proceeds. Authority shall have conducted its environmental review in accordance with 24 CFR Part 58 before any HOME funds are released to Developer.

(l) **Environmental Condition.** The environmental condition of the Site shall be reasonably acceptable to Authority, as determined by Authority Director and Authority legal counsel in their reasonable discretion.

(m) **Appraisal; Approval of Conforming Lease; Ground Rent.** Prior to the Effective Date, Developer has submitted to Authority a true and correct copy of an appraisal dated as of March 5, 2015 by Lea and Associates, regarding the fair market value of the Site demonstrating to the reasonable satisfaction of Authority and its economic consultant that the valuation of the Site, including the Conforming Leasehold Interest and total ground lease rent to be paid by Developer to UMC for the Site is justified.

(n) **Relocation.** Authority shall be reasonably satisfied that the Relocation, if any is required, will be conducted in compliance with all applicable Relocation Laws, and this Agreement, and Developer and the Project shall be in compliance with all Relocation obligations pursuant to this Agreement and the Relocation Laws.

(o) **Management Plan; Property Manager.** Developer shall have submitted to Authority, and Authority shall have approved, which approval shall not be unreasonably withheld or delayed, the Management Plan for the Project. Developer shall identify the Property Manager and provide relevant background information and evidence of its experience as a professional property manager for High Quality affordable residential projects in Orange County comparable to the Project, as required by Section 1209.1.

(p) **Approval of Development Plans and Product Specifications.** Authority shall have approved the Development Plans for the Project prepared and submitted by Developer as being in substantial conformity with the Scope of Development, this Agreement, and the Municipal Code, all as set forth in more detail in Section 802, and detailed product specifications shall have been approved by the City and Authority as described in the Scope of Development, Attachment No. 5 hereto.

(q) **Construction Security.** Developer shall have submitted to Authority a fully-executed Completion Guaranty in substantially the form attached hereto as Attachment No. 12.

(r) **Building Permits.** Developer shall have delivered to Authority a list of all Building Permits to be obtained, if any, and Developer shall have received all of such Building Permits or shall be eligible to receive such Building Permits subject only to payment (or waiver) of the fees required to obtain such Building Permits for the Construction.

(i) To the extent any decision relating to such permits is a discretionary decision of the Authority or any of its commission(s), administrator(s), or employee(s), then this Agreement in no respect does, or shall be construed to, pre-approve any discretionary decision relating to any Building Permit or other approval necessary to commence and complete the Construction.

(s) **[reserved].**

(t) **Escrow Expenses.** Developer shall have paid, or caused the payment of, all costs, fees, and expenses of the Escrow (other than Authority's deposit of the HOME Loan proceeds), including all costs or fees in connection with the acquisition of the Conforming Leasehold Interest, Escrow fees, title insurance costs, documentary transfer taxes, or recording fees.

(u) **Corporate Resolution.** Developer shall deliver to Authority certified copies of Developer Resolutions of the Developer entity's respective boards of directors (JHC and UMC, respectively) specifically authorizing (or ratifying) the execution of this Agreement, the HOME Loan Note, the HOME Loan Deed of Trust, the Security Agreement, the Additional Authority Loan Note, the Additional Authority Loan Deed of Trust, the City DA Fee Deferral Loan Note, the City DA Fee Deferral Loan Deed of Trust, the Regulatory Agreement, and all implementing Project Documents and identifying the individual(s) with authority to enter into non-material implementation agreements and/or amendments to this Agreement and make ongoing decisions relating to the acquisition of a Conforming Leasehold Interest in the Site, and the Construction of the Improvements, and operation of the Project.

(v) **Representations and Warranties.** The representations and warranties of Developer contained in this Agreement shall be correct in all material respects as of the initial disbursement and issuance of each of the HOME Loan and the City DA Fee Deferral Loan as though made on and as of those dates, and Authority Director shall have received a certificate to that effect signed by an officer of Developer addressed to each of Authority and City.

(w) **No Default.** No Default by Developer shall have occurred, and no event shall have occurred which, with the giving of notice or the passage of time or both, would constitute a Default by Developer, and Authority Director shall have received a certificate to that effect signed by an officer of Developer.

**401.2 Conditions Precedent to Disbursement of Additional Authority Loan.** Authority's obligation to disburse the Additional Authority Loan proceeds is subject to the fulfillment by Developer or waiver by Authority of each and all of the Conditions Precedent described in this Section 401.2, which are solely for the benefit of Authority, and each of which, if it requires action by Developer, shall also be a covenant of Developer, and any of which may be waived by the Authority Director in his sole and absolute discretion.

(a) **Cooperation and Loan Agreement.** To address the contingency that the Authority's LMIHAF does not have adequate funds on account to disburse the full amount of the

Additional Authority Loan at a date that is estimated by Developer to be 45 days prior to completion of Construction of the Improvements and readiness to cause the Conversion, the City and Authority shall enter into a cooperation and loan agreement for the City to advance to the Authority to fund the gap between monies on account in the LMIHAF and the full amount of the Additional Authority Loan. By action of the City Council and Authority board at an open, public meeting on March 10, 2015, the Interim City Manager and Interim Authority Director (or his successor(s)) is/are authorized to enter into such cooperation and loan agreement in a form approved by the City Attorney and Authority counsel.

(i) *SERAF Source of Funding.* In this regard, the intended and primary source of funds for the Additional Authority Loan as negotiated between Authority and Developer in connection with the Preliminary Award Letter, are from monies allocated to and available to the Authority through the Successor Agency pursuant to the Dissolution Law, in particular Section 34191.4(b)(2)(B) as part of the repayment of funds borrowed from the former Low to Moderate Income Housing Fund by the now dissolved Former Agency, which borrowing occurred to pay the Former Agency's obligation to make SERAF payments. The SERAF repayments are authorized by the Dissolution Law and are to be repaid over a series of years through the Recognized Obligation Payment Schedule ("ROPS") and Redevelopment Property Tax Trust Fund ("RPTTF") process subject to the requirements of the Dissolution Law. Developer acknowledges and agrees that this source of funding from the LMIHAF will be available only when SERAF repayments are received by the Successor Agency and transferred to and deposited with the Authority subject and pursuant to the Dissolution Law. Developer acknowledges that it has received and reviewed a preliminary estimate of timing and amounts of SERAF repayments to the Successor Agency prepared by an independent property tax consultant to Garden Grove that project approximately \$600,000 to be received between July 1 to December 31, 2016 applicable to the 2016-2017 fiscal year; and the balance of non-SERAF repayment funds (estimated at about \$1,000,000) will be paid from the Authority's general funds on account or made available through the cooperation and loan agreement described above in this subsection (a); provided however, none of the funding for the Additional Authority Loan shall include any monies sourced from federal programs or projects, such as CDBG, federal program income, etc., because the HOME Program for the HOME Loan will be directed to eleven (11) of the 47-units in the Project and will remain the sole federal funds loaned by Authority to Developer under this Agreement.

(b) **Developer Completion of Construction of Project.** Developer shall have completed Construction of the Project as evidenced by the issuance of the final certificate of occupancy by the City's Building Official for all of the Improvements at the Site.

(c) **Developer and Lender Readiness for Conversion of Primary Loan.** The Developer, the Tax Credit Investor, and the Primary Lender for the Primary Loan shall have met all their conditions precedent to Conversion of the Primary Loan from a construction loan to a permanent loan, which shall be evidenced by written certifications issued by duly authorized officers, partners, or members of the Developer, Tax Credit Investor and Lender.

(d) **HOME Loan Conditions Precedent Remain Satisfied.** Developer shall remain in compliance all Conditions Precedent set forth in Section 401.1 that were satisfied in connection with disbursement of the HOME Loan.

(e) **Representations and Warranties.** The representations and warranties of Developer contained in this Agreement, and those made as of the prior disbursement of



the HOME Loan and City DA Fee Deferral Loan shall remain correct, as well as the representations and warranties of Developer in this Agreement shall continue to be correct as a condition to disbursement of the Additional Authority Loan proceeds as though made on and as of the date of readiness for disbursement, and the Authority Director shall have received an updated certificate to that effect signed by the Developer.

(f) **No Default.** No Event of Default by Developer shall have occurred, and no event shall have occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Developer

All Conditions Precedent set forth in this Section 401, *et seq.*, to the disbursement of each of the (1) HOME Loan and (2) the deferral authorized by the City DA Fee Deferral Loan (both (1) and (2) to occur at Closing), and (3) the Additional Authority Loan (to occur upon the *later* of (a) completion of Construction and readiness for Conversion of the Primary Loan, or (b) December 31, 2016), are conditions to Authority's or City's (as applicable) obligations hereunder, are for Authority's and City's (as applicable) benefit only and the Authority Director and City Manager, as applicable, may waive all or any part of such rights by written notice to Developer. If Authority Director shall, within the applicable periods set forth herein, disapprove of any of the items which are subject to Authority's approval (and such items are not cured by Developer within applicable time frames), or if any of the conditions set forth in this Agreement are not met within the times called for, Authority may thereafter terminate this Agreement without any further liability on the part of Authority by giving written notice of termination to Developer. Escrow Holder shall thereupon, without further consent from Developer, return to each party the documents and funds deposited by them as to the Site.

City's obligations to Developer under this Agreement are limited to the making of the City DA Fee Deferral Loan as provided herein.

**402. Conditions Precedent to Developer's Commencement of the Construction.** Commencement of construction of any portion of the Project shall only occur upon satisfaction by Developer or waiver by the Authority Director of the following Conditions Precedent, each of which, if it requires action by Developer, shall also be a covenant of Developer:

**402.1 Conditions Precedent to Close of Escrow.** All Conditions Precedent to the Close of Escrow set forth in Section 401 shall remain satisfied and Developer shall be in continued compliance with all covenants contained in Section 401.

**402.2 Building Permits.** Developer shall have obtained all Building Permits and other permits required for the Construction, and shall have provided true, correct and complete copies of all such Building Permits to Authority.

**402.3 Pre-Construction Meeting of Contractor, Authority Representative(s) and Developer.** Developer shall have attended pre-construction meeting(s) or conference(s) as arranged by Authority among Contractor, Developer, and Authority staff (and Authority's construction management consultant, if applicable) relating to the commencement of the Construction, compliance with the Section 3 Clause (as required and hereinbefore described), and other issues related to undertaking and completing the Improvements in conformity with this Agreement and all applicable local, state, and federal laws.

**402.4 Insurance.** Authority shall have received confirmation, satisfactory to Authority Director or his risk management designee(s), that all of the insurance policies required herein remain in full force and effect.

**402.5 Representations and Warranties.** The representations and warranties of Developer contained in this Agreement shall be correct in all material respects as of the commencement of the Construction as though made on and as of that date, and Authority Director shall have received a certificate to that effect signed by an authorized officer of Developer.

**402.6 No Default.** No Default by Developer shall have occurred, and no event shall have occurred which, with the giving of notice or the passage of time or both, would constitute a Default by Developer, and Authority Director shall have received a certificate to that effect signed by an officer of Developer.

## **500. COST SAVINGS OBLIGATION.**

**501. Cost Savings Obligation.** Developer hereby agrees to provide and pay to the City a payment described under Section 501.1 below in connection with Cost Savings, if any, from the Project in an amount to be determined based on the "Audit" (as defined in Section 501.1, below) to be conducted upon completion of construction for the Project. Payment of the Authority Share of Cost Savings is to be made at the time set forth therefore in Section 501.1, below. Provided that the payment is timely and fully made in accordance with Section 501.1, the amount paid as the Authority Share of Cost Savings shall be credited against the amount then outstanding under the Additional Authority Loan Note.

**501.1 Audit to Determine Cost Savings and Authority Share of Cost Savings.** The actual amount of "Cost Savings" (as defined below) to be paid to the City shall be determined after the Audit, as hereafter defined and described, and the amount of such Cost Savings shall be equal to the amount by which the total sources of permanent financing for the Project exceed the costs of development incurred for the Project (with the resulting amount constituting the "Cost Savings"); the Developer shall pay to City an amount equal to sixty percent (60%) of the Cost Savings (which resulting amount shall constitute the "Authority Share of Cost Savings"). Within sixty (60) days following the Conversion of the Project, Developer shall cause its certified public accountant(s) to perform a final audit of the costs of development of the Project in accordance with the requirements of the Tax Credits and GAAP and generally accepted auditing standards (herein, referred to as "Audit"). If the Audit determines that the total sources of permanent financing for the Project (including long-term permanent debt and equity) exceed the total development cost for the Project (including, without limitation, all hard and soft costs and all on-site and off-site improvements required in connection with the development of the Project, including the Deferred Developer Fee), such excess shall be considered the "Cost Savings" for the Project.

**501.2 Payment of Authority Share of Cost Savings as Payment of Principal on Additional Authority Loan Note.** The Authority Share of Cost Savings, once determined by the Audit pursuant to Section 501.1, shall be due and paid by Developer and allocated and credited as a principal payment on the Additional Authority Loan Note, as and when paid.

**501.3 Timing of Payment of Authority Share of Cost Savings.** The Authority Share of Cost Savings shall become due and payable by Developer to the City after receipt by Developer of the final Tax Credit equity and completion of construction, but not later than sixty (60)

days after Developer receives its final Tax Credit equity payment for the Project, and such Authority Share of Cost Savings shall be paid in a lump sum as a principal payment toward the amount outstanding under the Additional Authority Loan Note.

## **600. RELOCATION.**

**601. Developer Responsible for Cost of Relocation.** Developer acknowledges that tenants and occupants, if any, that may occupy the Site, if displaced, may be eligible for advisory assistance, monetary payments, and other benefits under the Relocation Laws. Developer shall be fully responsible for administering Relocation, if any is required, including determinations of eligibility, extent of advisory assistance, and scope and amount of benefits and monetary payments pursuant to the applicable Relocation Laws, subject to review by Authority Director. Developer shall cause to be provided and shall pay any and all Relocation assistance and benefits, if any due, in accordance with Relocation Laws and in a manner and in amounts expressly approved by Authority Director to each eligible displaced person or business that is required to vacate the Site as a result of implementation of the Project or this Agreement. Authority Director's approval rights in the preceding sentence shall be limited solely to determining compliance with Relocation Laws. Developer is and shall remain solely responsible to pay all out-of-pocket costs for direct payments to eligible person(s), household(s) and business(es) for Relocation assistance and benefits due and paid and for any other costs incurred related to Relocation, including a Relocation consultant, and any and all costs or fees incurred pursuant to Section 602 below.

**602. Indemnification by Developer Relating to Relocation.** Developer hereby covenants and agrees to indemnify, save, protect, hold harmless, pay for, and defend the Indemnitees 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' and attorneys' fees, or relocation benefits claimed or payable under the Relocation Laws (for purposes of this Section 602, the foregoing shall be referred to as "Liabilities") which may now or in the future be incurred or suffered by Indemnitees by reason of, or resulting, in full or in part, or in any respect whatsoever from the Relocation of residents of the Site pursuant to or resulting from the implementation of this Agreement. At the request of Developer, Authority shall cooperate with and assist Developer in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense; provided that Authority shall not be obligated to incur any expense in connection with such cooperation or assistance.

**602.1 Release.** Developer, on behalf of itself and its Affiliates, and any and all successors and assigns hereby fully and finally releases the Indemnitees from any and all manner of actions, causes of action, suits, obligations, liabilities, judgments, executions, debts, claims and demands of every kind and nature whatsoever, known and unknown, which Developer and any of its affiliates, successors or assigns may now have or hereafter obtain against the Indemnitees by reason of, arising out of, relating to, or resulting from in full or in part, the election of Developer to proceed with the Project pursuant to this Agreement except to the extent arising out of the negligence or willful misconduct of any of the Indemnitees or a breach by Authority of any representation, warranty or covenant contained in this Agreement or any of the other Project Documents (collectively, "Claims"), which release shall include but not be limited to any Claims for Relocation assistance or benefits under federal, state, local, or any other applicable laws or Governmental Requirements. The parties agree that, with respect to the release of Claims as set forth above, all

rights under Section 1542 of the California Civil Code and any similar law of any state or territory of the United States are expressly waived. Section 1542 reads as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

**Developer Initials:** \_\_\_\_\_

## **700. DEVELOPER'S GENERAL REPRESENTATIONS AND WARRANTIES.**

**701. Developer Representations, Warranties and Covenants.** As a material inducement to Authority to enter into this Agreement, Developer represents and warrants to Authority:

### **701.1 Formation, Qualification and Compliance.**

(a) Developer is a California limited partnership whose managing general partner is JHC-Garden Grove LLC.

(b) JHC has been certified as a CHDO by the City. Developer shall ensure that JHC or other entities that may exert management or control over the Developer shall at all times constitute certified CHDO corporations in accordance with the HOME Regulations continuously throughout the entire HOME Compliance Period, as necessary to ensure the Project is continuously "sponsored," "developed," or "owned" by a CHDO within the meaning of Section 92.300(a) of the HOME Regulations during the entire HOME Compliance Period.

(c) Developer has all required authority to conduct its business and acquire, own, purchase, lease, improve and sell its property.

(d) To the best of Developer's knowledge, Developer is in compliance in all material respects with all laws applicable to its business and has obtained all approvals, licenses, exemptions and other authorizations from, and has accomplished all filings, registrations and qualifications with any governmental agency that are necessary for the transaction of its business;

(e) Developer has and will in the future duly authorize, execute and deliver this Agreement and any and all other agreements and documents required to be executed and delivered by Developer in order to carry out, give effect to, and consummate the transactions contemplated by this Agreement;

(f) To the best of Developer's knowledge, Developer does not have any material contingent obligations or any material contractual agreements which could materially adversely affect the ability of Developer to carry out its obligations hereunder;

(g) There are no material pending or, so far as is known to Developer, threatened, legal proceedings to which Developer is or may be made a party or to which any of its property is or may become subject, which have not been fully disclosed in the material submitted to

Authority which could materially adversely affect the ability of Developer to carry out its obligations hereunder;

(h) There is no action or proceeding pending or, to Developer's best knowledge, threatened, looking toward the dissolution or liquidation of Developer and there is no action or proceeding pending or, to Developer's best knowledge, threatened by or against Developer which could affect the validity and enforceability of the terms of this Agreement, or materially and adversely affect the ability of Developer to carry out its obligations hereunder.

Each of the foregoing items (a) to (h), inclusive in this Section 701.1, shall be deemed to be an ongoing representation and warranty until the Closing. Developer shall advise Authority in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items (a) to (h), inclusive. After the Closing and throughout the Affordability Period, Developer shall have an ongoing obligation to promptly (but in no event later than thirty (30) days) inform Authority in the event any of the foregoing representations and warranties (a) through (h) becomes materially untrue.

**701.2 Execution and Performance of Project Documents.** Developer has all required authority to execute and perform all obligations under the Project Documents. The execution and delivery by Developer of, and the performance by Developer of its obligations under, each Project Document have been authorized by all necessary action and do not and will not violate any provision of, or require any consent or approval not heretofore obtained under, any articles of incorporation, by-laws or other governing document applicable to Developer.

**701.3 Option Agreement for Ground Lease of the Site between UMC and Developer; Conforming Lease.** JHC-Acquisitions LLC ("JHC-Acquisitions") and UMC have entered into a valid and binding option to ground lease the Site, dated as of November 20, 2014 ("Option Agreement") pursuant to which UMC will ground lease to JHC-Acquisitions the Site pursuant to a Conforming Lease. To the knowledge of Developer, the Option Agreement is in full force and effect, and there are no defaults thereunder, and to its knowledge, no events have occurred that would become a default thereunder upon the giving of notice or the passage of time or both. Developer represents to Authority that under such Option Agreement, JHC-Acquisitions (and its Affiliates, including Developer) has until the Outside Closing Date to close Escrow and acquire the Conforming Leasehold Interest in the Site for the Project.

**701.4 Leveraging Review.** Developer acknowledges that the Project will be funded, in part, from monies from the City/Authority's HOME Funds, additional moneys of the Authority for the Additional Authority Loan and funds of the City as to the City DA Fee Deferral Loan. In this regard, Developer acknowledges, represents, and warrants to each of the Authority and the City that Developer has no other reasonable means of private or commercial financing to cause and complete acquisition of the Conforming Leasehold Interest and undertake completion of Construction of the Project.

**701.5 No Material Adverse Change.** Developer hereby represents and warrants, as of the Effective Date, that all documents, materials and information provided by Developer to Authority relating to Developer's qualifications, financial strength, and ability to perform its obligations hereunder are true, correct and complete in all material respects as of their respective dates and no Material Adverse Change has occurred or is reasonably likely to occur that would make

any such documents, materials or information incorrect, incomplete, or misleading in any material respect.

(a) Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 701, *et seq.*, not to be true in all material respects as of Closing, immediately give written notice of such fact or condition to the Authority. Such exception(s) to a representation shall not be deemed a Default by the Developer hereunder, but shall constitute an exception which the Authority shall have a right to approve or disapprove if Authority, in its sole discretion, determines that such exception would have an effect on the value of the Project or Developer's ability to perform Developer's obligations under this Agreement and the Project Documents. If Authority, acting in its sole discretion, elects to close the Escrow following disclosure of such information, Developer's representations and warranties contained in this Section 701, *et seq.*, shall be deemed to have been made as of the Closing, subject to such exception(s). If, following the disclosure of such information, Authority elects, acting in its sole discretion, to not close the Escrow, then Authority shall give notice to the Developer of such election within ten (10) days after disclosure of such information and this Agreement and the Escrow shall thereafter automatically terminate and neither party shall have any further rights, obligations or liabilities hereunder.

(b) The representations and warranties set forth in this Section 701, *et seq.*, subject to such exception(s), shall survive the Closing. During the entire Affordability Period, within five (5) business days following a written request from Authority or City, Developer shall either re-affirm in writing the material truth and accuracy of the representations and warranties set forth in this Section 701, *et seq.*, or identify any material inaccuracies of such representations and warranties. The fact that a representation or warranty contained in this Section 701, *et seq.*, has become inaccurate or misleading shall not, in and of itself, constitute a breach under this Agreement or the Project Documents; however, (i) failure to notify Authority of material inaccuracies in these representations and warranties within ten (10) business days of Authority's request for such information, and (ii) any overt material misrepresentation by Developer relating to such representations and warranties shall each constitute a Default under this Agreement, subject to delivery of notice and expiration of the cure rights provided in this Agreement.

(c) During the entire Affordability Period, the Developer shall have the ongoing obligation to promptly (but in no event later than five (5) business days following a Material Adverse Change) inform Authority (in writing) of the occurrence of any Material Adverse Change.

## **800. DEVELOPMENT OF THE SITE**

**801. Developer's Obligations.** Subject to the terms of this Agreement, Developer agrees to construct and develop or cause Construction and development through completion of the Project, including all on-site and off-site improvements required to be constructed in accordance with the Scope of Development and in compliance with the land use entitlement approved for the Project by the City and all applicable local codes, development standards, ordinances and zoning ordinances, other applicable Governmental Requirements, and the Development Plans which are approved by the City and Authority pursuant to Section 802 hereof.

**801.1 Scope of Development.** The "Project" shall include forty-seven (47) Housing Units (twenty (20) of which shall be one bedroom Housing Units, twelve (12) of which shall be two bedroom Housing Units (with one of the 2-bdrm units being the on-Site manager's unit) and

fifteen (15) of which shall be three bedroom Housing Units) developed in three stories of wood-framed construction with 38 garage spaces, 9 carports and 30 surface parking spaces. The building includes two elevators, a leasing office, a community center, manager's office, a common laundry room and trash chutes. All apartment units are on an accessible route and are handicap adaptable, and five (5) Senior Citizen Housing Units meet Uniform Federal Accessibility Standards (UFAS) requirements. The exterior design reflects a craftsman style with a combination of siding, stucco, brick, and wood with a composition shingle roof. The Project (including the off-site improvements anticipated to be required in connection with the Project) is described in more detail in the Scope of Development. A certain number of the Housing Units shall meet UFAS requirements as more fully detailed in the Scope of Development.

**801.2 Off-Site Improvements.** Developer shall complete all off-site improvements required by the City as condition(s) of approval included in the land use entitlement for the Project at no cost to Authority (or to City).

**802. Design Review of Development Plans.**

**802.1 Basic Concept Drawings.** Developer has submitted and Authority has approved basic concept drawings for the Project and all appurtenant improvements, including materials, color board, elevations of all four sides of the Project, preliminary landscape plans (both hardscape and softscape and other amenities of common areas) consistent with the City of Garden Grove Residential Design Guidelines for Affordable Housing Developments, a traffic and circulation plan as applicable or as may be required, and a rendered perspective, and all appurtenant improvements (collectively, "Basic Concept Drawings"). In the event Developer wishes to in any way alter or modify such approved Basic Concept Drawings, Developer shall re-submit such modified Basic Concept Drawings to both Authority and City for their reasonable review and approval of such modifications.

**802.2 Design Development Drawings.** Developer has submitted and Authority has approved the plans and drawings with respect to the Project ("Design Development Drawings") consistent with the City of Garden Grove Residential Design Guidelines for Affordable Housing Developments, including each of the following:

(a) A fully dimensioned Site Plan which complies with the City's land use entitlement and site plan submittal process for review by the City (through City's Planning Director, administrative approval of the land use entitlement, or as applicable, the Planning Commission or City Council approval of same all pursuant to applicable local, state and federal laws and regulations), which includes a landscape plan, with hardscape and softscape plans, sections and elevations, including lighting, equipment, furnishings and planting schedules, materials, and color board for all such improvements.

(b) Floor plans.

(c) Roof plans.

(d) Elevations and project sections.

(e) Tabulation of areas/uses.

- (f) Elevations of major public spaces.
- (g) Parking areas, both for tenants and guests.

In the event Developer wishes to in any way alter or modify the approved Design Development Drawings, Developer shall re-submit such modified Design Development Drawings, including provision for each of the above elements set forth in subsections (a) through (g) above, to both Authority Director and City for their reasonable review and approval of such modifications.

**802.3 Construction Drawings and Related Documents.** Developer has submitted and Authority has approved detailed construction plans/working drawings with respect to the Project, prepared by the architect for the Project, including without limitation a grading plan, which shall have been prepared by a registered civil engineer, and the components described in (a) through (b) below (together, "Construction Drawings").

(a) Common area amenities, including all recreational or leisure areas or improvements.

(b) Lighting schedules including a photo illumination plan, to determine if there is adequate lighting within the Project and along the access road, with samples or manufacturer's literature for exterior lighting. Lighting locations are to be shown on landscape plans and elevations.

**802.4 Standards for Disapproval.** Authority Director shall have the right to disapprove in his reasonable discretion any material revisions to the Basic Concept Drawings, Design Development Drawings or Construction Drawings. Authority review and subsequent approval or disapproval shall be conducted within the time periods set forth in the Schedule of Performance, and an Authority disapproval, if any, shall include a written statement of the reasons for such disapproval. Developer, upon receipt of any such disapproval, shall revise and resubmit the disapproved Basic Concept Drawings, Design Development Drawings, or Construction Drawings, as the case may be, by the time established therefor in the Schedule of Performance; provided, however, in no event shall any such drawings or plans be deemed approved.

Developer acknowledges and agrees that Authority is entitled to approve or disapprove material revisions to the Basic Concept Drawings, Design Development Drawings and Construction Drawings (collectively, "Development Plans") in order to satisfy Authority's obligation to promote the sound development and redevelopment of the Site, to promote a high level of design which will impact the surrounding development, and to provide an environment for the social, economic and psychological growth and well-being of the citizens of the City and all residents of the Project.

**802.5 Consultation and Coordination.** During the preparation of the Development Plans and throughout construction of the Project, Authority staff and authorized representatives of Developer shall hold joint progress meetings with City staff to coordinate the preparation of, submission to, and review of the Development Plans by Authority Director and City. Authority staff and authorized Developer representatives shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any documents to Authority and/or City can receive prompt and thorough consideration. Authority shall designate an Authority staff



member to serve as the project manager for the Project, who shall be responsible for the coordination of Authority's activities under this Agreement and for coordinating the permitting process.

**802.6 Revisions and Change Orders.** In the event Authority disapproves or conditionally approves the Development Plans, or any part(s) thereof, or if Developer desires to propose any substantial revisions to the approved Development Plans, or any part(s) thereof, Developer shall submit its revisions or proposed changes thereto to Authority Director and City, and shall also proceed in accordance with any and all Governmental Requirements regarding such revisions, within the time frame set forth in the Schedule of Performance for the resubmittal of such Development Plans, or any part(s) thereof. Any revision or change to such Development Plans proposed by Developer may be disapproved by Authority through its Authority Director in his reasonable discretion pursuant to subdivision (a) below. Any and all change orders or revisions required by the City and its inspectors that are required under the Municipal Code and any other applicable Uniform Codes (e.g. Building, Plumbing, Fire, Electrical, etc.) and under other Governmental Requirements shall be included by Developer in its Development Plans and completed during the construction of the Project. In the event Developer requests revisions, alterations, or modifications to the Development Plans, or any part(s) thereof, for any reason including increased construction costs because of unforeseen occurrences or conditions relating to the construction of the Project, any revisions, alterations, or modifications shall be subject to the approval of Authority in its reasonable discretion (and the City's Planning/Building Department in its discretion) pursuant to subdivision (a) below. Developer shall be required to pay any and all increased costs of construction due to any such revisions, alterations, or modifications of the Development Plans, or any part(s) thereof.

(a) **Approval of Change Orders.** Developer shall not be required to obtain Authority Director approval of any change orders or other revisions or modifications to the Construction Drawings, so long as each change order, revision, or modification is consistent with the approved Design Development Drawings, does not cause any value engineering not previously authorized by Authority and does not materially affect the design, materials, and architectural quality and integrity of the Project (any such change order, revision or modification is referred to herein as an "Exempt Change Order"). Notwithstanding the immediately preceding sentence, Developer shall be required to obtain Authority Director approval, which approval shall not be unreasonably withheld or delayed, to the extent any change order, revision, or modification (i) is inconsistent with the approved Design Development Drawings, causes any value engineering not previously approved by Authority, or materially changes the design, materials or architectural quality and integrity of the Project, or (ii) will result in a cost adjustment which, cumulatively with all other change orders, revisions, and modifications, exceeds the amount set forth as the contingency line item in the approved Final Budget for the Project (any such change order, revision or modification is referred to herein as a "Non-Exempt Change Order"). Notwithstanding the immediately preceding sentence, Authority shall have the right to review all requested change orders and construction loan draws in accordance with Section 802.10. Further, the determination of whether any proposed change order constitutes an Exempt Change Order or a Non-Exempt Change Order shall be made jointly by the Authority and the Developer, each in their reasonable discretion, and promptly after receipt of any change order request.

**802.7 Defects in Development Plans.** Neither Authority nor City shall be responsible to Developer or to any third parties in any way for (a) any defects in the Development Plans, (b) any structural or other defects in any work done according to the approved Development Plans, nor (c) any delays caused by the review and approval processes established by this

Section 802. Developer shall hold harmless, indemnify and defend the Indemnitees from and against any claims or suits for damages to property or injuries to persons (including death) arising out of or in any way relating to defects, latent or patent, in the Development Plans, or the actual construction work and improvements comprising the Project, including, without limitation, the violation of any Governmental Requirements, or arising out of or in any way relating to any defects in any work done and/or improvements completed according to the approved Development Plans.

**802.8 Selection of Subcontractors.** Developer or the General Contractor, as applicable, shall solicit no fewer than three (3) competitive bids from qualified, licensed, insured, and bonded Subcontractors for each portion of the construction work to be separately contracted for by Developer or the General Contractor, as applicable, and Developer shall select the Subcontractor(s) that have submitted the lowest responsible and responsive bid for each such separately contracted-for portion of the Project. Authority shall have every reasonable right and opportunity to review all materials, bid packages, and related documents and to observe and attend all stages of and meetings related to such competitive bidding process, including without limitation a right to review the invitation to bidders and each submitted bid package and the right to be present when each bid is opened by Developer and/or the General Contractor and all selected Subcontractors shall be reasonably acceptable to Authority Director. Developer shall provide copies of all documents and other information reasonably necessary or appropriate to permit Authority to verify that Developer has solicited competitive bids from such qualified contractors pursuant to this Section 802 and selected the lowest responsible and responsive Subcontractors as required herein, including copies of the invitation to bidders, all documents distributed to potential bidders by Developer, and all submissions received from bidding contractors in response thereto. Developer shall also submit to Authority evidence regarding each entity serving and/or contracting as the Subcontractor for each portion of the construction of the Project and all other on-site and off-site improvements required to be constructed in connection therewith in accordance with the Scope of Development, the land use entitlement approved by City for the Project, and the Development Plans, including all required licenses, certifications, insurance, etc., as reasonably requested by Authority Director.

(a) **HOME Program Requirements.** The selection of subcontractors for the Project shall comply with 24 CFR Part 84. Developer shall not contract with or permit the General Contractor to contract with contractors or subcontractors that are debarred or suspended, pursuant to 24 CFR Part 24.

**802.9 Authority Construction Manager.** Authority shall have the right, but with no obligation, to employ (at its sole cost and expense) a construction manager of its choosing ("Construction Manager") to oversee the competitive bidding and selection of all Subcontractors in accordance with Section 802.8 above and the construction and other development work performed at the Site pursuant to this Agreement. The Construction Manager may be retained to provide Authority with assurances that all work is performed in a timely and safe manner and in accordance with this Agreement, the Scope of Development, the approved Development Plans, the approved Construction Contracts, any approved change orders and other legal requirements. Authority may also direct the Construction Manager (or another consultant selected by Authority, in Authority's sole discretion) to evaluate the Development Plans and prepare an independent development cost estimate to assist Authority in determining whether Developer (or General Contractor, as applicable) is obtaining commercially reasonable bids for the Project from Subcontractors. Developer shall ensure that Authority's Construction Manager shall have full access to the Site and to all records of Developer, the General Contractor, and each and all Subcontractors relating to the Project to permit

the Construction Manager to perform its duties as described in this Section 802.9, and each Construction Contract shall provide appropriate provisions to effectuate this Section 802.9.

**802.10 Periodic Submittals to Authority during Construction.** During the course of construction and until the final certificate of occupancy for the Project is issued by City, Developer shall ensure that Authority (1) receives a copy of each change order request received by Developer from the Contractor or any subcontractor within three (3) business days following Developer's receipt of the request, (2) receives a copy of each construction loan draw request submitted by Developer to the Primary Lender for the Project, concurrently with submittal of such request to the Primary Lender, (3) receives a copy of each potential change order (PCO) log and minutes prior to each construction team meeting, and (4) receives notice of each weekly construction meeting among the Developer, Contractor and Lender's representatives (such notice to be provided to Authority concurrently with any Lender receiving notice of such meeting(s)). Authority shall notify Developer in writing of any objection to a request for a Non-Exempt Change Order or construction loan draw within five (5) business days of Authority's receipt of the subject document; provided, in no event shall any request for a Non-Exempt Change Order or construction loan draw be deemed approved by Authority unless Developer provides additional written notice to Authority (on or after the fifth (5<sup>th</sup>) business day following Authority's receipt of such submittal) requesting affirmative approval or disapproval of such requested Non-Exempt Change Order or construction loan draw and Authority fails to respond within an additional three (3) business days following such additional written notice from Developer. Upon Authority's written request, Developer shall provide a copy of all submittals and notices required by this Section 802.10 to Authority's Construction Manager.

**803. Timing of Development of the Project.** Developer hereby covenants and agrees to commence the construction and development of the Project within the time set forth in the Schedule of Performance (subject to force majeure pursuant to Section 1505 hereof). Developer further covenants and agrees to diligently prosecute to completion the construction and development of the Project in accordance with the approved Development Plans (as the same may be modified in accordance herewith) and to file a notice of completion therefor pursuant to California Civil Code Section 3093 within the time set forth in the Schedule of Performance.

**804. Governmental Permits.** Before commencement of any portion of the Construction of the Site, Developer shall secure or shall cause its Contractor to secure any and all permits and land use entitlements which may be required by the City or any other governmental agency with jurisdiction over such construction of the applicable portion of the Construction, including without limitation applicable Building Permits. Developer shall pay all necessary fees for such portion of the Construction and timely submit to Authority such information as may be required by Authority to obtain the applicable Building Permits, and Authority staff will, without obligation to incur liability or expense therefor, use reasonable efforts to expedite Authority's issuance of the applicable Building Permits meeting the requirements of the Municipal Code, and all other applicable federal, state, and local laws, rules, and regulations.

**805. Release of Construction Covenants.** Promptly after the completion of the Construction in conformity with this Agreement (as reasonably determined by the Authority Director), upon the written request of Developer, Authority shall furnish Developer with a Release of Construction Covenants which evidences and determines the satisfactory completion of the Construction of the Site in accordance with this Agreement. The issuance and recordation of the Release of Construction Covenants with respect to the Site shall not supersede, cancel, amend or

limit the continued effectiveness of any obligations relating to the maintenance, uses, occupancy, payment of monies, or any other obligations with respect to the Site, the Project, or this Agreement or any covenants recorded in connection herewith, except for the obligation to complete the Construction of the Site.

**806. Entry by Authority.** From the date of the Closing and thereafter, Developer (and its successor and assigns) shall permit Authority and City, and their officers, employees, consultants, and agents at all reasonable times, on not less than forty-eight (48) hours advance notice (except in the case of emergencies), and in compliance with the reasonable safety policies and procedures of Developer and its contractor, to enter onto the Site and inspect the work of development of the Project to determine that the same is in conformity with the Development Plans and all the requirements hereof. This Section 806 shall not limit the ability of the City to enter and inspect the Site pursuant to applicable authority under the Municipal Code and other applicable laws. Developer acknowledges that Authority and City are under no obligation to supervise, inspect, or inform Developer of the progress of construction, and Developer shall not rely upon Authority and City therefor. Any inspection by Authority and City is entirely for their purposes in determining whether Developer is in compliance with this Agreement and is not for the purpose of determining or informing Developer of the quality or suitability of construction or any other work at the Site. Developer shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers.

#### **900. INSURANCE AND INDEMNIFICATION.**

**901. Insurance Requirements.** Developer shall obtain and maintain at its sole cost and expense until the end of the Affordability Period (except as expressly provided below to contrary effect), the insurance coverages described in this Section 901, with the coverage limits, conditions, and endorsements defined herein. Insurance for contractors and subcontractors shall be provided to City upon request within 10 days of request.

**901.1 Insurance Coverage.** Prior to the earlier to occur of the (i) Developer's exercise of a right of entry onto the Site or (ii) the Closing, the following policies shall be obtained and maintained by Developer covering all activities relating to construction of Developer's Project at the Site. All policies shall include an endorsement giving City thirty (30) days advance written notice of cancellation or termination of each policy. Insurers for each policy shall waive subrogation against the City of Garden Grove, Garden Grove Housing Authority, and their respective elected and appointed officials, officers, agents, employees, representatives and volunteers. Insurers for each policy shall provide to City and Authority a waiver of subrogation evidencing the same.

(a) *Workers' compensation insurance.* For the duration of this Agreement, Developer shall maintain Workers Compensation Insurance in the amount and type required by California law.

*Within ten (10) days of the Date of Agreement Developer shall execute and deliver to City and Authority that certain Workers' Compensation Certificate for limited partnerships and Sole Proprietors and fully incorporated herein by this reference, which certificate is Developer's representation and warranty that it is a limited partnership or sole proprietorship and is not legally required to carry Workers' Compensation Insurance at the time of execution of this Agreement.*

(b) Commercial general liability insurance, including mobile equipment and not excluding XCU, in an amount not less Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) general aggregate for claims arising out of bodily injury, personal injury and property damage. Coverage shall include contractual, on-going operations and products-completed operations (Claims made and modified occurrence policies are not acceptable.)

(c) Automobile liability insurance, in an amount not less than One Million Dollars (\$1,000,000), combined single limit (bodily injury and property damage liability), including coverage for liability arising out of the use of owned, non-owned, leased, hired, or borrowed automobiles for performance of the work. As used herein the term "automobile" means any vehicle licensed or required to be licensed under the State of California. Such insurance shall apply to all operations of Developer both on and away from the Site. In the event that any drivers are excluded from coverage, such drivers will not be permitted to drive in connection with construction of the Project. (Claims made and modified occurrence policies are not acceptable.)

(d) Environmental policy, (if applicable), including remediation costs, in an amount not less than Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) general aggregate. (Claims made and modified occurrence policies are not acceptable.)

(e) A policy of Builder's All-Risk property insurance in an amount not less than one hundred percent (100%) of the full replacement value of the Project.

(f) Follows Form Excess liability coverage shall be provided for any underlying policy that does not meet the insurance requirements set forth herein. (Claims made and modified occurrence policies are not acceptable.)

(g) For any claims related to this agreement, Developer's insurance coverage shall be primary insurance as respects the City of Garden Grove, Garden Grove Housing Authority, and their respective officers, officials, agents, employees, representatives, and volunteers and shall not contribute with any insurance, or self-insurance, maintained by the parties.

All insurance coverage shall be placed with carriers admitted to write insurance in California, and with an A.M. Best's Guide Rating of A-, class VII or better, as approved by City. Any deductibles or self-insured retentions in excess of \$250,000 must be declared to and approved by City.

**901.2 Policy Provisions.** A certificate or certificates evidencing coverage described in subsections (a) through (g) of Section 901.1 above ("Insurance") shall be submitted to each of Authority and City prior to issuance of building permits for and commencement of the construction of the Project. The certificates shall be accompanied by appropriate policy endorsements stating that:

*Developer's insurance coverage shall be primary insurance as respects each of the City of Garden Grove, Garden Grove Housing Authority, and their respective officers, officials, agents, employees, representatives, and volunteers, and shall not contribute with any insurance or self-insurance maintained by the City of Garden Grove, Garden Grove Housing Authority, and/or their respective officers, officials, agents, employees, representatives, and volunteers. A primary-noncontributory endorsement shall be provided for each policy.*

Insurer shall provide to City and Authority not less than (30) days advance written notice for each policy prior to any, cancellation, termination, or non-renewal of the Insurance.

With the exception of the workers compensation policy, each of the City of Garden Grove, Garden Grove Housing Authority, and their respective elected and appointed officials, officers, agents, employees, representatives, and volunteers, shall be named as additional insureds on all policies, including the excess liability policy. Developer shall provide:

Additional Insured Endorsements, on-going and products-completed operations, including mobile equipment and not excluding XCU, for the policy under Section 901.1(b), *Commercial General Liability*. Endorsements shall designate the City of Garden Grove, Garden Grove Housing Authority and their respective officers, officials, agents, employees, representatives, and volunteers, as additional insureds for liability arising out of all work or operations performed by or on behalf of the Developer. Developer 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 and CG 20 37 07 04 or equivalent)

An Additional Insured Endorsement for the policy under section 901.1(c), *Automobile Liability*, shall designate the City of Garden Grove, Garden Grove Housing Authority and their respective officers, officials, agents, employees, representatives, and volunteers, as additional insureds for automobiles owned, leased, hired, or borrowed. Developer 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)

Additional Insured Endorsements, ongoing and products-completed operations, under Section 901(d), *Environmental Liability and Remediation*, if coverage is applicable to the Project. Endorsements shall designate the City of Garden Grove, Garden Grove Housing Authority and their respective officers, officials, agents, employees, representatives, and volunteers, as additional insureds for liability arising out of all work or operations performed by or on behalf of the Developer. Developer shall provide to City proof of insurance and endorsement forms that conform to City's requirements, as approved by City.

A Loss Payee Endorsement for the policy under section 901(e), *Builder's All Risk*, shall designate the City of Garden Grove and Garden Grove Housing Authority as Loss Payee. Developer shall provide to City and Authority proof of insurance and endorsement forms that conform to City and Authority's requirements, as approved by the City.

If any of the underlying policies do not meet policy limits as required herein, an Additional Insured Endorsement for the policy under section 901.1(f), *Follows Form Excess Liability*, shall designate each of the City of Garden Grove, Garden Grove Housing Authority, and their respective officers, officials, agents, employees, representatives, as additional insureds under the follows form excess liability policy. Developer shall also provide to Authority and City a certificate of insurance stating the excess liability policy follows form and the schedule of underlying policies for the excess liability policy with policy numbers. Developer shall provide to City and Authority proof of insurance and endorsement forms that conform to City and Authority's requirements, as approved by the City.

Upon request by Authority or City, Developer shall, within 10 days of original request, provide City and Authority with complete certified copies of insurance policies evidencing coverage

as required herein. Certificates and endorsements for each insurance policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. If required by City or Authority, Developer and/or and subcontractors shall, from time to time, increase the limits of its insurance policies to reasonable amounts customary for owners of improvements similar to those on the Site. In the event any policy of insurance required under this agreement does not comply with these requirements or is cancelled and not replaced, City and Authority have the right but not the duty to obtain the insurance it deems necessary and any premium paid by City or Authority will be promptly reimbursed by Developer.

**901.3 Subcontractors.** All subcontractors shall be required to provide the same insurance as required of Developer herein, with the exception of policy limits required. Developer shall be responsible to collect and maintain insurance from all subcontractors. Subcontractors shall provide the following policy limits for the policies below:

Workers compensation	As required by California law
Commercial general liability policy	Not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.
Automobile liability policy	Not less than \$1,000,000 combined single limit
Environmental liability (if applicable)	Not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate

**902. Reduction in Requirements.** Authority's Risk Manager is hereby authorized to reduce the insurance requirements set forth herein, on a temporary or permanent basis, in the event he determines, in his sole discretion, that such reduction is in Authority's best interest.

**903. Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance.** Subject to the provisions below and to the rights of the Primary Lender or any replacement permitted, primary lender, if the Project shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Developer, Developer shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Project improvements to substantially the same condition as the Project improvements existed immediately prior to the casualty, if and to the extent the insurance proceeds are available and sufficient to cover the actual cost of repair, replacement, or restoration, and Developer shall complete the same as soon as possible thereafter so that the Project improvements can be occupied in accordance with this Agreement. Subject to force majeure delays as set forth in Section 1505 herein, in no event shall the repair, replacement, or restoration period exceed two (2) years from the date Developer obtains insurance proceeds unless Authority Director, in his reasonable discretion, approves a longer period of time. Authority shall cooperate with Developer, at no expense to Authority, in obtaining any governmental permits required for the repair, replacement, or restoration. If, however, the then-existing laws of any other governmental agencies with jurisdiction over the Site do not permit the repair, replacement, or restoration, Developer may elect not to repair, replace, or restore the Project Improvements by giving notice to Authority (in which event Developer will be entitled to all insurance proceeds but Developer shall be required to remove all debris from the applicable portion of the Site) or Developer may reconstruct such other improvements on the Site as are consistent with applicable land use

regulations and approved by the Authority, in its reasonable discretion, and the other governmental agency or agencies with jurisdiction.

**904. Damage or Destruction Due to Cause Not Required to be Covered by Insurance.**

If the Project Improvements are completely destroyed or substantially damaged by a casualty for which Developer is not required to (and has not) insured against, or if insurance proceeds are insufficient to rebuild, and subject to the rights of the Primary Lender or any replacement permitted primary lender, then Developer shall not be required to repair, replace, or restore such improvements and may elect not to do so by providing Authority with written notice of election not to repair, replace, or restore within ninety (90) days after such substantial damage or destruction. In such event, Developer shall concurrently repay the full outstanding balance of each of the Additional Authority Loan and the HOME Loan to Authority and the City DA Fee Deferral Loan to the City and this Agreement shall be automatically terminated. As used in this Section 904, "substantial damage" caused by a casualty not required to be (and not) covered by insurance shall mean damage or destruction which is ten percent (10%) or more of the replacement cost of the improvements comprising the Project Improvements.

**905. Non-Liability of Authority.** Developer acknowledges and agrees that:

(a) The relationship between Developer and Authority is and shall remain solely that of borrower and lender, and by this Agreement or any Project Documents, Authority neither undertakes nor assumes any responsibility to review, inspect, supervise, approve (other than for aesthetics) or inform Developer of any matter in connection with the Project, including matters relating to: (i) the Scope of Development, (ii) architects, contractors, subcontractors and materialmen, or the workmanship of or materials used by any of them, or (iii) the progress of the Construction of the Project and its conformity with the Scope of Development; and Developer shall rely entirely on its own judgment with respect to such matters and acknowledges that any review, inspection, supervision, approval or information supplied to Developer by Authority in connection with such matters is solely for the protection of Authority and that neither Developer nor any third party is entitled to rely on it;

(b) Notwithstanding any other provision of any Project Document: (a) Authority is not a partner, joint venturer, alter-ego, manager, controlling person or other business associate or participant of any kind of Developer and Authority does not intend to ever assume any such status; (b) Authority's activities in connection with the Site shall not be "outside the scope of the activities of a lender of money" within the meaning of California Civil Code Section 3434, as modified or recodified from time to time, and Authority does not intend to ever assume any responsibility to any person for the quality or safety of the Site; and (c) Authority shall not be deemed responsible for or a participant in any acts, omissions or decisions of Developer;

(c) Authority (and all Indemnitees) shall not be directly or indirectly liable or responsible for any loss or injury of any kind to any person or property resulting from any construction on, or occupancy or use of, the Site, whether arising from: (a) any defect in any building, grading, landscaping or other on-site or off-site improvement; (b) any act or omission of Developer or any of Developer's agents, employees, independent contractors, licensees, invitees or volunteers; or (c) any accident on the Site or any fire or other casualty or hazard thereon; and

(d) By accepting or approving anything required to be performed or given to Authority under the Project Documents, including any certificate, financial statement, survey,



appraisal or insurance policy, Authority (and all Indemnitees) shall not be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by Authority (or any of the Indemnitees) to anyone.

**906. Indemnification.** Developer shall defend, indemnify, assume all responsibility for, and save and hold the Indemnitees harmless from any and all claims, causes of action, settlements, court damages, demands, defense costs, reasonable attorneys' fees, expert witness fees, and other legal expenses, costs of evidence of title, costs of evidence of value, and other expenses which they may suffer or incur and any liability of any kind or nature arising from or relating to the subject matter of this Agreement or the validity, applicability, interpretation or implementation hereof and for any damages to property or injuries to persons directly or indirectly related to or in connection with the Construction, operation, management, or ownership of the Conforming Leasehold Interest, including accidental death (including reasonable attorneys' fees and costs), whether such damage shall accrue or be discovered before or after termination of this Agreement. Developer shall not be obligated to indemnify the Indemnitees to the extent occasioned by the negligence or willful misconduct of any of the Indemnitees or the breach of any of the Project Documents by any of them. Developer shall have the obligation to defend any such action; provided, however, that this obligation to defend shall not be effective if and to the extent that Developer determines in its reasonable discretion that such action is meritorious or that the interests of the parties justify a compromise or a settlement of such action, in which case Developer shall compromise or settle such action in a way that fully protects the Indemnitees from any liability or obligation. In this regard, Developer's obligation and right to defend shall include the right to hire (subject to reasonable written approval by Authority) attorneys and experts necessary to defend, the right to process and settle reasonable claims, the right to enter into reasonable settlement agreements and pay amounts as required by the terms of such settlement, and the right to pay any judgments assessed against Developer or any other Indemnitees. If Developer defends any such action, as set forth above, (i) to the extent of Developer's indemnification obligations as set forth herein, Developer shall indemnify and hold harmless Indemnitees from and against any claims, losses, liabilities, or damages assessed or awarded against either of them by way of judgment, settlement, or stipulation and (ii) Authority shall be entitled to settle any such claim only with the written consent of Developer and any settlement without Developer's consent shall release Developer's obligations under this Section 906 with respect to such settled claim. The foregoing agreements by Developer shall remain in effect for the Affordability Period. At the request of Developer, Authority shall cooperate with and assist Developer in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense; provided that Authority shall not be obligated to incur any expense in connection with such cooperation or assistance.

**907. Reimbursement of Authority for Enforcement of Project Documents.** Developer shall reimburse Authority within thirty (30) days upon written demand itemizing all costs reasonably incurred by Authority (including the reasonable fees and expenses of attorneys, accountants, appraisers and other consultants, whether the same are independent contractors or employees of City or Authority, but not including in-house staff time) in connection with the enforcement of the Project Documents including the following: (a) Authority's (or any of the Indemnitees') commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights or obligations of the parties to any Project Document, and (b) all claims, demands, causes of action, liabilities, losses, commissions and other costs against which Authority (and all Indemnitees) is/are indemnified under the Project Documents and defense of any action if Authority (or any of the Indemnitees) has tendered the defense of such action to Developer and Developer fails to defend any such action. Such reimbursement obligations shall bear interest from the date occurring ten (10) days after

Authority gives written demand to Developer at the same rate as is provided in the HOME Loan Note or the Additional Authority Loan Note (or if different interest rates are specified therein, the highest non-default interest rate), and shall be secured by the HOME Loan Deed of Trust and the Additional Authority Loan Deed of Trust. Such reimbursement obligations shall survive the cancellation of the HOME Loan Note, the Additional Authority Loan Note or the City DA Fee Deferral Loan Note, release and reconveyance of the HOME Loan Deed of Trust or the Additional Authority Loan Deed of Trust or the City DA Fee Deferral Loan Deed of Trust, issuance of the Release of Construction Covenants, and termination of this Agreement.

#### **1000. TAXES AND ASSESSMENTS.**

**1001. Taxes and Impositions.** After Developer's acquisition of the Conforming Leasehold Interest from UMC, Developer shall be responsible to and shall pay, prior to delinquency, all of the following (collectively, the "Impositions"): (a) all general and special real property taxes and assessments imposed on the Site; and (b) all other taxes and assessments and charges of every kind that are assessed upon the Site and that create or may create a lien upon the Site (or upon any personal property or fixtures used in connection with the Site), including nongovernmental levies and assessments pursuant to applicable covenants, conditions or restrictions. If permitted by law, Developer may pay any Imposition in installments (together with any accrued interest).

**1001.1 Right to Contest.** Developer shall not be required to pay any Imposition so long as (a) the validity of such Imposition is being actively contested in good faith and by appropriate proceedings, and (b) either (i) Developer has demonstrated to Authority's reasonable satisfaction that leaving such Imposition unpaid pending the outcome of such proceedings could not result in conveyance of any parcel in satisfaction of such Imposition or otherwise impair Authority's interests under the Project Documents, or (ii) Developer has furnished Authority with a bond or other security satisfactory to Authority in an amount not less than 120% of the applicable claim (including interest and penalties).

**1001.2 Evidence of Payment.** Upon demand by the Authority Director from time to time, Developer shall deliver to the Authority Director within thirty (30) days following the due date of any Imposition, evidence of payment of said Imposition reasonably satisfactory to the Authority Director, unless Developer is contesting the imposition in conformity with Section 1001.1. In addition, upon demand by Authority from time to time, Developer shall furnish to Authority a tax reporting service for the Site of a type and duration, and with a company, reasonably satisfactory to Authority.

#### **1100. LENDER/HOLDER PROTECTIONS.**

**1101. Right of Authority to Satisfy Other Liens on Site after Title Passes.** After the disbursement of one or more of the HOME Loan, the Additional Authority Loan or the City DA Fee Deferral Loan and prior to the recordation of the Release of Construction Covenants, and after Developer has had written notice and has failed after a reasonable time, but in any event not less than the applicable cure period as set forth in the applicable Project Document, to challenge, cure, adequately bond against, or satisfy any liens or encumbrances on the Site which are not otherwise permitted under this Agreement, Authority shall have the right, but not the obligation, to satisfy any such liens or encumbrances and to add the amount of any payment made by Authority under this Section to the outstanding balance of one or more of the HOME Loan, which additional amount shall be secured by the HOME Loan Deed of Trust or the Additional Authority Loan, which additional

amount shall be secured by the Additional Authority Loan Deed of Trust. Notwithstanding the above, Developer shall have the right to assert any challenge to the validity or amounts of any tax, assessment, or encumbrance available to Developer with respect thereto.

**1102. Liens and Stop Notices.** Developer shall not allow to be placed on the Site or any part thereof any lien or stop notice. 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 or within twenty (20) days of Authority's demand, whichever first occurs:

- (a) pay and discharge the same; or
- (b) affect the release thereof by recording and delivering to Authority a surety bond in sufficient form and amount, or otherwise; or
- (c) provide Authority with other assurance which Authority deems, in Authority's sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of Authority from the effect of such lien or bonded stop notice.

**1103. Holder Not Obligated to Complete Construction.** The holder of the Primary Loan or any other any mortgage or deed of trust pre-approved by Authority, including without limitation US Bank (construction financing) and CCRC (permanent financing) as authorized by this Agreement, shall not be obligated by the provisions of this Agreement to complete the Project or any portion thereof, or to guarantee such completion; nor shall any covenant or any other provision in this Agreement be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

**1104. Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure.** With respect to any mortgage or deed of trust granted by Developer as provided herein, whenever Authority may deliver any notice or demand to Developer with respect to any breach or default by Developer in completion of the Project, Authority shall at the same time deliver to each holder of record of any mortgage or deed of trust authorized by this Agreement and to Tax Credit Investor a copy of such notice or demand. Each such holder and to Tax Credit Investor shall (insofar as the rights granted by Authority are concerned) have the right, at its option, within sixty (60) days after the receipt of the notice, 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. The holder, in that event, must agree to complete, in the manner provided in this Agreement, the Construction to which the lien or title of such holder relates. Any such holder (or approved assignee) properly completing such Construction shall be entitled, upon compliance with the requirements herein, to a Release of Construction Covenants with respect to the portion of the Construction completed by such holder.

It is understood that a holder shall be deemed to have satisfied the sixty (60) day time limit set forth above for commencing to cure or remedy a Developer default which requires acquisition of Developer's ground leasehold estate in and/or possession of the Site (or portion thereof) if and to the extent any such holder has within such sixty (60) day period commenced proceedings to obtain title and/or possession and thereafter the holder (or approved assignee) diligently pursues such proceedings to completion and cures or remedies the default.

Copies of all notices which are sent to Developer (or Developer's assignee) under the terms of this Agreement shall also be sent to the Tax Credit Investor.

**1105. Failure of Holder to Complete Project.** In any case where, sixty (60) days after the later of the date that (x) holder of any mortgage or deed of trust creating a lien or encumbrance upon the Conforming Leasehold Interest of Developer or any part thereof receives a notice from Authority of a default by Developer in completion of the Construction or any other part of the Project required by this Agreement or (y) such holder obtains possession of the properties, and such holder has not exercised the option to construct as set forth above, or if it has exercised the option but has defaulted hereunder and failed to timely cure such default, Authority may purchase the mortgage or deed of trust by payment to the holder of the amount of the unpaid mortgage or deed of trust debt, including principal and interest and all other sums secured by the mortgage or deed of trust or otherwise due and payable thereunder. If the ownership of the Site (including the Conforming Leasehold Interest in the Site) or any part thereof has vested in the holder, Authority, if Authority so desires, shall be entitled to a conveyance from the holder to Authority upon payment to the holder of an amount equal to the sum of the following:

- (a) The unpaid mortgage or deed of trust debt at the time the Developer's ground leasehold interest in the Site became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- (b) All expenses with respect to foreclosure including reasonable attorneys' fees;
- (c) The net expense, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Site or part thereof;
- (d) The costs of any improvements made by such holder;
- (e) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by Authority; and
- (f) Any customary prepayment charges imposed by the lender pursuant to its loan documents and agreed to by Developer.

**1106. Right of Authority to Cure Mortgage or Deed of Trust Default.** In the event of a mortgage or deed of trust default or breach by Developer prior to the completion of the Project, Developer shall immediately deliver to Authority a copy of any mortgage holder's notice of default. If the holder of any mortgage or deed of trust has not exercised its option to construct, Authority (and City each) shall have the right but no obligation to cure the default. In such event, Authority (and City) shall be entitled to reimbursement from Developer of all proper costs and expenses incurred by Authority and City in curing such default. Authority shall also be entitled to a lien upon Developer's leasehold interest in the Site to the extent of such costs and disbursements. Any such lien shall be junior and subordinate to the mortgages or deeds of trust approved and in place in conformity with this Agreement.

**1107. Subordination of the HOME Loan Deed of Trust and Security Agreement, Additional Authority Loan Deed of Trust, City DA Fee Deferral Loan Deed of Trust, Affordable Housing Covenants and Right of First Offer for Primary Loan and for Permitted Refinancings during the Permitted Refinancing Period.** Prior to the Closing and in connection with Developer obtaining its construction and initial permanent financing (i.e., the Primary Loan) for the Project, Developer, City, Authority and the first Primary Lender (US Bank) reached agreement on the terms and conditions of a subordination agreement related to such initial Primary Loan and Permitted Refinancings thereof during the Permitted Refinancing Period. In this regard, the Authority Director has determined that an economically feasible method of financing for the construction and operation of the Project without the subordination of the HOME Loan Deed of Trust and Security Agreement and/or the Additional Authority Loan Deed of Trust and/or the City DA Fee Deferral Loan Deed of Trust, the affordable housing covenants and Right of First Offer as set forth in this Agreement and the Regulatory Agreement is not reasonably available in the market, so such subordination agreement with US Bank allows and causes the HOME Loan Deed of Trust and Security Agreement and/or the Additional Authority Loan Deed of Trust and/or the City DA Fee Deferral Loan Deed of Trust, and the Regulatory Agreement with Right of First Offer to be junior and subordinate to the deeds of trust and other documents required by Primary Lender in connection with the initial Primary Loan and Permitted Refinancings. The term of this first subordination agreement is up to the 30-year Permitted Refinancing Period.

**1107.1 Third Party Costs.** Pursuant to Section 1626, if and to the extent any reaffirmation, new or amended subordination, any estoppel certificates, or similar documents are requested and/or necessary in connection with financings, refinancing or other matters related to a Primary Loan during the Affordability Period, Developer expressly acknowledges and agrees that any and all Third Party Costs incurred or to be incurred by Authority, including for example attorney fees or other consultant's costs, are and shall be the sole financial responsibility of Developer (or its Lender or other third party, but in no event Authority). Authority shall have no obligation to commence work on such additional work relating to subordination or reaffirmation of subordination without a deposit of the estimated Third Party Costs which Authority may draw upon to pay such Third Party Costs.

**1107.2 Effect of Subordination.** Pursuant to the applicable subordination agreement (as described in Section 1107 and 1108 herein), any party and its successors and assigns, receiving a leasehold interest in the Site through a trustee's sale, judicial foreclosure sale, or deed in lieu of foreclosure of such senior deed of trust or mortgage, including a deed of trust or mortgage which is given in connection with such refinancing, and any conveyance or transfer thereafter, shall receive said leasehold interest title free and clear of the affordable housing covenants as may be set forth in this Agreement, the HOME Loan Deed of Trust and Security Agreement, the Additional Authority Loan Deed of Trust, the City DA Fee Deferral Loan Deed of Trust, the Right of First Offer, and the provisions of the Regulatory Agreement.

**1108. Subordination of Additional Authority Loan Deed of Trust, HOME Loan Deed of Trust, Security Agreement, City DA Fee Deferral Loan Deed of Trust, and Regulatory Agreement with Right of First Offer.** Subject to the terms above in Section 1107, *et seq.*, Authority shall agree to subordinate the Additional Authority Loan Deed of Trust, the HOME Loan Deed of Trust and Security Agreement, and the Regulatory Agreement with Right of First Offer to the deed of trust securing the Primary Loan and City shall agree to subordinate its City DA Fee Deferral Loan Deed of Trust to the deed of trust securing the Primary Loan (and any Permitted Refinancing thereof) and enter into appropriate subordination agreement(s) and estoppel(s) in

connection therewith; provided, neither City nor Authority shall be required by the terms of any such subordination agreement(s) or estoppel(s) to pre-authorize the subordination of the Authority Additional Loan Deed of Trust, the HOME Loan Deed of Trust and Security Agreement, and the Regulatory Agreement with Right of First Offer (and the City's DA Fee Deferral Loan Deed of Trust to refinancing(s) of the Primary Loan except for a Permitted Refinancing that occurs within the Permitted Refinancing Period. After the Permitted Refinancing Period, the Authority Director shall have the right to approve each refinancing of the Primary Loan, which approval shall not be unreasonably withheld. In connection with the review of a proposed refinancing of the Primary Loan, the Authority Director shall take into account the following factors: (a) increases in the principal amount of or interest rate accruing on the Primary Loan; (b) impacts on the payment of Residual Receipts payments under the Additional Authority Loan Note and the HOME Loan Note; (c) impacts on the financial viability of the Project, including likelihood of a default by the Developer under the proposed refinancing loan documents; and (d) whether the terms of the proposed refinancing are consistent with then-current market terms for similar financings of comparable High Quality affordable housing developments.

**1108.1 Notice to Authority re New Financing or Refinancing.** In connection with implementation of Sections 1107 and 1108 and notwithstanding anything to the contrary in the Transaction Documents, Developer hereby agrees to provide not fewer than thirty (30) days' notice to Authority of any proposed refinancing of the Primary Loan, or any new financing, and such notice(s) shall include and the 30-day period shall commence when all relevant documentation in a complete and legible format is presented to Authority, all in order to conduct its reasonable review and provide its approval, disapproval, or consent to a financing or refinancing.

## **1200. AFFORDABLE HOUSING COVENANTS; MAINTENANCE, PROPERTY MANAGEMENT, AND OPERATION OF PROJECT.**

**1201. Duration of Affordability Requirements; Affordability Period.** The Project and all the Housing Units thereon shall be subject to the requirements of this Section 1200 *et seq.* throughout the entire 55-year Affordability Period.

### **1202. Selection of Tenants.**

**1202.1 Selection of Tenants.** Developer shall be responsible for the selection of tenants for the Housing Units in compliance with, to the extent applicable, the HOME Program, the Federal Program Limitations, and all lawful and reasonable criteria, as set forth in the Management Plan that is required to be submitted to and approved by Authority as a Condition Precedent and pursuant to this Agreement. Developer shall adopt a tenant selection system for the HOME Units in conformance with Section 92.253(d) of the HOME Regulations, which shall be approved by Authority Director in his reasonable discretion, which establishes a chronological waiting list system for selection of tenants and meets the requirements of this Section. As part of its tenant selection for the Housing Units, the Developer shall grant a first priority to households with incomes of fifty-nine percent (59%) or less of area median income who were displaced from the Travel Country Recreational Vehicle Park ("RV Park") by activities of the Former Agency or as otherwise described in the Judgment in *Marina Limon v. Garden Grove Agency for Community Development, et al.*, Orange County Superior Court Case No. 30-2009-00291597 ("Limon Judgment"), and a second priority to any households having an income of fifty-nine percent (59%) or less of area median income who were otherwise displaced by activities of the Former Agency at the income category that corresponds to the income of the displaced households. Further, Developer shall use its

commercially reasonable efforts to rent vacant Housing Units to eligible households on Authority's tenant interest list and eligible households currently holding Portable Vouchers, who are otherwise qualified to be tenants in accordance with the approved tenant selection criteria. To that end, Developer shall provide notice to Authority prior to the rental or lease when the Construction of the Project is substantially complete and in walk-through condition, but not less than sixty (60) days prior to the date Developer reasonably anticipates the issuance of the final certificate of occupancy for the Project, and shall promptly give notice to the Authority of any vacancy of a Housing Unit thereafter. Authority shall be afforded an exclusive marketing period for sixty (60) days after receiving written notice from Developer that one or more Housing Units have become vacant at the Project. Developer shall not rent or lease the vacant Housing Unit(s) or permit occupancy of such Housing Unit(s) during such exclusive marketing period to any person or tenant not notified of such vacancy by the Authority. In the event no tenant that is reasonably acceptable to the Developer applies for tenancy of the vacant Housing Unit within such time period, the Housing Unit may be rented or leased to another tenant selected by the Developer who meets all of the other requirements set forth in this Agreement. Sixteen (16) of the Housing Units shall be restricted to Senior Citizen Households, and thirty (30) Housing Units shall be restricted to Non-Senior/Family Households, plus one on-site manager unit that is not income restricted.

Subject to applicable Fair Housing Laws, Developer's waiting list of prospective, eligible tenants for Housing Units at the Project shall include and follow the following order of priority for selection of tenants, and Authority will follow such order of priority:

(a) first priority to households with incomes of fifty-nine percent (59%) or less of AMI who were displaced from the Travel Country Recreational Vehicle Park by activities of the Former Agency or as otherwise described in the Limon Judgment;

(b) second priority to any households having an income of fifty-nine percent (59%) or less of AMI who were otherwise displaced by activities of the Former Agency at the income category which corresponds to the income of the displaced households;

(c) third priority to 50% AMI Very Low Income Households and 59% AMI Low Income Households, as applicable, who have been displaced from their residences due to programs or projects implemented by the Authority or the City of Garden Grove or another governmental entity;

(d) fourth priority to 50% AMI Very Low Income Households and 59% AMI Low Income Households, as applicable, who have applied for and have received Portable Vouchers from Authority or other housing authority;

(e) fifth priority to 50% AMI Very Low Income Households and 59% AMI Low Income Households, as applicable, who are listed on Authority's waiting list for affordable housing and who then currently live and have lived, and/or currently work and have worked, continuously for at least the past six months in Garden Grove as of the date of application; and

(f) sixth priority to 50% AMI Very Low Income Households and 59% AMI Low Income Households, as applicable, and who then currently live and have lived, and/or currently work and have worked, continuously for at least the past six months in Garden Grove as of the date of application.

**1202.2 Rental Voucher/Certificate Holders.** To the extent Housing Units are available, Developer shall not refuse to lease to a holder of a certificate of family participation or a Portable Voucher under 24 CFR part 982 or to the holder of a comparable document evidencing participation in a HOME Program, Section 8 Program or other tenant-based assistance program solely on the basis of such certificate, voucher, or comparable document, who is otherwise qualified to be a tenant in accordance with the approved tenant selection criteria.

**1202.3 Affordable Rent.** In the event Developer rents a Housing Unit to a household holding a Portable Voucher, the rental agreement (or sublease agreement, as applicable) between Developer, as landlord, and the tenant shall expressly provide that monthly rent charged shall be the Affordable Rent required hereunder for the Housing Unit (not fair market rent) and that the rent collected directly from such tenant holding a Portable Voucher shall be not more than 30% of tenant's actual gross income pursuant to the applicable voucher program regulations; i.e., the rent charged to such tenant under the rental agreement shall be the Affordable Rent chargeable hereunder and not fair market rent for the area, as would otherwise be permitted under the applicable Portable Voucher program. Thus, the subsidy payment to Developer under any Portable Voucher shall not exceed the difference between thirty percent (30%) of the tenant's actual gross income and Affordable Rent chargeable for the applicable Housing Unit hereunder (and under the Regulatory Agreement). Upon request, Developer shall provide evidence to Authority of the exact expiration date of the Tax Credit Compliance Period.

**1202.4 [Reserved].**

**1202.5 Subsidy Layering.** Prior to the Date of Agreement Developer has caused to be completed subsidy layering for the Project pursuant to and in full compliance with the HOME Regulations; and, Developer hereby acknowledges and agrees that, upon completion of construction of the Project and leasing of the Housing Units to 50% AMI Very Low Income Households and 59% AMI Low Income Households, both Senior Citizens Households and Non-Senior/Family Households, as applicable, pursuant to this Agreement, Developer will have received governmental subsidies from Authority and from TCAC through the Tax Credits allocated to the Project (and/or other subsidies included in the final financing sources for the Project, as approved by Authority pursuant to Section 209) in exchange for Developer's agreement to limit the rents charged to tenants of the Project to an Affordable Rent, both Senior Citizens Households and Non-Senior/Family Households, as applicable, and Developer further acknowledges and agrees that acceptance of additional governmental rental subsidies resulting in total, cumulative rent payments to Developer in excess of an Affordable Rent for any of the Housing Units at the Project may constitute an unjustified windfall to Developer at the expense of Authority and the federal and state governments.

**1202.6 Authority Director Authority to Approve Exceptions.** Notwithstanding anything to the contrary set forth in this Section 1202, the Authority Director may, in his sole and absolute discretion, permit the rental agreement (or lease agreement, as applicable) for a Housing Unit to which a Portable Voucher is applied to charge a monthly rent amount higher than the Affordable Rent for such Housing Unit (up to the applicable fair market rent).

**1203. Income and Occupancy Restrictions.** As included in the annual income certification provided by Developer to Authority, or as otherwise reasonably requested more often by Authority, Developer shall endeavor to make available for Authority Director's review and approval such information as Developer has reviewed and considered in its selection process, together with the statement by Developer that Developer has determined that each selected tenant will comply with all



applicable terms and conditions of this Agreement in each tenant's occupancy of a Housing Unit, including without limitation, that each corresponding household, both Senior Citizens Households and Non-Senior/Family Households, as applicable, satisfies the income eligibility requirements, Affordable Rent requirements, and other requirements of this Agreement.

**1203.1 Tenant Income Requirements.** In this regard, Developer covenants and agrees that (i) each tenant (other than the on-site Property Manager) shall be a 50% AMI Very Low Income Household, or a 59% AMI Low Income Household as defined herein, both Senior Citizens Households and Non-Senior/Family Households, as applicable, and (ii) the cost to each tenant household (other than the on-site Property Manager) for the corresponding Housing Unit on the Site shall be at and within the defined Affordable Rent for the applicable 50% AMI Very Low Income Household, or a 59% AMI Low Income Household, both Senior Citizens Households and Non-Senior/Family Households, as applicable, and (iii) each tenant household (other than the on-site Property Manager) shall meet applicable occupancy standards for the Housing Unit, both Senior Citizens Households and Non-Senior/Family Households, as applicable, under the HOME Program and this Agreement, and (iv) the occupancy and use of the Site, both units for Senior Citizen Households and units for Non-Senior/Family Households, as applicable, shall comply with all other covenants and obligations of this Agreement (collectively, "Tenant Selection Covenants").

**1203.2 Unit Mix; Management Unit.** Developer covenants that the unit mix at the Site shall be as set forth in Attachment No. 10, which is incorporated herein by this reference. One (1) of the two-bedroom Housing Units at the Project shall be occupied by an on-site manager. The on-site manager is not required to income qualify as a 50% AMI Very Low Income Household or 59% AMI Low Income Household; nor shall the monthly housing payment charged for the on-site manager's Housing Unit be restricted to an Affordable Rent, nor shall Developer be required to comply with any other requirements set forth in this Agreement relating to the income or other Tenant Selection Covenants when selecting and retaining such on-site manager.

**1204. Income Certification Requirements.** Following the completion of the Construction and annually thereafter (on or before April 30 of each year), as part of the annual report required by Section 1213 and Attachment No. 19, Developer shall submit to Authority, at Developer's expense, a written summary of the income, household size, rent payable by each of the tenants of the Housing Units both Senior Citizens Households and Non-Senior/Family Households, as applicable. At Authority's request, but not less frequently than prior to each initial and subsequent rental of each Housing Unit to a new tenant household (but not lease renewals) and annually thereafter, Developer shall also provide to Authority completed income computation, asset evaluation, and certification forms, for any such tenant or tenants, in substantially the form attached hereto as Attachment No. 21 (or such other form as may be provided by Authority from time to time to comply with Federal Program Limitations or other legal requirements). Developer shall obtain, or shall cause to be obtained by the Property Manager, an annual certification from each household, both Senior Citizens Households and Non-Senior/Family Households, as applicable, leasing a Housing Unit demonstrating that such household is a 50% AMI Very Low Income Household or a 59% Low Income Household, as applicable, and meets the eligibility requirements established for the Housing Unit. Developer shall verify, or shall cause to be verified by the Property Manager, the income certification of each tenant household, both Senior Citizens Households and Non-Senior/Family Households, as applicable. In order to comply with this Section 1204, Developer shall submit to Authority any and all tenant income and occupancy certifications and supporting documentation required to be submitted to TCAC pursuant to the Tax Credit Rules and the Tax Credit Regulatory Agreement for the Project; provided, Authority may request (and Developer shall provide) additional

documentation to assist Authority's evaluation of Developer's compliance with this Agreement, if determined to be necessary in the reasonable discretion of the Authority Director, specifically including (without limitation) any documentation or additional certifications that may be necessary to verify compliance with the HOME Regulations and Federal Program Limitations, as applicable during the HOME Compliance Period, and each tenant's status as a Senior Citizen Household or a Non-Senior/Family Household, as applicable. This requirement is in addition to and does not replace or supersede Developer's obligation to annually submit the Certificate of Continuing Program Compliance to Authority. Further, Authority has the right, but not the obligation to monitor compliance with respect to each tenant household at the Project, both Senior Citizens Households and Non-Senior/Family Households, as applicable, and Authority's election to monitor some, but not all, of the Housing Units shall not constitute a waiver of Authority's right to monitor and enforce compliance with respect to all Housing Units in the future.

**1204.1 Verification of Income of New and Continuing Tenants.** Gross income calculations for prospective (and continuing) tenants, both Senior Citizens Households and Non-Senior/Family Households, as applicable, shall be determined in accordance with 25 Cal. Code Regs. Section 6914. Developer shall verify the income and information provided in the income certification of the proposed tenant as set forth below.

(a) Developer shall verify the income of each proposed tenant of the Project pursuant to the Tenant Selection Covenants set forth in Section 1202 herein, and by at least one of the following methods as appropriate to the proposed tenant:

(i) obtain two (2) paycheck stubs from the person's two (2) most recent pay periods.

(ii) obtain a true copy of an income tax return from the person for the most recent tax year in which a return was filed.

(iii) obtain an income verification certification from the employer of the person.

(iv) obtain an income verification certification from the Social Security Administration and/or the California Department of Social Services if the person receives assistance from such agencies.

(v) obtain an alternate form of income verification reasonably requested by Authority, if none of the above forms of verification is available to Developer.

(vi) as to the Senior Citizen Housing Units obtain verification and supporting documentation of the household as a Senior Citizen Household.

**1204.2 Verification regarding Eligibility of New Tenants.** Developer shall retain documentation regarding the eligibility of each new tenant household, including that each such household satisfied the applicable priorities set forth in Section 1202.1 above.

## **1205. Affordable Rent.**

**1205.1 Maximum Monthly Rent.** The maximum monthly rent chargeable for the Housing Units shall be annually determined by Authority in accordance with the lowest and most

restrictive rent under Health and Safety Code Section 50052.5 and 50053 ("CRL), or the Tax Credit Rules, or Section 92.252 of the HOME Regulations (during the HOME Compliance Period), as applicable, pursuant to the following formulas:

(a) The Affordable Rent for the Housing Units to be rented to 50% AMI Very Low Income Households, both Senior Citizens Households and Non-Senior/Family Households, as applicable, shall not exceed one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of fifty percent (50%) of AMI for Orange County adjusted for household size, as determined in accordance with Health and Safety Code Sections 50052.5 and 50053 (and in the absence of such regulation, as determined in accordance with TCAC Regulations) and pursuant to the lowest and most restrictive of (a) CRL, or (b) the Tax Credit Rules, or (c) the HOME Regulations (but as to (c) only during the HOME Compliance Period), whichever calculation results in the most restrictive affordable rent.

(b) The Affordable Rent for the Housing Units to be rented to 59% AMI Low Income Households, both Senior Citizens Households and Non-Senior/Family Households, as applicable, shall not exceed one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of fifty-nine percent (59%) of AMI for Orange County as determined in accordance with Health and Safety Code Sections 50052.5 and 50053 (and in the absence of such regulation, as determined in accordance with TCAC Regulations) and pursuant to the lowest and most restrictive of (a) CRL, or (b) the Tax Credit Rules, or (c) the HOME Regulations (but as to (c) only during the HOME Compliance Period), whichever calculation results in the most restrictive affordable rent and calculated and adjusted to 59% AMI Affordable Rent.

(c) The Affordable Rent for all HOME Units shall also be limited to and shall not exceed the *lesser* of (i) the Affordable Rent amount described in subsection (a) and (b) above, as applicable, or (ii) during the HOME Compliance Period, the applicable Low HOME rent amount pursuant to the HOME Regulations as to the 50% AMI Housing Units and the applicable High HOME rent amount pursuant to the HOME Regulations as to the 59% AMI Housing Units.

For purposes of this Agreement, "Affordable Rent" shall mean the total of monthly payments for (a) use and occupancy of each Housing Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by Developer 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, or cable TV or internet services, 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 Developer.

**1205.2 Rent Schedule and Utility Allowance.** Authority will annually review and approve the Affordable Rents proposed by Developer for all of the Housing Units, both for Senior Citizen Housing Units and Non-Senior/Family Housing Units, together with the monthly allowances proposed by Developer for utilities and services to be paid by the tenant. Developer must annually reexamine the income of each tenant household living in the Housing Units annually in accordance with Sections 1204 and 1213 herein. The maximum monthly rent must be recalculated by Developer and reviewed and approved by Authority annually to confirm the rents are consistent with this Agreement and applicable legal requirements and may change as changes in the applicable gross Rent amounts, the income adjustments, or the monthly allowance for utilities and services warrant. Any increase in Rents for the Housing Units is subject to the provisions of outstanding leases.

Developer must provide all tenants not less than thirty (30) days prior written notice before implementing any increase in Rents.

**1205.3 Increases in Tenant Income.** A tenant who qualifies as a 50% AMI Very Low Income Household or a 59% AMI Low Income Household prior to occupancy of a Housing Unit in compliance with the Agreement shall be deemed to continue to be so qualified until such time as the annual re-verification of such tenant's income demonstrates that such tenant no longer qualifies as a 50% AMI Very Low Income Household, or a 59% AMI Low Income Household as applicable. A tenant occupying a Housing Unit whose income increases, causing that tenant household to cease to be income qualified in the same category shall, if that tenant household continues to qualify in a higher income category provided for under this Agreement, be deemed to so qualify and the Housing Unit occupied by such tenant household shall be counted towards Developer's obligation to provide a Housing Unit for households in such income category. To the extent the contract rent charged to tenants holding Portable Vouchers is limited to an Affordable Rent pursuant to Section 1202.3 or Section 1202.4, the contract rent chargeable for such Housing Unit shall be increased to reflect the Affordable Rent for a 50% AMI Very Low Income Household or a 59% AMI Low Income Household (as applicable) in accordance with the immediately preceding sentence. The HOME Units shall be "floating units", but maintaining the allocation between Senior Citizen Housing Units and Non-Senior/Family Housing Units, as defined in the HOME Regulations, such that the location of the Housing Units designated for each income category as well as the Housing Units designated as HOME Units may change within the Project provided that the next available Housing Unit containing the appropriate number of bedrooms (and unit type as to Senior Household or Non-Senior/Family Household), shall be used to replace any Housing Units re-designated due to an increase in tenant income, such that to the extent reasonably practicable, the Project shall continuously comply with the unit mix set forth in Attachment No. 10. A tenant household whose income increases such that such tenant household ceases to be income qualified to occupy any Housing Unit at the Project, may continue to occupy his Housing Unit and be charged rent including a reasonable utility allowance, not greater than the lesser of thirty percent (30%) of the household's adjusted monthly income, recertified annually, or the market rent applicable to the Housing Unit as published by HUD.

**1205.4 Most Restrictive Affordable Rent Covenants Govern.** To the extent of an inconsistency between or among the foregoing covenants relating to Affordable Rent and other covenants or agreements applicable to the Project, the most restrictive covenants or agreement regarding the Affordable Rent for the Housing Units in the Project shall prevail; provided however, affordable rents for the HOME Units are subject to the HOME Regulations only during the HOME Compliance Period and then after the HOME Compliance Period the less and most restrictive between CRL and TCAC Rules shall prevail as to those eleven HOME Units. As noted on Attachment No. 10, as of the Date of Agreement, affordable rent pursuant to Health and Safety Code Section 50053 is the lowest and most restrictive rent for all Housing Units (excluding the one manager's unit.)

**1205.5 Affordable Rent Calculation Tables.** In illustration of the foregoing description of Affordable Rent, attached hereto as Attachment No. 10 and fully incorporated herein by this reference is a "UNIT MIX AND AFFORDABLE RENT CALCULATION TABLES (Garden Grove United Methodist Church Apartments Project)." The chart is illustrative only and in the event of any inconsistency between such chart and the specific provisions of this Agreement, the provisions of this Agreement shall prevail.

**1206. Subleases; Rental Agreements for Housing Units.** As set forth in the Conditions Precedent, Developer shall submit a standard sublease form, one form for a Senior Citizen unit and one form for a Non-Senior/Family unit, which shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, including the HAL, the Dissolution Law, Unruh Act, Civil Code Section 51, et seq. all requirements of this Agreement, and (during the HOME Compliance Period) all applicable HOME Regulations (including 24 CFR 92.253), to Authority for approval. Authority shall reasonably approve such sublease forms upon finding that such sublease forms are consistent with this Agreement and contain all of the provisions required pursuant to the HOME Program, the HOME Regulations, the HAL, the Dissolution Law, and the Unruh Act. Developer shall enter into a written sublease, in the applicable form approved by Authority, with each tenant/tenant household of the Project, both for the Senior Citizen Housing Units and Non-Senior/Family Housing Units. No sublease shall contain any of the provisions that are prohibited pursuant to Section 92.253 of the HOME Regulations. In the event Developer desires to use a different form sublease/rental agreement for the HOME Units than for the remaining non-HOME Units, Developer shall submit both proposed form sublease/rental agreements to Authority for reasonable approval of each such document (except immaterial modifications to the approved sublease form are permitted without prior approval).

**1207. Social Services.** Developer shall provide social services to the tenant households of the Project, both the Senior Citizen Housing Units and the Non-Senior/Family Housing Units, in accordance with the Description of Social Services set forth as Attachment No. 15 throughout the entire Affordability Period. The specific social services to be provided by Developer at the Project are subject to reasonable approval by Authority and HUD and in the event Developer intends to materially modify the social services to be provided at the Project, Developer must first (1) submit a written explanation of such modification to Authority along with any supporting documentation reasonably requested by Authority Director and (2) obtain Authority Director's reasonable approval of such modified social services to be provided at the Project.

**1208. Maintenance.**

**1208.1 General Maintenance.** Developer shall maintain the Site and all improvements thereon, including lighting and signage, in good condition, free of debris, waste and graffiti, and in compliance with all applicable provisions of the Municipal Code. Developer shall maintain in accordance with the Maintenance Standards (as hereinafter defined) the improvements and landscaping on the Site. Such Maintenance Standards shall apply to all buildings, signage, common amenities, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Site and any and all other improvements on the Site and the Project. To accomplish the maintenance, Developer shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement.

Developer and its maintenance staff, contractors or subcontractors shall comply with the following standards as to the Project (collectively, "Maintenance Standards"):

(a) The Site and Project shall be maintained in conformance and in compliance with the approved final as-built plans, and reasonable maintenance standards which comply with the industry standard for comparable High Quality affordable housing projects in the County, including but not limited to painting and cleaning of all exterior surfaces and other exterior

facades comprising all private improvements and public improvements to the curbline. The Site and Project shall be maintained in good condition and in accordance with the industry custom and practice generally applicable to comparable High Quality affordable housing projects in the County.

(b) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(c) Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

Authority agrees to notify Developer in writing if the condition of the Site does not meet with the Maintenance Standards and to specify the deficiencies and the actions required to be taken by Developer to cure the deficiencies. Upon notification of any maintenance deficiency, Developer shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety, then Developer shall have forty-eight (48) hours to rectify the problem. In the event Developer does not maintain the Site and Project in the manner set forth herein and in accordance with the Maintenance Standards, Authority shall have, in addition to any other rights and remedies hereunder, the right to maintain the Site and Project, or to contract for the correction of such deficiencies, after written notice to Developer, and Developer shall be responsible for the payment of all such costs incurred by Authority.

**1208.2 Program Maintenance.** In addition to the routine maintenance and repair required pursuant to Section 1208.1, Developer shall perform the following minimum programmed maintenance of the Improvements to the Site:

(a) Interior painting and window covering replacement at least every seven (7) years;

(b) Exterior painting at least every ten (10) years;

(c) Repair and resurfacing of parking areas and walkways at least every five (5) years; and

(d) Replacement of all deteriorated or worn landscaping and play equipment at least every five (5) years.

Upon the request of Developer, the Authority Director, at his sole and absolute discretion, may grant a waiver or deferral of any program maintenance requirement. Developer shall keep such records of maintenance and repair as are necessary to prove performance of the program maintenance

requirements. If deterioration of improvements or landscaping at the Project warrants, Developer shall perform maintenance more frequently than the requirements of this Section 1208.2 to ensure the Project is maintained at a High Quality as required by this Agreement.

## **1209. Management of the Project.**

**1209.1 Property Manager.** Developer shall cause the Project, and all appurtenances thereto that are a part of the Project, to be managed in a prudent and business-like manner, consistent with property management standards for other comparable High Quality, well-managed rental housing projects in Orange County, California. Developer shall contract with a property management company or property manager to operate and maintain the Project in accordance with the terms of this Section ("Property Manager"); provided, however, the selection and hiring of the Property Manager (and each successor or assignee Property Manager) is and shall be subject to prior written approval of Authority Director in his sole and reasonable discretion. The Property Manager shall not be an Affiliate of Developer without the express prior written approval of the Authority Director, which consent shall not be unreasonably withheld, delayed, or conditioned. Developer shall conduct due diligence and background evaluation of any potential outside property manager or property management company to evaluate experience, references, credit worthiness, and related qualifications as a property manager. Any proposed property manager shall have prior experience with rental housing projects and properties comparable to the Project and the references and credit record of such manager/company shall be investigated (or caused to be investigated) by Developer prior to submitting the name and qualifications of such proposed property manager to the Authority Director for review and approval. A complete and true copy of the results of such background evaluation shall be provided to the Authority Director. Approval of a Property Manager by Authority Director shall not be unreasonably delayed but shall be in his sole and reasonable discretion, and Authority Director shall use good faith efforts to respond as promptly as practicable in order to facilitate effective and ongoing management of the Project. Furthermore, the identity and retention of any approved Property Manager shall not be changed without the prior written approval of the Authority Director, which approval shall not be unreasonably withheld or delayed, but shall be in his sole and reasonable discretion. The selection by Developer of any new Property Manager also shall be subject to the foregoing requirements. The fee to be paid to the Property Manager shall not exceed the Maximum Property Management Fee. Authority hereby approves The John Stewart Company as the initial Property Manager.

**1209.2 Management Plan.** Prior to and as a Condition Precedent to the Closing and the initial disbursement by the Authority of the HOME Loan proceeds, Developer shall prepare and submit to the Authority Director for review and approval a management plan, including both the Senior Citizen Housing Units and Non-Senior/Family Housing Units, which includes a detailed plan and strategy for long term operation, maintenance, repair, security, social services for, and marketing of the Project, the method of selection of tenants, rules and regulations for tenants, and other rental and operational policies for the Project ("Management Plan"). Authority Director approval of the Management Plan shall not be unreasonably withheld or delayed. Subsequent to approval of the Management Plan by the Authority Director the ongoing management and operation of the Project shall be in compliance with the approved Management Plan. Developer and Property Manager may from time-to-time submit to the Authority Director proposed amendments to the Management Plan that are also subject to the prior written approval of the Authority Director, which approval shall not be unreasonably withheld or delayed. The Management Plan shall contain provisions which implement the priority consideration to be afforded those displaced households referenced in Section 1202.1 of this Agreement.

(a) Gross Mismanagement. In the event of “Gross Mismanagement” (as that term is defined below) of the Project or any part of the Project, Authority Director shall have and retain the authority to direct and require any condition(s), acts, or inactions of Gross Mismanagement to cease and/or be corrected immediately, and further to direct and require the immediate removal of the Property Manager and replacement with a new qualified and approved Property Manager, if such condition(s) is/are not ceased and/or corrected after expiration of thirty (30) days from the date of written notice from Authority Director. If Developer or Property Manager has commenced to cure such Gross Mismanagement condition(s) on or before the 20<sup>th</sup> day from the date of written notice (with evidence of such submitted to the Authority Director), but has failed to complete such cure by the thirtieth (30<sup>th</sup>) day, then Developer or Property Manager shall have an additional ten (10) days to complete the cure of such Gross Mismanagement condition(s). In no event shall any condition of Gross Mismanagement continue uncured for a period exceeding forty-five (45) days from date of the initial written notice of such condition(s). If such condition(s) do persist beyond such period Authority Director shall have the sole and absolute right to immediately and without further notice to Developer (or to Property Manager or any other person/entity) replace the Property Manager with a new property manager of the Authority Director’s selection at the sole cost and expense of Developer. If Developer takes steps to select a new Property Manager that selection is subject to the requirements set forth above for selection of a Property Manager.

(i) For purposes of this Agreement, the term “Gross Mismanagement” shall mean management of the Project (or any part of the Project) in a manner which violates the terms and/or intention of this Agreement to operate a High Quality covenanted affordable rental housing complex comparable to other similar complexes in Orange County, California, and shall include, but is not limited to, any one or more of the following:

(A) Knowingly leasing to tenants who exceed the prescribed income levels;

(B) Knowingly allowing the tenants to exceed the prescribed occupancy levels without taking immediate action to stop such overcrowding;

(C) Underfunding required reserve accounts, unless funds are not reasonably available to deposit in such accounts;

(D) Failing to timely maintain the Project in accordance with the Management Plan and the manner prescribed herein;

(E) Failing to submit timely and/or adequate annual reports to Authority as required herein;

(F) Fraud or embezzlement of Project funds, including without limitation funds in the reserve accounts;

(G) Failing to reasonably cooperate with the Garden Grove Police Department or other local law enforcement agency(ies) with jurisdiction over the Project, in maintaining a crime-free environment within the Project;



(H) Failing to reasonably cooperate with the Garden Grove Fire Department or other local public safety agency(ies) with jurisdiction over the Project, in maintaining a safe environment within the Project;

(I) Failing to reasonably cooperate with the Garden Grove Planning & Building Department, including the Code Enforcement Division, or other local health and safety enforcement agency(ies) with jurisdiction over the Project, in maintaining a safe environment within the Project;

(J) Spending funds from the Capital Replacement Reserve account(s) for items that are not defined as capital costs under the standards imposed by generally accepted accounting principles (GAAP) (and/or, as applicable, generally accepted auditing principles); and

(K) Failing to re-lease Housing Units within ninety (90) days (on an annual average basis) following a notice of vacancy or termination by a tenant household and/or failing to maintain average (over the prior three (3) years) annual vacancy rates at less than ten percent (10%), provided however this 90-day average annual basis may be tolled but only for an event of major casualty or loss, such as due to damage from fire, earthquake or acts of God.

(ii) Notwithstanding the requirements of the Property Manager to correct any condition of Gross Mismanagement as described above, Developer is obligated and shall use commercially reasonable efforts to correct any defects in property management or operations at the earliest feasible time and, if necessary, to replace the Property Manager as provided above. Developer shall include advisement and provisions of the foregoing requirements and requirements of this Agreement within any contract between Developer and its Property Manager.

**1209.3 Marketing.** Developer shall comply with an affirmative marketing plan reasonably approved by Authority, including methods for informing the public and potential tenants about the federal fair housing laws, procedures to inform and solicit applications from persons in the housing market area not likely to apply for tenancy at the Housing Units without special outreach and recordkeeping methods that will permit Authority to evaluate the actions taken by Developer (or Property Manager) to affirmatively market the Housing Units at the Project, both for the Senior Citizen Housing Units and Non-Senior/Family Housing Units. Specific procedures for marketing and releasing Housing Units shall be set forth in the Management Plan and shall include:

(a) Posting advertisements and notices of the availability of the Housing Unit(s) in local newspapers and other publications. Such advertisements and notices shall include a description of the age and income requirements applicable to the Housing Unit(s).

(b) Posting advertisements and notices of the vacancy(ies) at including without limitation at the United Methodist Church of Garden Grove adjacent to the Project, at other local religious institutions, nonprofit organizations operating in the City, community centers, public buildings such as post-offices, City Hall, Community Meeting Center, the Garden Grove Louis Lake Senior Center, and Central Library, and on the City's website.

(c) Posting advertisements and notices of the vacancy(ies) both for the Senior Citizen Housing Units and Non-Senior/Family Housing Units anywhere Developer believes

tenant households eligible for occupancy in the Housing Units at the Project are likely to become informed.

(d) Developer shall communicate the availability of Housing Units at the Project both for the Senior Citizen Housing Units and Non-Senior/Family Housing Units with nonprofits operating in Garden Grove, including communication of the eligibility requirements set forth in Section 1202.1.

**1209.4 Code Enforcement.** Developer acknowledges and agrees that City and City's employees and authorized agents shall have the right to conduct code compliance and/or code enforcement inspections of the Project and the individual units, both exterior and interior, during normal business hours and upon reasonable notice (not less than 48 hours prior notice) to Developer and/or an individual tenant. If such notice is provided by Authority or City representative(s) to Developer, then Developer (or its Property Manager) shall immediately and directly advise tenant of such upcoming inspection and use commercially reasonable efforts to cause access to the area(s) and/or units on the Project to be made available and open for inspection. Developer shall include express advisement of such inspection rights within the approved lease/rental agreements for each Housing Unit in the Project in order for each and every tenant and tenant household to be aware of this inspection right.

**1209.5 Occupancy Limits.** The maximum occupancy of the Housing Units in the Project shall not exceed more than such number of persons as is equal to two persons per bedroom, plus one. Thus, for the one (1) bedroom Housing Units, the maximum occupancy shall not exceed three (3) persons. For the two (2) bedroom Housing Units, the maximum occupancy shall not exceed five (5) persons. For the three (3) bedroom Housing Units, the maximum occupancy shall not exceed seven (7) persons.

**1210. Capital Reserve Requirements.** Developer shall annually set aside and fund the Capital Replacement Reserve amounts defined and required under this Agreement (Two Hundred Fifty Dollars (\$250) per year for each Housing Unit, increased annually by 3%) or shall cause the Property Manager to do so. The Capital Replacement Reserve deposits shall be allocated from the gross rents received from the Site and shall be deposited into a separate interest-bearing trust account. Funds in the Capital Replacement Reserve shall be used for capital replacements to the fixtures and equipment on the Site (including common areas) that are normally capitalized under generally accepted accounting principles and shall include the following: carpet and drape replacement; appliance replacement; exterior painting, including exterior trim; hot water heater replacement; plumbing fixtures replacement, including tubs, showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement; 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. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve Developer of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Site and all common areas and common improvements in the manner prescribed herein.

**1210.1 Annual Accounting of Reserve.** Not less than once per year, Developer, at its expense, shall submit to Authority an accounting for the Capital Replacement Reserve set forth in the Annual Financial Statement, demonstrating compliance with this Section 1210.

**1211. Operating Budget.** Within twelve (12) months after commencement of Construction of the Project, but in no event later than ninety (90) days prior to the completion of Construction of the Project, and not less than annually thereafter on or before October 1 of each year, Developer shall submit to Authority on not less than an annual basis an Operating Budget for the Project, which budget shall be subject to the written approval of Authority Director or his/her designee, which approval shall not be unreasonably withheld. The Authority Director's discretion in review and approval of each proposed annual Operating Budget shall include, without limitation, authority to review individual categories, line items, and accounts, such as the following: extent, type, and amount for social services at or associated with the Project; existing balance(s) in and proposed deposits to the Capital Replacement Reserve and Capitalized Operating Reserve to evaluate shortfalls and/or cumulative unexpended/unencumbered deposits (provided that required annual deposits into the Capitalized Replacement Reserve are not required to exceed \$250/per unit and the amount maintained in the Capitalized Operating Reserve is not required to exceed the Target Amount as defined below); conformity of any annual increases in the Partnership Related Fees/Expenses with the increases permitted by this Agreement; reasonableness and conformity to prevailing market rates in the City and rates and fees for goods and services to be provided by Developer or any Affiliate. The Operating Budget shall be in substantially the form attached hereto as Attachment No. 17 and incorporated herein, or such other form as may be required by Authority from time to time. Authority shall not unreasonably withhold, condition, or delay Authority's approval of the annual Operating Budget, or any amendments thereto.

**1212. Capitalized Operating Reserve.** Commencing on or before Conversion, Developer shall, or shall cause the Property Manager to, set aside an amount equal to three (3) months of (i) Debt Service on the Primary Loan and (ii) Operating Expenses for the Project ("Target Amount") in an Capitalized Operating Reserve to be held in a separate interest bearing trust account, which initial deposit shall be funded using proceeds of the Primary Loan and Tax Credit equity. The Capitalized Operating Reserve shall thereafter be replenished from Annual Project Revenue (if any) only to the extent required by the Primary Lender or Developer's Tax Credit investor. The amount in the Capitalized Operating Reserve shall be retained to cover shortfalls between Annual Project Revenue and actual Operating Expenses, but shall in no event be used to pay for capital items or capital costs properly payable from the Capital Replacement Reserve.

**1212.1 Annual Accounting of Reserve.** Not less than once per year, Developer, at its expense, shall submit to Authority an accounting for the Capitalized Operating Reserve set forth in the Annual Financial Statement, demonstrating compliance with this Section 1212.

**1213. Monitoring and Recordkeeping.** Throughout the 55-year Affordability Period, Developer shall comply with all applicable recordkeeping and monitoring requirements set forth in the HAL, the Dissolution Law (including without limitation Section 33418 and information for the Authority to prepare its annual report required by Section 34176.1), and the HOME Program (during the HOME Compliance Period), including Section 92.508 (or successor regulation) of the HOME Regulations (and specifically including the requirements set forth in Attachment No. 19). On or before April 30 in each year following the Closing, Developer shall annually complete and submit to Authority (a) an annual report including all information required by Attachment No. 19 and (b) a Certification of Continuing Program Compliance substantially in the form of Attachment No. 13, or other form provided by Authority Director. Representatives of Authority shall be entitled to enter the Site during regular business hours, upon at least 48 hours' notice, to monitor compliance with this Agreement, to inspect the records of the Project, and to conduct an independent audit or inspection of such records. Developer agrees to cooperate with Authority in making the Site and all Housing Units

thereon available for such inspection or audit. Developer agrees to maintain records in a businesslike manner, to make such records available to Authority upon 48 hours' notice, and to maintain such records for the entire Affordability Period.

**1213.1 HOME Matching Requirement.** Developer acknowledges that Authority will use HOME Funds to make the HOME Loan and that the HOME Program, specifically 24 CFR 92.218 through 24 CFR 92.222, contains a HOME Matching Requirement. City intends to utilize this Project and count as match funds the Tax Credit Investor's equity investment, other of Developer's expenditures on and subsidies to the Project that are eligible to be applied to the HOME Matching Requirement pursuant to the HOME Regulations. Developer agrees to cooperate in good faith with the Authority to track and report compliance with the HOME Matching Requirement and to provide to Authority in its progress reports (Attachment No. 19 hereof) such information and to maintain such records necessary to evidence Project funds applicable to the HOME Matching Requirement.

**1213.2 Annual Monitoring Fee.** Concurrently with the delivery of each annual report and Certificate of Continuing Program Compliance to Authority, Developer shall pay an Annual Monitoring Fee to Authority in the amount of Sixty Dollars (\$60) per Housing Unit per year, increased annually by 3%, which shall compensate Authority for its costs incurred to monitor Developer's compliance with this Agreement; provided however, the source of payment of the Annual Monitoring Fee shall be from the Developer's Share of Residual Receipts and may be accrued during the initial 15 years of the Affordability Period.

**1214. Regulatory Agreement.** The requirements of this Agreement that are applicable after the disbursement of the HOME Loan, the Additional Authority Loan and the City DA Fee Deferral Loan are set forth in the Regulatory Agreement. The execution of the Regulatory Agreement is a Condition Precedent to the initial disbursement of the HOME Loan, and its continuing compliance with all Conditions Precedent is a condition to the subsequent disbursement of the Additional Authority Loan.

**1215. Transfers; General Prohibition of Transfer without Authority Consent.** The qualifications and identity JHC-A, and JHC as the sole member of the managing general partner of the Developer entity, both as experienced and successful developers and operators/managers of affordable housing, including senior and non-senior projects, are of particular concern to Authority. It is because of these identities and the qualifications of JHC-A and JHC that Authority has entered into this Agreement with Developer. Accordingly, commencing upon Developer's Ground Lease of the Site and continuing through completion of the Construction of the Project on the Site, and thereafter continuing until the end of the Affordability Period, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement, nor shall Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the Site, or any part thereof, or this Agreement (collectively referred to herein as a "Transfer") without the prior written approval of Authority, except as expressly set forth herein, which approval shall not be unreasonably withheld or delayed.

**1215.1 Permitted Transfers.** Notwithstanding the provisions of this Agreement or any other Project Document prohibiting transfer of any interest in Developer, the Site, the Conforming Lease, the Project, this Agreement, or any of the Project Documents, Authority approval of a Transfer shall not be required in connection with any of the following; provided, however, the Project must continue to be "owned", "developed" or "sponsored" by a CHDO corporation within the

meaning of Section 92.300(a) of the HOME Regulations at all times during the HOME Compliance Period:

(a) The conveyance or dedication of any portion of the Conforming Leasehold Interest or the Site to the Authority or other appropriate governmental agency, or the granting of easements or permits to facilitate the Construction (as defined herein).

(b) An assignment for financing purposes to secure the funds necessary for the Ground Lease of the Site and undertaking through completion of the Construction or a refinancing thereof, so long as such construction and/or permanent loan documents have been duly reviewed and reasonably approved by Authority, and (ii) either (1) Authority has approved such financing or refinancing pursuant to this Agreement, or (2) such refinancing constitutes a Permitted Refinancing and occurs during the Permitted Refinancing Period.

(c) Subleasing of individual Housing Units, both Senior Citizen Housing Units and Non-Senior/Family Housing Units, to income-qualified tenants in accordance with Section 1200, *et seq.* and the Regulatory Agreement.

(d) The transfer of all or any part of the Conforming Lease or the Project, or assignment of any Project Document to JHC-A or JHC, an entity controlled by JHC, a nonprofit corporation in which a majority of the board of directors are members of the board of directors of JHC-A or JHC (collectively "Jamboree Affiliate Entity"), or an entity or entities in which a Jamboree Affiliate Entity is a general partner or managing member; provided that upon such transfer the Project shall continue to be owned, developed or sponsored by a CHDO at all times during the HOME Compliance Period.

(e) The substitution of the general partner of Developer ("General Partner") as directed by the Tax Credit Investor in accordance with the terms of the Partnership Agreement, subject to the following terms and conditions. Such Tax Credit Investor may substitute an affiliate ("Interim General Partner") on an interim basis for a period reasonably calculated to identify and admit into the partnership a new general partner as set forth below ("Substitute General Partner"). The Interim General Partner is hereby approved by the Authority. The Substitute General Partner must be an entity reasonably acceptable to the Authority Director, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, upon such transfer the Project shall continue to be owned, developed or sponsored by a CHDO at all times during the HOME Compliance Period.

(f) The pledge by the General Partner of Developer to the Tax Credit Investor of the General Partner's interest in Developer, as security for the performance of all of the General Partner's obligations under the Partnership Agreement.

(g) The pledge by the General Partner of Developer to Lender of the General Partner's interest in Developer, as security for the performance of all of Developer's obligations under the Primary Loan (or any approved refinancing thereof).

(h) The pledge by the Tax Credit Investor to Lender of the Tax Credit Investor's interest in Developer, as security for the performance of all of the Developer's obligations under the Primary Loan (or any approved refinancing thereof).

(i) The pledge by the Tax Credit Investor to Developer as security for the Tax Credit Investor's obligation to make its capital contributions pursuant to the Partnership Agreement.

(j) The sale, transfer or pledge of any limited partnership interest or non-managing member's interest in Developer or of any partnership or membership interest in the Limited Partner.

(k) The sale, transfer, or conveyance of the General Partner's interest in Developer to a Jamboree Affiliate Entity.

In the event of a Transfer by Developer not requiring Authority's prior approval, Developer nevertheless agrees that at least fifteen (15) days prior to such Transfer it shall give written notice to Authority of such assignment and satisfactory evidence that the assignee will assume all of the obligations of this Agreement in writing through an assignment and assumption agreement in a form reasonably acceptable to Authority. The form of each assignment and assumption agreement shall be submitted to Authority for review and reasonable approval by Authority's legal counsel not later than fifteen (15) days prior to the proposed date of the Transfer.

**1215.2 Authority Consideration of Requested Transfer.** Authority agrees that it will not unreasonably withhold, condition, or delay approval of a request for approval of a Transfer made pursuant to this Section 1215, *et seq.*, provided Developer delivers written notice, in a complete form with supporting documentation, to Authority requesting such approval and includes the proposed assignment and assumption contract and, if required by Authority, all necessary and relevant background and experience information related to the proposed transferee.

An assignment and assumption agreement in form reasonably satisfactory to Authority's legal counsel shall be required for each proposed Transfer. Within fifteen (15) days after the receipt of Developer's written notice in its complete form requesting Authority approval of a Transfer pursuant to this Section 1215, *et seq.*, Authority shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, Authority reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, Developer shall promptly furnish to Authority such further information as may be reasonably requested. Upon the effective date of the approved or permitted Transfer, if an assignment and assumption agreement reasonably acceptable to Authority has been executed and delivered to Authority, the assignor shall be released by Authority from each and every obligation hereunder expressly assumed by the approved or permitted assignee.

(a) Payment of Authority Third Party Costs re Proposed Transfer. Pursuant to Section 1626, any and all Third Party Costs incurred by Authority in connection with consideration and approval (or disapproval) of a proposed transferee for any Transfer shall be paid by Developer, and payment thereof shall be and remain a condition precedent to Authority's obligation to approve and execute any Transfer document, including without limitation any assignment and assumption agreement.

**1215.3 Successors and Assigns.** All of the terms, covenants and conditions of this Agreement shall be binding upon Developer and its permitted successors and assigns. Whenever the

term "Developer" is used in this Agreement, such term shall include any other permitted successors and assigns of Developer, as applicable, and as herein provided.

### **1300. FEDERAL PROGRAM LIMITATIONS; COMPLIANCE WITH LAWS.**

**1301. HOME Program.** Because the HOME Loan to Developer will be provided with HOME Program funds, Developer shall carry out the Construction of the Housing Units and the operation of the Project during the HOME Compliance Period in conformity with all requirements of the HOME Program (including the 2013 Final Rule) to the extent applicable to the Project. In the event Developer desires to change the affordable housing or maintenance requirements for the Site from the specific requirements set forth in this Agreement in order to comply with a subsequently enacted amendment to the HOME Program, Developer shall notify Authority in writing of such proposed change and the amendment related thereto at least thirty (30) days prior to implementing such change. In the event Authority disapproves of such change and Developer's interpretation of the amendment related thereto, Authority shall notify Developer of its disapproval in writing and the parties shall seek clarification from the appropriate HUD Field Office. Only if HUD concurs with Developer's interpretation of the HOME Program shall Developer be permitted to implement the proposed change.

**1302. Federal Funding of HOME Loan.** Due to the source of funding for the HOME Loan from HOME Program funds, which is a federal revenue source, Developer shall comply with all applicable Federal Program Limitations, including without limitation, the following federal provisions.

**1302.1 Property Standards.** Developer agrees to ensure that Construction of the Project and operation of the Housing Units during the HOME Compliance Period, both the Senior Citizen Housing Units and the Non-Senior/Family Housing Units and all ancillary and appurtenant improvements, will comply with all applicable requirements of the HOME Regulations, including 24 CFR §92.251, including the following requirements:

(a) **State and Local Requirements.** The Project and all Housing Units and common areas at the Site shall meet all applicable State and local codes, ordinances, and zoning requirements, including all applicable requirements set forth in the Municipal Code and all applicable State and local residential and building codes. The Project and all Housing Units and common areas at the Site must meet all such applicable requirements upon Project completion.

(b) **HUD Requirements.** The Project and all Housing Units and common areas at the Site shall also meet the requirements described in paragraphs (i) through (iv) of this Section 1302.1(b):

(i) **Accessibility.** The Project and all Housing Units and common areas at the Site shall meet the accessibility requirements of 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619).

(ii) **Disaster Mitigation.** Where relevant, the Project must be constructed to mitigate the impact of potential disasters (e.g., earthquakes, hurricanes, flooding, and wildfires), in accordance with State and local codes, ordinances, or other State and local requirements, or such other requirements as HUD may establish.

(iii) **Written Cost Estimates, Construction Contracts and Construction Documents.** The Construction Contract(s) and Development Plans must describe the Construction work to be undertaken in adequate detail so that the Authority can conduct inspections in accordance with the HOME Regulations. The Developer shall also provide written cost estimates for Construction for Authority's review; Authority shall determine whether such cost estimates are reasonable.

(iv) **Construction Progress Inspections.** Developer shall permit and facilitate progress and final inspections of Construction by the Authority to ensure that work is done in accordance with the applicable codes, the Construction Contract(s), and Development Plans.

(c) **Ongoing Property Condition Standards: Rental Housing.** Authority has established property standards for rental housing ("Authority's Property Standards"), which standards include all inspectable items and inspectable areas specified by HUD based on the HUD physical inspection procedures (Uniform Physical Condition Standards (UPCS)) prescribed by HUD pursuant to 24 CFR 5.705. Developer shall ensure that the Project, including all Housing Units, both the Senior Citizen Housing Units and the Non-Senior/Family Housing Units, and all common areas and appurtenant improvements at the Site, shall comply with the Authority's Property Standards throughout the Affordability Period. In accordance with the Authority's Property Standards, Developer shall maintain the Project, including all Housing Units and common areas at the Site: (i) as decent, safe, and sanitary housing in good repair, (ii) free of all health and safety defects and life-threatening deficiencies, and (iii) in compliance with the lead-based paint requirements in 24 CFR Part 35.

(d) **Inspections; Corrective and Remedial Actions.** In accordance with the HOME Regulations, Authority shall undertake ongoing inspections of the Project in accordance with §92.504(d). Authority has developed written inspection procedures and procedures for ensuring that timely corrective and remedial actions are taken by the Developer to address identified deficiencies.

**1302.2 Labor Standards.** In addition to compliance with Section 1303.1, to the extent required by applicable federal and/or state laws, the Construction Contract for the Project, as well as any other contract for the Construction work, shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of the United States Department of Labor pursuant to the Davis-Bacon Act (40 U.S.C. §276a-276a-5), will be paid to all laborers and mechanics employed in the Construction work, and such contract(s) shall also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. §3701, *et seq.*). Participating contractors, subcontractors, and other participants must comply with regulations issued under these Acts and with other federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. Developer shall supply to Authority certification, in form and substance satisfactory to HUD and Authority Director, as to compliance with the applicable provisions of this Section before receiving any disbursement of federal funds for the Construction work. If required by applicable federal and/or state law,



Developer shall require the General Contractor to implement and enforce all applicable prevailing wage and labor laws, including California Labor Code Section 1720, Davis-Bacon, and other applicable labor laws and regulations including, e.g., the requirement that all workers sign in and sign out of the job site (to the extent such requirement is applicable by law).

**1302.3 Handicapped Accessibility.** Developer shall comply with (a) Section 504 of the Rehabilitation Act of 1973, and implementing regulations at 24 CFR 8C governing accessibility of projects assisted with federal funds; and (b) the Americans with Disabilities Act of 1990, and implementing regulations at 28 CFR 35-36 in order to provide handicapped accessibility to the extent readily achievable; and (c) the Uniform Federal Accessibility Standards (UFAS) pursuant to the Architectural Barriers Act of 1968, 42 U.S.C. 4151-4157, as amended.

**1302.4 Use of Debarred, Suspended, or Ineligible Participants.** Developer shall comply (and cause the General Contractor to comply) with the provisions of 24 CFR 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractor or subcontractor during any period of debarment, suspension, or placement in ineligibility status. The Contractor, each subcontractor, and any other contractors or subcontractors or agents of Developer (subject to compliance with 24 CFR part 135) shall have provided to Authority the certification in appendix B of 24 CFR Part 24 that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from this Project, and Authority shall be responsible for determining whether each contractor has been debarred.

**1302.5 Maintenance of Drug-Free Workplace.** Developer shall certify that Developer will provide a drug-free workplace in accordance with 2 CFR 2429.

**1302.6 Lead-Based Paint.** Authority, as a recipient of federal funds, has modified and conformed all of its federally funded housing programs to the Lead-Based Paint Poisoning Prevention Act, Title X of the 1992 Housing and Community Development Act, 42 U.S.C. §4800, *et seq.*, specifically §§4821-4846, and the implementing regulations thereto. In this regard, Developer shall comply with all applicable federal requirements relating to lead-based paint.

**1302.7 Affirmative Marketing.** Developer shall adopt and implement affirmative marketing procedures and requirements at the Site in accordance with Section 92.351 of the HOME Regulations.

**1302.8 Nondiscrimination, Equal Opportunity and Fair Housing.** Developer shall carry out the Project and perform its obligations under this Agreement in compliance with all of the federal laws and regulations regarding nondiscrimination equal opportunity and fair housing described in 24 CFR 92.350 and 24 CFR 5.105.

**1302.9 Energy Conservation Standards.** As applicable to the Project, Developer shall cause the Site to meet the cost-effective energy conservation and effectiveness standards in 24 CFR 965 and 24 CFR 990.185.

**1302.10 Displacement and Relocation.** Developer acknowledges and agrees that, pursuant to Federal Program Limitations and consistent with the other goals and objectives of that part, Authority must ensure that it has taken all reasonable steps to minimize the displacement of persons as a result of the Construction work. In the event displacement were to occur, Developer

shall cause all Relocation of tenants and occupants at the Project to be conducted in accordance with the Relocation Laws and all Federal Program Limitations. Developer further agrees to cooperate with Authority in meeting the requirements of the Federal Program Limitations and shall take all actions and measures reasonably required by Authority Director (or his duly authorized representative) in connection therewith.

**1302.11 Requests for Disbursements of Funds.** Developer may not request disbursements of funds hereunder until the funds are needed for payment of eligible costs of the Project. The amount of each request shall be limited to the amount needed for the acquisition of the Conforming Leasehold Interest in the Site and the Construction as set forth in the Final Budget.

**1302.12 Eligible Costs.** Developer shall only use HOME Program funds to pay costs defined as "eligible costs" under Federal Program Limitations.

**1302.13 Records and Reports.** Developer shall maintain and from time to time submit to Authority such records, reports and information as Authority Director may reasonably require in order to permit Authority to meet the recordkeeping and reporting requirements required of them pursuant to 24 CFR 92.508. Without limiting the following, Developer shall maintain records and submit annual reports as required by this Agreement and Attachment No. 19.

**1302.14 Conflict of Interest.** Developer shall comply with and be bound by the conflict of interest provisions set forth at 24 CFR 570.611.

**1302.15 Conflicts between and among Federal Program Limitations and the HAL and the Dissolution Law.** If and to the extent applicable for any source of federal revenue expended to implement the Project and in the event of any conflict or inconsistency between applicable Federal Program Limitations and/or the HAL and/or the Dissolution Law, then the more stringent requirement(s) shall control.

**1302.16 Layering Review.** Developer acknowledges that a layering review has been performed prior to the Date of Agreement and shall be updated and performed in accordance with Federal Program Limitations as a condition to Closing. In connection with such review Developer acknowledges and agrees it shall be required to represent and certify to Authority that no government assistance other than the HOME Loan, the Tax Credits, the Additional Authority Loan or the City DA Fee Deferral Loan, has been obtained or is contemplated to be obtained for the Ground Lease, Construction and operation of the Project on the Site. If and when, such layering review is conducted, Developer agrees to notify Authority in the event that it applies for or proposes to use governmental funds, other than as listed in the previous sentence, for the Project at the Site.

**1303. Compliance with Laws.** Developer shall comply with all applicable federal, state and local statutes, ordinances, regulations and laws, (including the Governmental Requirements) with respect to Developer's Ground Lease of the Site and the Construction and the operation and management of the Project at the Site by Developer. Developer shall carry out the design, construction and completion of the Improvements, and operation and management of the Project, in conformity with all applicable laws, including all applicable federal, state, and local labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Municipal Code, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Act, Civil Code Section 51, *et seq.*

**1303.1 Prevailing Wage Laws.** Developer shall carry out the Construction through completion of the Project and the overall development of the Site in conformity with all applicable federal, state and local labor laws and regulations, including without limitation, the requirements, as and if applicable, to pay prevailing wages under federal law (the Davis Bacon Act, 40 U.S.C. Section 3141, *et seq.*, and the regulations promulgated thereunder set forth at 29 CFR Part 1 (collectively, "Davis Bacon")) and California law (Labor Code Section 1720, *et seq.*). The highest applicable wage requirements under federal or state law will apply.

Developer shall be solely responsible, expressly or impliedly, for determining and effectuating compliance with all applicable federal, state and local public works requirements, prevailing wage laws, labor laws and standards, and Authority makes no representations, either legally or financially, as to the applicability or non-applicability of any federal, state or local laws to the Project or any part thereof, either onsite or offsite. Developer expressly, knowingly and voluntarily acknowledges and agrees that Authority has not previously represented to Developer or to any representative, agent or Affiliate of Developer, or its Contractor or any subcontractor(s) for the construction or development of the Project, in writing or otherwise, in a call for bids or otherwise, that the work and construction undertaken pursuant to this Agreement is (or is not) a "public work," as defined in Section 1720 of the Labor Code or under Davis Bacon.

Developer knowingly and voluntarily agrees that Developer shall have the obligation to provide any and all disclosures or identifications as applicable and if required by Labor Code Section 1781 and/or by Davis Bacon, as the same may be amended from time to time, or any other similar law or regulation. Developer agrees to and shall indemnify, protect, pay for, defend (with legal counsel acceptable to Authority) and hold harmless the Indemnitees, with counsel reasonably acceptable to Authority, and their elected and appointed public officials, employees and agents, from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorneys' fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, Construction (as defined by applicable law) and/or operation of the Project, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (i) the noncompliance by Developer of any applicable local, state and/or federal law or regulation, including, without limitation, any applicable federal and/or state labor laws or regulations (including, without limitation, if applicable, the requirement to pay state and/or federal prevailing wages); (ii) the implementation of Section 1781 of the Labor Code and/or Davis Bacon, as the same may be amended from time to time, or any other similar law or regulation; and/or (iii) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781 and/or by Davis Bacon, as the same may be amended from time to time, or any other similar law or regulation. It is agreed by the parties that, in connection with the development and construction (as defined by applicable law or regulation) of the Project, including, without limitation, any and all public works (as defined by applicable law or regulation), Developer shall bear all risks of payment or non-payment of prevailing wages under applicable federal, state and local law or regulation and/or the implementation of Labor Code Section 1781 and/or Davis Bacon, as the same may be amended from time to time, and/or any other similar law or regulation. "Increased costs," as used in this Section 1303.1, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the Construction and development of the Project by Developer. At the request of Developer, Authority shall cooperate with and assist Developer in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense;

provided that Authority shall not be obligated to incur any expense in connection with such cooperation or assistance.

### **1303.2 [Reserved].**

**1303.3 Section 3 Compliance.** Developer agrees to comply with and to cause the Contractor, each subcontractor, and any other contractors and/or subcontractors or agents of Developer to comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. §1701u, and the implementing regulations, in connection with the construction of the Project to the extent applicable. Developer shall submit to Authority each Construction Contract with appropriate provisions providing for the Construction of the Project in conformance with the terms of this Agreement, including the Section 3 Clause, in accordance with Section 209.2(f). The General Contractor and all subcontractors shall register with the City's Garden Grove Workforce Center.

Authority has prepared a Section 3 "checklist" and other forms related to Section 3 compliance, attached hereto as Attachment No. 20 and fully incorporated by this reference; and as provided by Authority to Developer, and its contractor(s) or subcontractor(s), if any, and as applicable, such forms shall be utilized in all contracts and subcontracts to which Section 3 applies. Developer hereby acknowledges and agrees to take all responsibility for compliance with all applicable Section 3 Clause federal requirements as to Developer, general contractor, subcontractors, or other contractor(s), subcontractor(s), and other agents. Developer shall provide or cause to be provided to the Contractor and each subcontractor, and each of its other contractor(s), subcontractor(s) and agents the checklist for compliance with the Section 3 Clause federal requirements provided by Authority, to obtain from the Contractor, each subcontractor, and other contractor(s), subcontractor(s), and agents all applicable items, documents, and other evidence of compliance with the items, actions, and other provisions within the checklist, and to submit all such completed Section 3 Clause documentation and proof of compliance to the Authority Director. To the extent applicable, Developer shall comply and/or cause compliance with all Section 3 Clause requirements for the Project. For example, when and if Developer or its contractor(s) hire(s) full time employees, rather than volunteer labor or materials, Section 3 is applicable and all disclosure and reporting requirements apply.

### **1400. NONDISCRIMINATION COVENANTS.**

**1401. Nondiscrimination and Equal Opportunity.** Developer hereby covenants, by and for itself, its successors and assigns, and all persons claiming under or through them, to comply with the following laws relating to nondiscrimination and equal opportunity to the extent applicable to the Site or Project: (1) The Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100 *et seq.*; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*; 24 CFR part 8; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135; Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp.,

p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60; Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971-1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise), and the Unruh Act, Civil Code Section 51, *et seq.*

**1402. Prohibition of Inquiries on Sexual Orientation or Gender Identity.** Developer further covenants, by and for itself, its successors and assigns, and all persons claiming under or through them, not to inquire about the sexual orientation or gender identity of an applicant for, or occupant of, the Project or any Housing Unit at the Site, for the purpose of determining eligibility for occupancy of such Housing Units or otherwise making such Housing Units available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity. Further, determinations of eligibility for occupancy of Housing Units at the Project shall be made in accordance with the eligibility requirements provided for such program by HUD, and such Housing Units shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.

The covenants established in this Section 1400, *et seq.*, shall, without regard to technical classification and designation, be binding for the benefit and in favor of Authority and its successors and assigns, and shall remain in effect in perpetuity.

#### **1500. DEFAULTS AND REMEDIES.**

**1501. Defaults—General.** Subject to the permitted extensions of time and other cure periods set forth in this Agreement and in the Project Documents, failure or delay by any party to perform any term or provision of this Agreement constitutes a Default hereunder and under the Project Documents. The party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay, and shall complete such cure, correction or remedy with diligence.

**1501.1 Events of Default by Developer.** The occurrence of any of the following, whatever the reason therefor, shall specifically constitute a Default by Developer:

(a) Developer fails to make payment under the Authority Additional Loan Note when due, and such failure is not cured within ten (10) days after Developer's receipt of written notice that such payment was not received when due; or

(b) Developer fails to make payment under the HOME Loan Note when due, and such failure is not cured within ten (10) days after Developer's receipt of written notice that such payment was not received when due; or

(c) Developer fails to make payment under the City DA Fee Deferral Loan Note when due, and such failure is not cured within ten (10) days after Developer's receipt of written notice that such payment was not received when due; or

(d) Developer fails to perform any other obligation for the payment of money (other than payments of principal or interest) under any Project Document, and such failure is not cured within ten (10) days after Developer's receipt of written notice that such obligation was not performed when due, and Developer has not exercised its right to contest the obligation to make such payments in conformity with this Agreement; or

(e) Developer fails to perform any obligation (other than obligations described in subsections (a), (b), (c), or (d), above) under any Project Document, and such failure is not cured within thirty (30) days after Developer's receipt of written notice that such obligation was not performed; provided that, if cure cannot reasonably be effected within such thirty (30)-day period, such failure shall not be a Default so long as Developer (in any event, within thirty (30) days after receipt of such notice) commences cure, and thereafter diligently prosecutes such cure to completion; or

(f) Subject to Section 1505, work on the Project ceases for thirty (30) consecutive days for any reason (other than and limited to: governmental orders, decrees or regulations, acts of God, strikes or other causes beyond Developer's reasonable control) and such causes, in the aggregate and in the Authority Director's reasonable judgment, threaten to delay the completion of the Project beyond the required Outside Completion Date set forth in this Agreement; or

(g) Developer is enjoined or otherwise prohibited by any governmental agency from constructing and/or occupying the Improvements and such injunction or prohibition continues unstayed for thirty (30) days or more for any reason; or

(h) Developer is dissolved, liquidated or terminated, or all or substantially all of the assets of Developer are sold or otherwise transferred without the Authority Director's prior written consent to the extent consent is required; or

(i) Developer is the subject of an order for relief by a bankruptcy court, or is unable or admits its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or Developer applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or any part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of Developer and the appointment continues undischarged or unstayed for ninety (90) days; or Developer institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, reorganization, or similar proceeding relating to it or any part of its property; or any similar proceeding is instituted without the consent of Developer and continues undismissed or unstayed for ninety (90) days; or any judgment, writ, warrant of attachment or execution, or similar process is issued or levied against any property of Developer is not released, vacated or fully bonded within ninety (90) days after its issue or levy; or

(j) Authority exercises Authority's right to cure a default by Developer under the Primary Loan, or other financing senior to the Additional Authority Loan, the HOME Loan, or the City DA Fee Deferral Loan, and Developer does not reimburse Authority for the cost to cure such default within ten (10) days following written demand for payment from Authority.

**1502. Notice of Default.** The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice or, provided that the party is proceeding with diligence to cure, such greater time as may be necessary to cure given the nature of the Default. Failure or delay in giving such notice shall not constitute a waiver of any Default, nor shall it change the time of Default. If Authority fails to approve or disapprove any request by Developer within the time period set forth in this Agreement or any other Project Document (or, if no time period is set forth herein or therein, within thirty (30) days after the initial request), such failure shall be a Default by Authority ten (10) days after Developer gives Authority notice of the Default.

**1503. Termination Prior to Developer's Acquisition of Conforming Leasehold Interest.**

**1503.1 Termination by Developer.** In the event that prior to the closing of the Escrow as to the Conforming Lease:

(a) Developer is unable to obtain the Primary Loan or other financing necessary for the acquisition of the Conforming Leasehold Interest and Construction through completion of the Project on the Site; or

(b) Authority is in default of the Agreement and has not cured or commenced to cure such default within the applicable cure periods;

then, subject to any applicable cure provisions contained in this Agreement, at the option of Developer, all provisions of this Agreement shall terminate and be of no further force and effect. Thereafter, neither Authority nor Developer shall have any further rights against or liability to the other with respect to this Agreement.

**1504. Remedies Upon Default.**

**1504.1 Institution of Legal Actions.** The occurrence of any Default shall give the non-defaulting party the right to proceed with any and all remedies set forth in this Agreement or any other implementing or ancillary agreements related to the Project, 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 hereunder or thereunder or to enjoin acts or things which may be unlawful or in violation of the provisions hereof or thereof, and the right to terminate this Agreement. In addition, the occurrence of any Default by Developer will relieve Authority of any obligation to perform hereunder, including without limitation to fund the Home Loan, the Additional Authority Loan and the obligation of the City to make available the City DA Fee Deferral Loan, and the right to cause any indebtedness of Developer to Authority hereunder to become immediately due and payable.

**1504.2 Acceptance of Service of Process.** In the event that any legal arbitration or action is commenced against Authority, service of process on Authority shall be made by personal service upon the Authority Secretary or in such other manner as may be provided by law. In the event that any legal action is commenced against Developer, service of process on Developer shall be made by personal service upon a partner or an officer of Developer and shall be valid whether made within or outside the State of California or in such other manner as may be provided by law.

**1504.3 Other Authority Remedies upon Developer Default.** Upon the occurrence and during the continuance of any Default by Developer, Authority may, at its option and in its sole and absolute discretion, do any or all of the following:

(a) By written notice to Developer, declare the principal of all amounts owing under the one or more of the Additional Authority Loan Note secured by the Additional Authority Loan Deed of Trust, the HOME Loan Note secured by the HOME Loan Deed of Trust, the City DA Fee Deferral Note secured by the City DA Fee Deferral Loan Deed of Trust, and/or other Project Documents, together with all accrued interest and other amounts owing in connection therewith, to be immediately due and payable, regardless of any other specified due date;

(b) In its own right or by a court-appointed receiver, take possession of the Site, enter into contracts for and otherwise proceed with the completion of the work of improvement on the Site by expenditure of its own funds;

(c) Exercise any of its rights under the Project Documents and any rights provided by law, including the right to foreclose on any security and exercise any other rights with respect to any security, all in such order and manner as Authority elects in its sole and absolute discretion; and/or

(d) Seek and obtain an order for specific performance as allowed by law or in equity.

**1505. 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 in default, 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, without limitation, 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, or acts or failures to act of any public or governmental entity (except that neither Authority's nor City's acts or failure to act shall excuse performance of Authority or City, as applicable, 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.

**1506. Attorney's Fees.** In the event any legal action is instituted among Authority, City and Developer (including any member or partner of Developer or its successor(s) and assign(s)) in connection with this Agreement, then the prevailing party(ies) shall be entitled to recover from the losing party(ies) all of its costs and expenses, including court costs and reasonable attorneys' fees, and all fees, costs, and expenses incurred on any appeal or in collection of any judgment.

**1507. Inaction Not a Waiver of Default.** Any failures or delays by any party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.



**1508. Cumulative Remedies; No Waiver.** The parties' rights and remedies under this Agreement are cumulative and in addition to all rights and remedies provided by law from time to time. The exercise by a party of any right or remedy shall not constitute a cure or waiver of any default, nor invalidate any notice of default or any act done pursuant to any such notice, nor prejudice such party in the exercise of any other right or remedy. No waiver of any default shall be implied from any omission by a party to take action on account of such default if such default persists or is repeated. No waiver of any default shall affect any default other than the default expressly waived, and any such waiver shall be operative only for the time and to the extent stated. No waiver of any provision of this Agreement shall be construed as a waiver of any subsequent breach of the same provision. A party's consent to or approval of any act by another party requiring further consent or approval shall not be deemed to waive or render unnecessary such party's consent to or approval of any subsequent act. A party's acceptance of the late performance of any obligation shall not constitute a waiver by such party of the right to require prompt performance of all further obligations; a party's acceptance of any performance following the sending or filing of any notice of default shall not constitute a waiver of such party's right to proceed with the exercise of its remedies for any unfulfilled obligations; and such party's acceptance of any partial performance shall not constitute a waiver by such party of any rights relating to the unfulfilled portion of the applicable obligation.

## **1600. MISCELLANEOUS.**

### **1601. General Interpretation Terms.**

**1601.1 Singular and Plural Terms; Masculine and Feminine Terms.** Any defined term used in the plural in any Project Document shall refer to both the singular and the plural form thereof. Any provision herein or defined term used that refers to the masculine shall also refer to the feminine, and any provision herein or defined term used that refers to the feminine shall also refer to the masculine.

**1601.2 Accounting Principles.** Any accounting term used and not specifically defined in any Project Document shall be construed in conformity with, and all financial data required to be submitted under any Project Document shall be prepared in conformity with, generally accepted accounting principles applied on a consistent basis or in accordance with such other principles or methods as are reasonably acceptable to Authority.

**1601.3 References and Other Terms.** Any reference to any Project Document or other document shall include such document both as originally executed and as it may from time to time be modified. References herein to Articles, Sections, Exhibits, and Attachments shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears except as otherwise noted. The term "document" is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms "including" and "include" mean "including (include) without limitation".

**1601.4 Attachments and Other Exhibits Incorporated.** All attachments and other exhibits to this Agreement, as now existing and as the same may from time to time be modified, are incorporated herein by this reference.

**1602. Notice of Certain Matters.** Developer shall give notice to each of Authority and City, within ten (10) days after Developer's learning thereof, of each of the following:

(a) any material pending or, so far as is known to Developer, threatened, legal proceedings to which Developer or an Affiliate is or may be made a party or to which any portion of the Site is or may become subject, which have not been fully disclosed in the material submitted to Authority which could materially adversely affect the ability of Developer to carry out its obligations hereunder, whether covered by insurance or not;

(b) any dispute between Developer and any governmental agency relating to the Site or the Project, the adverse determination of which might materially affect the Site or the Project;

(c) any change in Developer's principal place of business;

(d) any aspect of the Project that is not in substantial conformity with the Scope of Development;

(e) any Default or event which, with the giving of notice or the passage of time or both, would constitute a Default;

(f) the creation or imposition of any mechanics' lien or other lien against the Site;

(g) any Material Adverse Change in the financial condition of Developer;

(h) any material change affecting the eligibility of a selected tenant; and

(i) any material change to Developer's application to TCAC in the form submitted in March 2015, which shall not occur without Authority's prior consent, which consent shall not be unreasonably withheld.

**1603. Further Assurances.** Developer and Authority shall each execute and acknowledge (or cause to be executed and acknowledged) and deliver to the other party all documents, and take all actions, reasonably required by the other party from time to time to confirm the rights created or now or hereafter intended to be created under the Project Documents, to protect and further the validity, priority and enforceability of the Regulatory Agreement, Additional Authority Loan Deed of Trust, HOME Loan Deed of Trust, City DA Fee Deferral Loan Deed of Trust, the Security Agreement and Financing Statement or otherwise to carry out the purposes of the Project Documents.

**1604. Obligations Unconditional and Independent.** Notwithstanding the existence at any time of any obligation or liability of Authority to Developer, or any other claim by Developer against Authority, in connection with the Site or otherwise, Developer hereby waives any right it might otherwise have (a) to offset any such obligation, liability or claim against Developer's obligations under the Project Documents, or (b) to claim that the existence of any such outstanding obligation, liability or claim excuses the nonperformance by Developer of any of its obligations under the Project Documents.

**1605. Notices.** All notices, demands, approvals and other communications provided for in the Project Documents shall be in writing and be delivered to the appropriate party at its address as follows:

If to Developer: Garden Grove Housing Partners LP  
17701 Cowan Avenue, Suite 200  
Irvine, California 92614  
Attn: Laura Archuleta

with copies to: Rutan & Tucker, LLP  
611 Anton Boulevard, Suite 1400  
Costa Mesa, California 92626  
Attn: Patrick D. McCalla, Esq.

and to Tax Credit Investor: Boston Financial Investment Management, L.P.  
101 Arch Street  
Boston, MA 02110

If to City or Authority: City of Garden Grove  
Garden Grove Housing Authority  
11222 Acacia Parkway  
Garden Grove, California 92840  
Attention: City Clerk/Secretary  
Fax No.: (714) 741-5044

with copies to: City of Garden Grove  
Garden Grove Housing Authority  
11222 Acacia Parkway  
Garden Grove, California 92840  
Attention: City Manager/Authority Director  
Fax No.: (714) 741-4044

City of Garden Grove  
Garden Grove Housing Authority  
11222 Acacia Parkway  
Garden Grove, California 92840  
Attention: City Attorney  
Fax No.: (714) 741-5044

Stradling Yocca Carlson & Rauth  
660 Newport Center Drive, Suite 1600  
Newport Beach, California 92660  
Attention: Celeste Stahl Brady  
Fax No.: (949) 823-5141

Addresses for notice may be changed from time to time by written notice to all other parties. Written notice, demands and communications between Authority and Developer shall be deemed sufficient if dispatched by personal delivery, overnight delivery by a reputable courier service, registered or certified mail, postage prepaid, return receipt requested to the principal offices of

Authority and Developer, the addresses of which are hereinafter set forth. Such written notices, demands and communications may be sent in the manner prescribed to each other's addresses as either party may, from time to time, designate by mail, or the same may be delivered in person to representatives of either party upon such premises. Notices herein shall be deemed given as of the date of personal service or three (3) consecutive calendar days after deposit of the same in the custody of the United States Postal Service.

**1606. Survival of Representations and Warranties.** All representations and warranties in the Project Documents shall survive the conveyance of the Conforming Leasehold Interest and have been or will be relied on by Authority notwithstanding any investigation made by Authority.

**1607. No Third Parties Benefited.** Except as provided herein as to the Authority, this Agreement is made for the purpose of setting forth rights and obligations of Developer, City and Authority, and no other person shall have any rights hereunder or by reason hereof.

**1608. Binding Effect; Assignment of Obligations.** This Agreement shall bind, and shall inure to the benefit of, Developer, City and Authority and their respective and permitted successors and assigns. Except as otherwise permitted pursuant to Section 1215.1 above, Developer shall not assign any of its rights or obligations under any Project Document without the prior written consent of Authority Director, which consent may be withheld in the Authority Director's sole and absolute discretion. Any such assignment without such consent shall, at Authority's option, be void. In connection with the foregoing consent requirement, Developer acknowledges that City and Authority have relied upon Developer's particular expertise in entering this Agreement and continue to rely on such expertise to ensure the satisfactory completion of the Project.

**1609. Counterparts.** Provided that the written reasonable approval of Authority Director is first obtained, any Project Document, other than the HOME Loan Note, the City DA Fee Deferral Loan Note, or the Additional Authority Loan Note, may be executed in counterparts, all of which, taken together, shall be deemed to be one and the same document.

**1610. Prior Agreements; Amendments; Consents; Integration.** This Agreement (together with the other Project Documents) contains the entire agreement among Authority, City and Developer with respect to the Site, and all prior negotiations, understandings and agreements are superseded by this Agreement and such other Project Documents; provided that the Development Agreement DA-001-2014 adopted by Garden Grove Ordinance No. 2853 shall remain enforceable according to its terms. No modification of any Project Document (including waivers of rights and conditions) shall be effective unless in writing and signed by the party against whom enforcement of such modification is sought, and then only in the specific instance and for the specific purpose given. This Agreement is executed in three duplicate originals, each of which is deemed to be an original. This Agreement includes pages 1 through 102, S-1 and S-2, and Attachment Nos. 1 through 25, which constitutes the entire understanding and agreement of the parties.

**1611. Waivers.** All waivers of the provisions of this Agreement must be in writing by the appropriate authorized representatives of Authority, City and/or Developer, as applicable, and all amendments hereto must be in writing by the appropriate authorized representatives of Authority and Developer.

**1612. Governing Law.** All of the Project Documents shall be governed by, and construed and enforced in accordance with, the laws of the State of California and applicable Federal Program

Limitations. Developer irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of Orange or the United States District Court of the Central District of California, as Authority may deem appropriate, in connection with any legal action or proceeding arising out of or relating to this Agreement or the other Project Documents. Developer also waives any objection regarding personal or in rem jurisdiction or venue.

**1613. Severability of Provisions.** No provision of this Agreement or of any Project Document that is held to be unenforceable or invalid shall affect the remaining provisions, and to this end all provisions of this Agreement and the Project Documents are hereby declared to be severable.

**1614. Headings.** Article and Section headings included in this Agreement, the Attachments, and any Project Documents are for convenience of reference only and shall not be used in construing such documents.

**1615. Conflicts.** In the event of any conflict between or among the provisions of this Agreement and those of the HOME Loan Note, or the Additional Authority Loan Note, or the City DA Fee Deferral Loan Note, or the Regulatory Agreement, the provisions of the HOME Loan Note or the Additional Authority Loan Note, City DA Fee Deferral Loan Note, and the Regulatory Agreement shall prevail; however, in the event of a conflict between the provisions of this Agreement and any other Project Document, this Agreement shall prevail. In the event of any conflict between the provisions of each of the Additional Authority Loan Note and the HOME Loan Note, the Additional Authority Loan Note shall prevail while such note is outstanding. Notwithstanding the foregoing, with respect to any matter addressed in both this Agreement and any other Project Document, the fact that one document provides for greater, lesser or different rights or obligations than the other shall not be deemed a conflict unless the applicable provisions are inconsistent and could not be simultaneously enforced or performed.

**1616. Time of the Essence.** Time is of the essence in this Agreement and in all of the Project Documents.

**1617. Conflict of Interest.** No member, official or employee of Authority shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement that is prohibited by law.

**1618. Warranty against Payment of Consideration.** Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

**1619. Nonliability of Authority and Developer Officials and Employees.** No member, official, director, officer, board official, or employee of any party to this Agreement shall be personally liable to any other party, or any successor in interest of any other party, in the event of any default or breach by the party or for any amount which may become due to the other party(ies) or successor, or on any obligation under the terms of this Agreement.

**1620. Broker's Commissions.** No broker was contracted with in connection with the HOME Loan, the Additional Authority Loan or the City DA Fee Deferral Loan. Developer and UMC have engaged no broker in connection with Developer's Option Agreement dated as of November 20, 2014 for the Conforming Lease of the Site; however, nonetheless, Authority shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement or the

Escrow if such were to be alleged or sought by a third party or by UMC or by any Jamboree Affiliate Entity. Developer represents to Authority that other than as disclosed above in this Section 1620, it has engaged no broker, agent, or finder in connection with this transaction, and Developer agrees to hold Authority harmless from any claim by any broker, agent or finder retained by Developer. Authority acknowledges that Authority has not engaged any broker, agent, or finder in connection with this transaction, and Authority agrees to hold Developer harmless from any claim by any broker, agent or finder retained by Authority.

**1621. Authority Approvals and Actions through Authority Director and City Manager.** Authority shall maintain authority of this Agreement and the authority to implement this Agreement through Authority Director and the City Manager (or interim appointments). Authority Director and City Manager shall have the authority to issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of Authority and City so long as such actions do not materially or substantively change the uses or development planned and required on the Site, or add to the costs incurred or to be incurred by Authority or City as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform as specified in the Schedule of Performance. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council and/or the Authority Board, as applicable.

**1622. Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**1623. Legal Advice.** Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

**1624. Non-Recourse Obligation.** In the event of any Default under the terms of this Agreement or any of the other Project Documents, the sole recourse of Authority for any such Default shall be Developer's interest in the Site and the Project and Developer and its partners and Affiliates shall not be personally liable for the payment of any obligations under this Agreement; provided, however, that the foregoing shall not in any way affect any rights Authority may have hereunder, or any right of Authority to recover or collect funds, damages or costs (including without limitation reasonable attorneys' fees and costs) incurred by Authority as a result of fraud, intentional misrepresentation or bad faith waste, and/or any costs and expenses incurred by Authority in connection therewith (including without limitation reasonable attorneys' fees and costs).

**1625. Covenant Not to Sue.** The following covenant relating to Developer's obligation not to sue regarding the Project or the Site or any issues ancillary thereto (but excluding the specific performance of this Agreement) is a material incentive for and a part of the consideration to

Authority and City to enter into this Agreement with Developer. Therefore, Authority shall have no obligation to make the HOME Loan or the Additional Authority Loan, nor shall City be obligated to make available the City DA Fee Deferral Loan, and the performance obligations of City and Authority under this Agreement shall terminate at the election of the City and Authority, in the event from and after the Effective Date and until the Closing, Developer, or any Affiliate of Developer or any of its partners, officers, directors, employees, agents, representatives, consultants, attorneys, or any person acting at the direction of Developer, undertakes any act to oppose, or to commence, participate in, prosecute, or otherwise object to, or to litigate, directly or indirectly, any permit or discretionary decision of Authority, City, Successor Agency, City's Planning Commission, or any other City board or commission relating to the Site and/or the Project of whatever form or nature (but excluding the specific performance of this Agreement).

Notwithstanding the foregoing, nothing set forth in this Section 1625 shall prevent Developer from asserting its rights relating to the performance and enforcement of this Agreement or due to the abuse of discretion by a governmental entity considering and acting upon a future discretionary decision related to the parameters of this covenant. Further, nothing in the foregoing covenant shall prevent Developer from asserting Developer's rights with respect to prospective action or future conduct by any person who interferes, opposes, or delays implementation and completion of the Project.

**1626. Developer's Payment and Reimbursement of Authority's Third Party Costs Incurred Post-Conversion of Primary Loan.**

**1626.1 Third Party Costs Defined; Obligation.** Developer shall pay for and reimburse Authority for all costs reasonably incurred by Authority and City for any and all out of pocket, third party costs, fees, and expenses incurred by Authority or City (or Successor Agency) (but not in-house staff time) for attorneys, economic consultants, appraisers, engineers, affordable housing consultants, escrow company fees, title company fees, and other consulting and/or professional services incurred by Authority or City (or Successor Agency) arising from and/or related in any respect to the implementation of this Agreement or the Project from the period of time commencing upon the Conversion to permanent financing for the Project through the term of the Affordability Period (together, "Third Party Costs"). The Third Party Costs may include costs incurred in connection with (a) drafting, negotiation, and execution of post-Conversion agreements, if any, (b) post-Conversion enforcement of the Regulatory Agreement, HOME Loan Note, HOME Loan Deed of Trust, Additional Authority Loan Note, Additional Authority Loan Deed of Trust, City DA Fee Deferral Loan Note, City DA Fee Deferral Loan Deed of Trust or other Project Documents, including the following: (i) commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights or obligations of the parties to any Project Documents, and (ii) all claims, demands, causes of action, liabilities, losses, commissions and other costs against which Authority or City are indemnified under the Project Documents, provided as to defense of any action which Authority or City have tendered the defense to Developer and Developer fails to defend any such action; and (c) other reasonable costs incurred related to requests for or provision of estoppel certificates, subordination agreements, affordable housing documents, escrow instructions, advisory assistance, amendments, implementation agreements, interpretations, modifications, any other agreements, instruments, documentation, legal advice, economic development/affordable housing advice, or other third party contracts for consulting or professional services necessitated by Authority's, City's or Developer's post-Conversion implementation of this Agreement, and/or requested by Developer, and/or its Lender or other independent contractor or consultant to Developer post-Conversion arising from or related in any manner to this Agreement.

**1626.2 Payment of Third Party Costs.** Within ten (10) days of the submittal by Authority or City staff of copies of invoices or billings for Third Party Costs incurred, it is and shall be the obligation of Developer to reimburse and pay to Authority or City one hundred percent (100%) of these Third Party Costs.

(a) This reimbursement obligation shall bear interest from the date occurring ten (10) days after Authority or City gives written demand to Developer at the lesser of the rate of ten percent (10%) per annum, or the maximum rate then permitted by law.

(b) This reimbursement obligation shall survive the issuance of the final Release of Construction Covenants for the Project and termination of this Agreement.

**1626.3 Exception to Payment of Post-Conversion Third Party Costs.** Notwithstanding Sections 1626.1 and 1626.2 above, Developer shall not be responsible to pay and reimburse for Third Party Costs if the costs incurred are attributable to one or more of the following events:

(a) City Council, Authority Board, Planning Commission, Zoning Administrator, or other City official with discretionary approval and/or disapproval rights over the Project or the implementation of this Agreement (including Successor Agency, as and if applicable) disapproves, denies, or refuses to take action on an application for a permit or other discretionary application necessary to commence and complete the Project;

(b) Default by City or Authority under this Agreement; or

(c) Any amendment to this Agreement or any other Project Documents that is initiated by Authority or City.



IN WITNESS WHEREOF, the parties hereto have caused this HOME Funds Commitment and Agreement (Garden Grove United Methodist Church Apartments Project) to be executed on the dates hereinafter respectively set forth.

**DEVELOPER:**

**GARDEN GROVE HOUSING PARTNERS LP,**  
a California limited partnership

By: JHC-GARDEN GROVE LLC,  
a California limited liability company,  
Its General Partner

By: Jamboree Housing Corporation,  
a California nonprofit public benefit  
corporation, its Managing Member

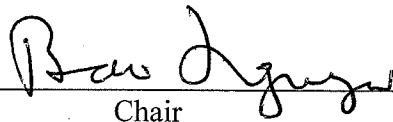
By: *Marcy V. Finamore*  
Marcy V. Finamore, Executive Vice  
President and Chief Financial Officer

[Signatures continue on following page.]

[Signatures continue from previous page.]

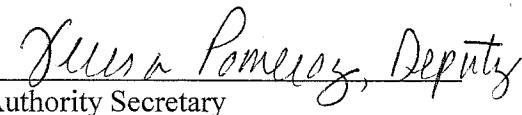
**AUTHORITY:**

**GARDEN GROVE HOUSING AUTHORITY,**  
a public body, corporate and politic

By:   
Chair

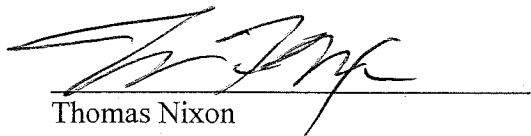
**ATTEST:**

**KATHLEEN BAILOR,**  
**AUTHORITY SECRETARY**

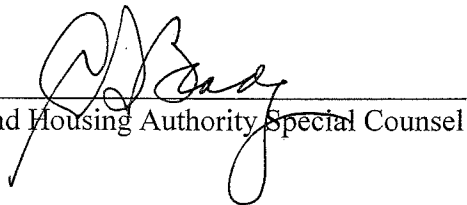
  
Authority Secretary

**APPROVED AS TO FORM (FOR CITY AND AUTHORITY):**

**WOODRUFF, SPRADLIN & SMART,**  
**CITY ATTORNEY**

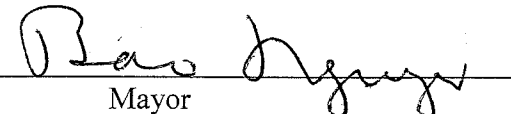
  
Thomas Nixon

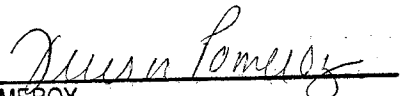
**STRADLING YOCCA CARLSON & RAUTH**

  
City and Housing Authority Special Counsel

**CITY:**

**CITY OF GARDEN GROVE,**  
a municipal corporation

By:   
Mayor

**ATTEST:**   
**TERESA POMEROY**  
Deputy City Clerk  
City of Garden Grove  
**DATED:** July 21, 2015

**ATTACHMENT NO. 1**

**LEGAL DESCRIPTION**

The land referred to below is situated in the City of Garden Grove, County of Orange, State of California, and is described as follows:

PARCEL A:

PARCEL 2, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER PARCEL MAP FILED IN BOOK 137, PAGES 27 AND 28 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION OF SAID LAND DESCRIBED IN DEED RECORDED SEPTEMBER 13, 1990 AS INSTRUMENT NO. 90-487987, OFFICIAL RECORDS.

PARCEL B:

THOSE PORTIONS OF STANFORD AVENUE AND MAIN STREET, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, ADJOINING PARCEL 2 ON THE NORTH AND EAST, AS SHOWN ON A PARCEL MAP FILED IN BOOK 137, PAGES 27 AND 28 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BOUNDED WESTERLY BY THE NORTHERLY PROLONGATION OF THAT CERTAIN COURSE IN THE BOUNDARY OF SAID PARCEL 2 SHOWN AS "NORTH 0° 53' 09" 233.25 FEET" ON SAID PARCEL MAP AND BOUNDED SOUTHERLY BY THE EASTERLY PROLONGATION OF THAT CERTAIN COURSE SHOWN AS "NORTH 89° 23' 30" EAST 281.00 FEET" ON SAID PARCEL MAP.

PARCEL C:

THE WEST 110 FEET OF THE EAST 210 FEET OF THE NORTH 2 ACRES OF THE WEST HALF (W½) OF THE NORTHEAST QUARTER (NE¼) OF THE SOUTHEAST QUARTER (SE¼) OF THE SOUTHEAST QUARTER (SE¼) OF SECTION THIRTY-TWO (32), IN TOWNSHIP FOUR (4) SOUTH, RANGE TEN (10) WEST, SAN BERNARDINO BASE AND MERIDIAN.

APN(s): 089-202-28 and 089-202-54

**ATTACHMENT NO. 2**

**SCHEDULE OF PERFORMANCE**

**A. GENERAL**

1. Submittal of Agreement. Developer shall execute and submit the Agreement to Authority Director for consideration and action by City and Authority. Fourteen (14) days prior to City Council and Authority Board consideration and action on the Agreement.
2. Authority Approval/Disapproval of Exceptions to Title. Authority shall provide Developer with written notification of Authority's approval or disapproval of the exception(s) set forth in the preliminary report for the Site. Within 60 days after the later to occur of Authority's receipt of legible copies of all of the supporting documents underlying the Exceptions; as of the Date of Agreement Authority disapproves of Exceptions 6, 11, and 15 in the PTR provided by Developer's counsel to the Authority's counsel on June 8, 2015.
3. Insurance. Developer shall furnish or cause to be furnished appropriate certificates of insurance and/or endorsements to City and Authority that meet all requirements of the Agreement. As a Condition Precedent to the close of Escrow.
4. Developer Signage. Developer shall identify the Project with temporary construction signage designed and located as approved by Authority on the Site. Within forty-five (45) days following the close of Escrow.

**B. PROJECT FINANCING**

1. Submission of Evidence of Financing. Developer shall submit to Authority evidence of financing for the Project as set forth in Section 209, *et seq.* of the Agreement. No later than June 23, 2015.

2. Receipt of All Funding Commitments Necessary to Complete Acquisition of the Conforming Leasehold Interest in the Site. Complete..  
Developer shall use its best and good faith efforts to secure irrevocable funding commitments from TCAC and Lender which when combined with available Authority funding for this Project shall equal no less than [\$18,250,000.00, consisting of \$12,000,000 in bond proceeds and \$6,250,000 from tax credits] for acquisition of the Conforming Leasehold Interest in the Site and Construction. Developer shall submit such commitments to Authority for review.
  
3. Approval of Developer's Funding Commitments. Authority Complete.  
shall approve, conditionally approve, or disapprove Developer's Funding Commitments as required by the Agreement.
  
4. Review and Consent to Developer's Financing Documents in Implementation of the Funding Commitments. As a Condition Precedent to  
Developer shall submit to Authority, and Authority shall review and consent to Developer's Financing Documents in implementation of the Funding Commitments. the Closing.

C. GROUND LEASE OF THE SITE BY DEVELOPER BY CONFORMING LEASE

1. Open Escrow. Developer shall open Escrow with UMC for the Complete.  
Conforming Lease of the Site.
  
2. Environmental Investigation. Developer shall complete Complete.  
physical and environmental investigation of the Site and submit copies of all of the Environmental Reports and recommended remedial actions to Authority.
  
3. Remediation Contracts. Developer shall enter into contracts Complete.  
necessary to complete required remediation, if any, and set a schedule for completion thereof as a part of the Construction.
  
4. Deposit of Documents into Escrow. Developer shall obtain and Not fewer than one (1)  
cause to be fully executed and deposited with Escrow Holder calendar day prior to close of  
the Conforming Lease. Authority and Developer shall cause to Escrow.  
be fully executed the final form of the Additional Authority Loan Note, Additional Authority Loan Deed of Trust, HOME Loan Note, HOME Loan Deed of Trust, Security Agreement, City DA Fee Deferral Loan Note, City DA Fee Deferral Loan Deed of Trust, Regulatory Agreement, Request for Notice of Default, and such other Project Documents necessary for the closing of Escrow.

- |  |  |
|--|--|
| 5. <u>Conditions Precedent to Developer's Ground Lease of the Site by the Conforming Lease and Initial Funding of the HOME Loan and Implementation of the City DA Fee Deferral Loan Note.</u> Authority must notify Escrow that all Conditions Precedent to Developer's Ground Lease of the Site by the Conforming Lease and Authority's funding therefor from the proceeds of the HOME Loan have been satisfied by Developer or waived by Authority prior to the close of Escrow. | Not later than the Closing.  |
| 6. <u>Close of Escrow.</u> Escrow shall close when all Conditions Precedent thereto thereof have been waived or satisfied.   | Within five (5) days of notification by Authority to Escrow Holder that all Conditions Precedent are satisfied and/or waived, but not later than the Outside Closing Date. |
| 7. <u>Conditions Precedent to Funding of the Additional Authority Loan Amount.</u> Conditions are satisfied by Developer.  | On the latest to occur of (i) completion of Construction of the Project and readiness for Conversion of the Primary Loan, or (ii) December 31, 2016.                       |

D. CONSTRUCTION OF PROJECT

- |  |   |
|--|---|
| 1. <u>Submission of Final Budget and Construction Schedule.</u> Developer shall submit to Authority the Final Budget and updated construction schedule for the Construction pursuant to the Agreement. | As a Condition Precedent to the Closing.  |
| 2. <u>Approval of Construction Costs and Development Schedule.</u> Authority shall approve, conditionally approve, or disapprove Developer's Final Budget and schedule for the Construction.           | As a Condition Precedent to the Closing.. |
| 3. <u>Development Plans.</u> Developer shall prepare and submit Development Plans (as defined in the Agreement) to Authority for review and approval.  | Complete.                                 |
| 4. <u>Approval of Development Plans.</u> Authority shall review and approve, approve with conditions, or disapprove the Development Plans.   | Complete..                                |
| 5. [reserved]  | [reserved]                                |
| 6. [reserved]  | [reserved]                                |

- |  |   |
|--|---|
| 7. <u>Management Plan</u> . Developer shall submit its proposed Management Plan to Authority for review and approval.                                | As a Condition Precedent to the Closing.  |
| 8. <u>Approval of Management Plan</u> . Authority shall review and approve, approve with conditions, or disapprove the Management Plan.              | Within fourteen (14) days of receipt of a complete submittal from Developer.  |
| 9. <u>Revision to Management Plan</u> . Developer shall revise Management Plan if conditionally approved or disapproved by Authority.                | Within fourteen (14) days of receipt of disapproved Management Plan from Authority.   |
| 10. <u>Approval of Revised Management Plan</u> . Authority shall review and approve, approve with conditions, or disapprove revised Management Plan. | Within fourteen (14) days of receipt of a complete submittal of revised Management Plan from Developer, but not later than Closing.                 |
| 11. <u>Progress Reports</u> . During construction Developer shall prepare monthly written progress reports and submit to Authority Director.         | Commencing thirty (30) days after start of the Construction work through completion.  |
| 12. <u>Commencement of Construction</u> . Developer shall cause the Construction to be commenced by Contractor.                                      | Within thirty (30) days of Closing and subject to satisfaction of the applicable Conditions Precedent, but in no event later than November 6, 2015. |
| 13. <u>Completion of Construction</u> . Developer shall complete all work of the Construction.   | On or before the Outside Completion Date.   |
| 14. <u>Release of Construction Covenants</u> . Authority to furnish Developer with a Release of Construction Covenants.                              | Within 14 days of receipt of Developer request and only after Developer's satisfactory completion of the Construction of the Project.               |

For the purposes of this Schedule of Performance, the commencement date is the Effective Date of the Affordable Housing Agreement. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between Developer and the Authority Director, and Authority Director is authorized on behalf of Authority to agree to make such revisions as he deems reasonably necessary. The Authority Director, in his sole discretion, may elect to bring to the Authority Board for consideration and action any modifications to this Schedule of Performance. It is understood that the Schedule of Performance is subject to all of the terms and conditions set forth in the text of the Agreement. The summary of the items of performance in the Schedule of Performance is not intended to supersede or modify the more complete description in the text; in the

**ATTACHMENT NO. 2  
SCHEDULED OF PERFORMANCE**

event of any inconsistency between the Schedule of Performance and the text of the Agreement, the text shall govern. In the event the Authority Director deems it necessary to bring to Authority Board for consideration one or more modifications to this Schedule of Performance, the discretion to do so is expressly reserved to the Authority Director. The time periods set forth herein for Authority's approval of plans and drawings and other submittals that are submitted to Authority by Developer shall only apply and commence upon Developer's complete submittal of all the required information. In no event shall an incomplete submittal by Developer trigger any of Authority's obligations of review and/or approval hereunder; provided, however, that Authority shall notify Developer of an incomplete submittal as soon as is practicable and in no event later than the applicable time set forth for Authority's action on the particular item in question.





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
06/18/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER 1-818-539-2300 Arthur J. Gallagher & Co. <i>Lucy Hovsepyan</i> Insurance Brokers of California, Inc. License #0726293 505 North Brand Boulevard, Suite 600 <i>lucy-hovsepyan@ajg.com</i> Glendale, CA 91203-3944 <i>818-539-1262</i>	CONTACT NAME: <i>Lucy Hovsepyan</i> PHONE (A/C No, Ext): 818-539-1262 E-MAIL ADDRESS: <i>Lucy_Hovsepyan@ajg.com</i> FAX (A/C No): 818-539-1562
INSURED Garden Grove Housing Partners, LP Attn: Jose Sanchez 17701 Cowan Suite 200 Irvine, CA 92614	INSURER(S) AFFORDING COVERAGE INSURER A: PHILADELPHIA IND INS CO <i>Att, XV</i> NAIC # 18058 <i>(L)</i> INSURER B: FEDERAL INS CO <i>Att, XV</i> 20281 <i>(L)</i> INSURER C: <i>Michael Hampar</i> INSURER D: <i>818-539-1410</i> INSURER E: <i>Michael.hampar@ajg.com</i> INSURER F:

COVERAGES CERTIFICATE NUMBER: 44271518 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	X	X	PHPK1328299	05/01/15	05/01/16	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X	X	PHPK1328299	05/01/15	05/01/16	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ Nil			79883472	05/01/15	05/01/16	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Social Services E&O			PHPK1328299	05/01/15	05/01/16	Ea. Occ. / Agg. 1M/2M <i>to follow.</i>

*Reviewed and approved as to insurance language and/or requirements.*  
*Heidi M. Jay*  
*6-22-15 \*w/waiver*  
 Risk Management

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Re: 12741 Main Street and 10882 Standord Avenue, Garden Grove, CA 92840- City of Garden Grove, the Authority and their respective officers, officials, agents, employees, representatives, and volunteers are named named as an additional insured with Primary and Non-Contributory endorsement per form PI-GL-005 07/12. Waiver of subrogation in favor of the additional insured on General Liability policy per form CG 24 04 05 09. Additional Insured endorsement for Auto policy applies per form CA 20 48 02 99. Waiver of subrogation applies to the Auto Policy per form CA 04 44 10 13. Primary and Non-Contributory endorsement applies to the Auto Policy per form PI-MANU-1 (01/00) Umbrella is a follow form. 30 day notice of cancellation/10 day notice for non-payment of premium.

<b>CERTIFICATE HOLDER</b> City of Garden Grove Garden Grove Housing Authority 11222 Acacia Parkway Garden Grove, CA 92840 USA	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Lucy Hovsepyan</i>
--	---

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

<p><b>Name Of Additional Insured Person(s) Or Organization(s):</b>  City of Garden Grove, the Authority and their respective officers, officials, agents, employees, representatives, and volunteers, Garden Grove Housing Authority</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
  2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

Reviewed and approved as to insurance language and/or requirements.

*Heidi M. Jay*  
Risk Management  
6-22-15

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED  
PRIMARY AND NON-CONTRIBUTORY INSURANCE**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART  
SCHEDULE**

**Effective Date:** 06/17/2015

**Name of Person or Organization (Additional Insured):**

City of Garden Grove, the Authority and their respective officers, officials, agents,  
employees, representatives, volunteers and Garden Grove Housing Authority  
11222 Acacia Parkway  
Garden Grove, CA 92840

Reviewed and approved as to insurance language  
and/or requirements.

*Heidi M. Jany*  
Risk Management  
6-22-15

**SECTION II – WHO IS AN INSURED** is amended to include as an additional insured the person(s) or organization(s) shown in the endorsement Schedule, but only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" arising out of or relating to your negligence in the performance of "your work" for such person(s) or organization(s) that occurs on or after the effective date shown in the endorsement Schedule.

This insurance is primary to and non-contributory with any other insurance maintained by the person or organization (Additional Insured), except for loss resulting from the sole negligence of that person or organization.

This condition applies even if other valid and collectible insurance is available to the Additional Insured for a loss or "occurrence" we cover for this Additional Insured.

The Additional Insured's limits of insurance do not increase our limits of insurance, as described in **SECTION III – LIMITS OF INSURANCE.**

All other terms, conditions, and exclusions under the policy are applicable to this endorsement and remain unchanged.

# WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

## SCHEDULE

<p><b>Name Of Person Or Organization:</b></p> <p>C City of Garden Grove, the Authority &amp; their respective officers, officials, agents, employees, representatives, volunteers &amp; Garden Grove Housing Authority</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of Section IV – Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

Reviewed and approved as to insurance language  
and/or requirements:

*Heidi M. Jay*  
Risk Management  
6-22-15

Policy #PHPK1328299 ✓

PI-MANU-1 (01/00)

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

Primary Non-Contributory (City of Garden Grove)

Limited only to the operations of the insured, such insurance afforded by this endorsement for the additional insured shall apply as primary insurance. Any other insurance maintained by the additional insured or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.

All other terms and conditions of this Policy remain unchanged.

Reviewed and approved as to insurance language  
and/or requirements.

*Heidi M. Jay*  
Risk Management  
6-22-15

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE FORM
- BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM
- GARAGE COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM
- TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

<p><b>Named Insured:</b> Jamboree Housing Corporation</p> <p><b>Endorsement Effective Date:</b> 06/17/2015</p>
--

**SCHEDULE**

<p><b>Name(s) Of Person(s) Or Organization(s):</b></p> <p>C</p> <p>City of Garden Grove, the Authority and their respective officers, officials, agents, employees, representatives, volunteers &amp; Garden Grove Housing Authority</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

The **Transfer Of Rights Of Recovery Against Others To Us** Condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

Reviewed and approved as to insurance language and/or requirements.

*Heidi M. Jay*  
Risk Management  
6-22-15



# Chubb Commercial Excess And Umbrella Insurance

## Schedule Of Underlying Insurance

Effective date: MAY 1, 2015  
 Policy Number: 7988-34-72  
 Insured: JAMBOREE HOUSING CORPORATION

**Description** **Limits**

### Employers Liability

Insurer: NEW YORK MARINE AND GENERAL INSURANCE COMPANY

Policy No.:	WC201200002886	Coverage B - Employer's Liability
Policy Period:	12/20/2014	Bodily Injury By Accident
to:	12/20/2015	\$ 1,000,000. Each Accident
		Bodily Injury By Disease
		\$ 1,000,000. Policy Limit
		\$ 1,000,000. Each Employee

### Employers Liability

Insurer: STATE COMPENSATION INSURANCE FUND OF CALIFORNIA

Policy No.:	9124433-15	Coverage B - Employer's Liability
Policy Period:	01/31/2015	Bodily Injury By Accident
to:	12/20/2015	\$ 1,000,000. Each Accident
		Bodily Injury By Disease
		\$ 1,000,000. Policy Limit
		\$ 1,000,000. Each Employee

### Commercial General Liability

Insurer: PHILADELPHIA INDEMNITY INSURANCE COMPANY

Policy No.:	PHPK1328299	\$ 1,000,000. Each Occurrence
Policy Period:	05/01/2015	\$ 2,000,000. General Aggregate
to:	05/01/2016	\$ 2,000,000. Products/Completed Operations Aggregate
Occurrence		\$ 1,000,000. Personal and Advertising Injury (aggregate when applicable)

"INCLUDED 1MM/1MM SAM"

✓ 6-22-15

# Chubb Commercial Excess And Umbrella Insurance

## Schedule Of Underlying Insurance

Effective date: MAY 1, 2015

Policy Number: 7988-34-72

Insured: JAMBOREE HOUSING CORPORATION

### Description

### Limits

#### Automobile Liability

Insurer: PHILADELPHIA INDEMNITY INSURANCE COMPANY

Policy No.: PHPK1328299 \$ 1,000,000. Each Accident  
Policy Period: 05/01/2015 or  
to: 05/01/2016 Bodily Injury Liability  
Each Person  
Each Accident  
Property Damage Liability -  
Each Accident

Includes owned, non-owned and hired autos

#### Employee Benefits Liability

Insurer: PHILADELPHIA INDEMNITY INSURANCE COMPANY

Policy No.: PHPK1328299 \$ 1,000,000. Each Claim  
Policy Period: 05/01/2015 \$ 1,000,000. Aggregate  
to: 05/01/2016

Claims Made

Retroactive Date 05/01/2009

#### Limited Professional Liability

Insurer: PHILADELPHIA INDEMNITY INSURANCE COMPANY

Policy No.: PHPK1328299 \$ 1,000,000. Each Incident  
Policy Period: 05/01/2015 \$ 2,000,000. Aggregate  
to: 05/01/2016

Occurrence





# Chubb Commercial Excess And Umbrella Insurance

## Schedule Of Underlying Insurance

Effective date: MAY 1, 2015  
 Policy Number: 7988-34-72  
 Insured: JAMBOREE HOUSING CORPORATION

**Description** **Limits**

### Non-Owned & Hired Auto Liability

Insurer: PHILADELPHIA INDEMNITY INSURANCE COMPANY

Policy No.: PHPK1328299 \$ 1,000,000. Each Accident  
 Policy Period: 05/01/2015  
 to: 05/01/2016

Occurrence

**Authorization** *All other terms and conditions remain unchanged.*

Authorized Representative  
 May 5, 2015

**POLICY CHANGE DOCUMENT**

**POLICY NO.:** PHPK1328299

**Philadelphia Indemnity Insurance Company | 110669 Arthur J Gallagher -Affordable Housing P**

**NAMED INSURED** Jamboree Housing Corporation

**MAILING ADDRESS** 17701 Cowan Ste 200  
Irvine, CA 92614-6840

**POLICY PERIOD:** FROM 05/01/2015 TO 05/01/2016 at  
12:01 A.M. Standard Time at your mailing address shown above.

**CHANGE EFFECTIVE** 06/17/2015 **CHANGE #** 4

**DESCRIPTION**

In consideration of the premium reflected, the policy is amended as indicated below:

Added the following location with respect to General Liability coverage:

Location #54: 12741 Main St & 10882 Stanford Ave, Garden Grove, CA 92840  
Added General Liability class code 49452 - Vacant Land - with exposure basis of 6 acres.

Added as Named Insured: Garden Grove Housing Partners, LP  
Added the following as Additional Insured per forms CG2026, PI-GL-005, CG2404, CA2048, CA0444, PI-CANXAICH-002 and Auto Primary and Non-Contributory manuscript endorsement attached:

City of Garden Grove, the Authority and their respective officers, officials, agents, employees, representatives, volunteers and Garden Grove Housing Authority  
11222 Acacia Parkway  
Garden Grove, CA 92840

Path ID 8972869

Total Annual Additional/Return Premium \$	9.00	Total Prorate Additional/Return Premium \$	8.00
	<b>ADDITIONAL</b>		<b>ADDITIONAL</b>

<b>COUNTERSIGNED</b>	<b>BY</b>
(Date)	(Authorized Representative)

06/17/2015  
Issue Date

*Handwritten signature and date: 6-22-15*

Zimbra

heidij@ci.garden-grove.ca.us

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**RE: Insurance Needed for Garden Grove Housing Partners LP**

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**From :** Michael Hampar <Michael\_Hampar@ajg.com>

Fri, Jun 19, 2015 11:50 AM

**Subject :** RE: Insurance Needed for Garden Grove Housing Partners LP

2 attachments

**To :** Lucy Hovsepyan <Lucy\_Hovsepyan@ajg.com>, Heidi Janz <heidij@ci.garden-grove.ca.us>

3. I did not receive information for the builder's risk/course of construction policy. GIVEN THE INTENT OF BUILDERS RISK IS TO PROVIDE PROPERTY COVERAGE FOR A SITE UNDER CONSTRUCTION, A BUILDERS RISK POLICY IS NOT PLACED UNTIL CONSTRUCTION BEGINS AS THERE ARE NO PROPERTY VALUES TO INSURE YET.

4. Please provide the schedule of underlying policies for the excess policy. ATTACHED

5. Please provide an additional insured endorsement for the excess liability policy. UMBRELLA CARRIERS DO NOT ISSUE ADDITIONAL INSURED ENDORSEMENTS, THERE IS NO NEED, THE POLICY IS A FOLLOW FORM. WE HAVE CONFIRMATION FROM CHUBB THAT THEY DO NOT PROVIDE ENDORSEMENTS AS THEIR POLICY FORM FOLLOWS FORM.

**Michael Hampar**

Area Senior Vice President

Arthur J. Gallagher &amp; Co.

505 N. Brand Blvd., 6th Floor | Glendale, CA 91203 USA

P: 818.539.1410 | F: 818. 539.1710

[www.ajg.com](http://www.ajg.com)

Arthur J. Gallagher &amp; Co. Insurance Brokers of California, Inc.

CA Corp. License No. 0726293

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**From:** Lucy Hovsepyan**Sent:** Friday, June 19, 2015 11:07 AM**To:** Heidi Janz; Michael Hampar**Subject:** RE: Insurance Needed for Garden Grove Housing Partners LP

Dear Heidi,

Attached is the revised certificate. I will call you shortly.

If you have any questions or concerns please do not hesitate to contact our office.

Zimbra

heidij@ci.garden-grove.ca.us

**FW: Jamboree Endorsements**

**From :** Lucy Hovsepyan <Lucy\_Hovsepyan@ajg.com> Mon, Jun 22, 2015 10:28 AM  
**Subject :** FW: Jamboree Endorsements 2 attachments  
**To :** Heidi Janz <heidij@ci.garden-grove.ca.us>

Hi Heidi,

Per our phone conversation please note even though the underlying schedule on the umbrella policy shows Jamboree as named insured, Garden Grove Housing Partners, LP has been added to the named insured schedule and umbrella policy will also apply to this entity. I am attaching the endorsement where it shows the named insured addition.

Also below is the email from the underwriter.

Can you please get a confirmation that developer's insurance is sufficient if possible by this afternoon. I will not be in the office for 3 days and would like to make sure everything is placed and funding is not put on hold.

Thank you Heidi!!

If you have any questions or concerns please do not hesitate to contact our office.

Sincerely,

**Lucy Hovsepyan**  
Client Service Manager



Arthur J. Gallagher & Co.  
505 N. Brand Blvd. #600 | Glendale, CA 91203  
P: 818.539.1262 | F: 818.539.1562  
[www.ajg.com](http://www.ajg.com)  
License No. 0D89754 | Corp. License No. 0726293

✓  
6-22-15

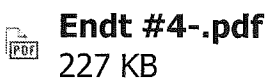
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**From:** Borders, Mary  
**Sent:** Monday, June 22, 2015 8:06 AM  
**To:** Michael Hampar  
**Cc:** Lucy Hovsepyan  
**Subject:** RE: Jamboree Endorsements

Lucy called shortly after I rec'd your email and we talked about that one... Originally it was specified that you needed primary / non-contrib wording which is why I used this form. Phly specifically filed in order to incorporate primary/non-contrib wording to an AI endorsement which is why I used this one. The City of Garden Grove has an interest in operations of Jamboree which would constitute their 'work'. If there is another filed form that you prefer, let me know and I'll see about switching out.

**Mary K Borders**  
Sr. Underwriter  
Philadelphia Insurance Companies  
A Member of the Tokio Marine Group  
**ThinkPHLY.com** – Find out why you should **ThinkPHLY** firms

✓  
④  
6-22-15



ATTACHMENT " \_\_\_\_\_ "

WORKERS' COMPENSATION CERTIFICATE FOR LIMITED PARTNERSHIPS & SOLE PROPRIETORS

**Garden Grove Housing Partnership, LP**

**Garden Grove United Methodist Church Senior /Multi-Family Apartment Project**

Contractor by the signature of its authorized representative hereunder represents that it is a limited partnership or sole proprietorship and is not legally required to carry workers' compensation or employers' liability insurance as required under California law. However, if, at any time during the performance of the Work contemplated by the Contract Documents, the Contractor hires an employee or employees, the Contractor will provide the City/Agency/Sanitary District/Housing Authority with evidence satisfactory to the City/Agency/Sanitary District/Housing Authority that it has secured workers' compensation and employers' liability insurance satisfactory to the City/Agency/Sanitary District/Housing Authority prior to any such employee performing any work under the Contract Documents.

**I declare under penalty of perjury under the laws of the State California that the foregoing is true, complete, accurate and correct. I also certify that I am authorized to sign on behalf of and bind Garden Grove Housing Partnership, LP.**

Company Name

SIGNATURE OF AUTHORIZED PERSON: *Marcy Finamore*

PRINTED NAME OF AUTHORIZED PERSON: Marcy Finamore

TITLE OR POSITION OF AUTHORIZED PERSON: Executive Vice President/ CFO

COMPANY NAME: Garden Grove Housing Partnership, LP

DATE: 6/22/2015

**NOTE:** This form shall serve as notification to the City of Garden Grove that Contractor represents that it not legally required to have Workers Compensation or Employers' Liability Insurance under California law.

**DO NOT FILL OUT THE BOTTOM PORTION OF THIS REQUEST!**

**City/Agency/Sanitary District Use Only**

RISK MANAGEMENT DIVISION SIGNATURE: *Heidi M. Jay*

DATE: 10-22-15

ATTACHMENT " \_\_\_\_\_ "

WORKERS' COMPENSATION CERTIFICATE FOR LIMITED PARTNERSHIPS & SOLE PROPRIETORS

**Garden Grove Housing Partnership, LP**

**Garden Grove United Methodist Church Senior /Multi-Family Apartment Project**

Contractor by the signature of its authorized representative hereunder represents that it is a limited partnership or sole proprietorship and is not legally required to carry workers' compensation or employers' liability insurance as required under California law. However, if, at any time during the performance of the Work contemplated by the Contract Documents, the Contractor hires an employee or employees, the Contractor will provide the City/Agency/Sanitary District/Housing Authority with evidence satisfactory to the City/Agency/Sanitary District/Housing Authority that it has secured workers' compensation and employers' liability insurance satisfactory to the City/Agency/Sanitary District/Housing Authority prior to any such employee performing any work under the Contract Documents.

**I declare under penalty of perjury under the laws of the State California that the foregoing is true, complete, accurate and correct. I also certify that I am authorized to sign on behalf of and bind Garden Grove Housing Partnership, LP.**

Company Name

SIGNATURE OF AUTHORIZED PERSON: \_\_\_\_\_

*Marcy Finamore*

PRINTED NAME OF AUTHORIZED PERSON: \_\_\_\_\_

Marcy Finamore

TITLE OR POSITION OF AUTHORIZED PERSON: \_\_\_\_\_

Executive Vice President/ CFO

COMPANY NAME: Garden Grove Housing Partnership, LP

DATE: 6/22/2015

**NOTE:** This form shall serve as notification to the City of Garden Grove that Contractor represents that it not legally required to have Workers Compensation or Employers' Liability Insurance under California law.

**DO NOT FILL OUT THE BOTTOM PORTION OF THIS REQUEST!**

City/Agency/Sanitary District Use Only

RISK MANAGEMENT DIVISION SIGNATURE: \_\_\_\_\_

*Weidi M. Jay*

DATE: 6-23-15

**ATTACHMENT NO. 3**  
**HOME LOAN NOTE**  
**PROMISSORY NOTE SECURED BY DEED OF TRUST**

\$2,010,561.00

Garden Grove, California

\_\_\_\_\_, 2015

FOR VALUE RECEIVED, **GARDEN GROVE HOUSING PARTNERS LP**, a California limited partnership (“Developer”), promises to pay to the **GARDEN GROVE HOUSING AUTHORITY**, a public body, corporate and politic (“Authority”), at its offices at 11222 Acacia Parkway, Garden Grove, California 92840, or at such other place as Authority may from time to time designate in writing, (a) the principal sum of Two Million Ten Thousand Five Hundred Sixty-One Dollars (\$2,010,561) (or so much of the proceeds as have been disbursed by Authority to Developer for the HOME Loan pursuant to the Agreement (defined below) but in no event to exceed \$2,010,561) (“Note Amount”); and (b) all costs and expenses payable hereunder.

**RECITALS**

A. This HOME Loan Note, Promissory Note Secured By Deed of Trust (“Note”) is made pursuant to that certain HOME Funds Commitment and Agreement (Garden Grove United Methodist Church Apartments Project) by and among Developer, the City of Garden Grove (“City”) and Authority, dated as of June 23, 2015 (“Agreement”).

B. Capitalized terms used in this Note shall have the meaning set forth in the Agreement, unless expressly otherwise defined herein.

**NOW, THEREFORE**, for good valuable consideration, receipt of which is hereby acknowledged, Developer agrees as follows:

**1. Agreement.** The principal sums hereunder have been and are being loaned by Authority to Developer in accordance with and pursuant to the Agreement, which is a public record on file in the office of the City Clerk. The proceeds of the HOME Loan shall be disbursed only to pay for the items and in accordance with the procedures set forth in the Agreement. The terms of the Agreement are incorporated herein and made a part hereof to the same extent and with the same force and effect as if fully set forth herein. In the event of any inconsistencies between the terms of this Note and the terms of the Agreement or any other document related to the Note Amount, the terms of this Note shall prevail. Authority is also providing to Developer another loan, the Additional Authority Loan evidenced by the Additional Authority Loan Note and secured by the Additional Authority Loan Deed of Trust, in second lien priority against the Site, all as defined and described in the Agreement. This HOME Loan Note is secured by the HOME Loan Deed of Trust, recorded in third lien priority against the Site.

a. *Cross-Default.* A default by Developer under any of the provisions of the Agreement, the HOME Loan Deed of Trust of even date herewith, the Additional Authority Loan Note as secured by the Additional Authority Loan Deed of Trust, the City DA Fee Deferral Loan Note secured by the City DA Fee Deferral Loan Deed of Trust, or any of the other Project Documents, or any of the other Transaction Documents shall, after the expiration of any cure period



under the respective agreement, be a default hereunder, and a default hereunder after the expiration of any applicable cure periods shall be a default under the Project Documents.

2. **Interest.** Three percent simple interest (3%) per annum (based on a 360-day year and charged on the basis of the actual number of days elapsed) shall accrue on the Note Amount and all other amounts due under this Note (other than accrued interest), except as set forth in Section 8 hereof.

3. **Payment.** The Note Amount shall be paid by Developer's annual payment to Authority of an amount equal to the Authority's Share of Residual Receipts after payment in full of the Additional Authority Loan Note, all as determined by a Residual Receipts calculation from the operation of the Project for the preceding calendar year (after payment in full of the Additional Authority Loan Note). In addition, after payment in full of the Additional Authority Loan Note (which may be accomplished in whole or in part from Refinancing Net Proceeds), Developer shall pay to Authority seventy-five percent (75%) of the Refinancing Net Proceeds immediately upon any refinancing of the Project (or any part thereof) and seventy-five percent (75%) of the Transfer Net Proceeds immediately upon any transfer in whole or in part of the Project; provided, however, that no Refinancing Net Proceeds will be payable hereunder as a result of the Conversion of the Primary Loan and assignment thereof to CCRC. Residual Receipts payments shall be made and delivered by Developer to Authority beginning April 30 in the year following the year in which the Additional Authority Loan Note is paid in full from Residual Receipts as set forth in the Agreement, and annually thereafter and continuing until the Note Amount and all accrued interest thereon and all other amounts owing to Authority hereunder have been repaid in full; provided, however, as noted, no payments will be made hereunder until the Additional Authority Loan has been repaid in full. In the event there are no Residual Receipts for the calendar year relating to such payment, no annual payment for such year shall be required hereunder; provided, however, in such event, such interest shall continue to accrue. Any remaining portion of the Note Amount, plus unpaid accrued interest, shall be due and payable in full on the fifty fifth (55<sup>th</sup>) anniversary of the date the Release of Construction Covenants is recorded for the Project. Notwithstanding the foregoing, the full Note Amount may be accelerated as set forth in Section 8 below.

a. *Definitions.*

"*Annual Project Revenue*" shall mean all gross income and all revenues of any kind from the Project in a calendar year, of whatever form or nature, whether direct or indirect, with the exception of the items excluded below, received by or paid to or for the account or benefit of Developer or any Affiliate of Developer or any of their agents or employees (provided, in no event shall amounts counted as Annual Project Revenue be double counted if paid by Developer to one or more of its Affiliates), from any and all sources, resulting from or attributable to the ownership, operation, leasing and occupancy of the Project, determined on the basis of generally accepted accounting principles applied on a consistent basis, (but expressly excluding all sublease payments paid relating to the Preschool Center, which are due, payable and remitted to UMC). In this regard, Annual Project Revenue shall include, but not be limited to: (i) gross rentals paid by tenants of the Project under leases, and payments and subsidies of whatever nature, including without limitation any payments, vouchers or subsidies from HUD (including Section 8 Program (Portable Voucher) payments by HUD, if any) or any other person or organization, received on behalf of tenants under their leases, (ii) amounts paid to Developer or any Affiliate of Developer on account of Operating Expenses for further disbursement by Developer or such Affiliate to a third party or parties,

**ATTACHMENT NO. 3**

**HOME LOAN NOTE**

Page 2 of 13

including, without limitation, grants received to fund social services at the Project (to the extent such grants exceed the cost of providing such social services), (iii) late charges and interest paid on rentals, (iv) rents and receipts from licenses, concessions, vending machines, coin laundry and similar sources; (v) other fees, charges or payments not denominated as rental but payable to Developer in connection with the rental of office, retail, storage, or other space in the Project; (vi) consideration received in whole or in part for the cancellation, modification, extension or renewal of leases, and (vii) interest and other investment earnings on security deposits, reserve accounts and other Project accounts to the extent disbursed. Notwithstanding the foregoing, Annual Project Revenue shall not include the following items: (a) security deposits from tenants (except when applied by Developer to rent or other amounts owing by tenants); (b) capital contributions to Developer by its members, partners or shareholders (including capital contributions required to pay any Deferred Developer Fee); (c) condemnation or insurance proceeds; (d) funds received from any source actually and directly used for acquisition of the Conforming Leasehold Interest in the Site and/or initial development of the Project; (e) proceeds of the approved Primary Loan; or (f) receipt by an Affiliate of management fees, grants received for social services, or other bona fide arms-length payments for reasonable and necessary Operating Expenses associated with the Project.

**“Authority’s Share of Residual Receipts”** shall mean fifty percent (50%) of Residual Receipts.

**“Capitalized Operating Reserve”** shall mean the capitalized operating reserve for the Project, which shall be funded by Primary Loan proceeds and Tax Credit equity in the Target Amount as provided in Section 1212, estimated as of the Date of Agreement to be approximately One Hundred Twenty Seven Thousand Dollars (\$127,000) and equivalent to three (3) months of operating expenses, reserve payments, and required debt service. The Capitalized Operating Reserve shall thereafter be replenished from Annual Project Revenue if and to the extent required by the Primary Lender or Developer’s Tax Credit Investor.

**“Capital Replacement Reserve”** shall mean a separate reserve fund account to be established and maintained by Developer equal to not less than Two Hundred Fifty Dollars (\$250) per year (increased annually by 3%) for each Housing Unit in the Project (i.e., forty-seven (47) units in the Project times \$250 equals Eleven Thousand Seven Hundred Fifty Dollars (\$11,750.00) per year for the Project), to be used as the primary resource to fund capital improvements and replacement improvements. The amount of \$250 for each Housing Unit that is set aside by Developer (or its Property Manager) shall be allocated from the gross rents received from the Site and deposited into a separate interest-bearing trust account for capital repairs and replacements to the improvements, fixtures and equipment at the Site that are normally capitalized under generally accepted accounting principles, 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, showers, toilets, lavatories, sinks, and faucets; air conditioning and heating replacement; asphalt repair, replacement, and seal coating; roofing repair and replacement; landscape tree replacement; 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. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve Developer of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Site and all common areas and common improvements in the manner prescribed herein. Pursuant to the procedure for submittal of each annual Operating Budget to

**ATTACHMENT NO. 3**

**HOME LOAN NOTE**

Page 3 of 13

Authority Director by Developer, Authority Director will evaluate the cumulative amount on deposit in the Capital Replacement Reserve account and exercise his sole, reasonable discretion to determine if existing balance(s) in, proposed deposits to, shortfalls, if any, and/or a cumulative unexpended/unencumbered account balance in such Capital Replacement Reserve account are adequate or in excess of the amount needed to provide for necessary capital repairs and improvement to the Site (provided that required annual deposits thereto are not required to exceed \$250/per Housing Unit, increased annually by 3%.) To the extent the Primary Lender and/or Tax Credit Investor requires Developer to maintain a reserve fund or account for any or all of the same purposes as the Capital Replacement Reserve, Authority will allow Developer to credit any funds actually reserved for any or all of the same purposes pursuant to the requirements of the Primary Lender and/or Tax Credit Investor against Developer's obligation to make deposits into the Capital Replacement Reserve.

**"CCRC"** shall mean the California Community Reinvestment Corporation.

**"Conforming Lease"** shall mean that certain Ground Lease Agreement (United Methodist Church) to be entered into between UMC, as ground lessor/landlord, and Developer (or its Affiliate), as ground lessee/tenant, for ground lease of the Site, which includes at a minimum the following business terms: (1) the period of the ground lease, the "term", is sixty (60) years or more, (2) Developer, as ground lessee, has and maintains rights to the Leased Premises, as therein defined, sufficient to yield at least 55 years of occupancy conforming to the Regulatory Agreement, (3) permits use of the Site as provided under the HOME Agreement, (4) provides for payments to be made by Developer (or an Affiliate) to UMC, (5) provides to City and Authority express rights (in a form and content approved by the City Manager/Authority Director and legal counsel in their reasonable discretion) of notice(s) regarding event(s) of default, extended rights to cure event(s) of default, and rights equivalent to the ROFO.

**"Conforming Leasehold Interest" or "Conforming Leasehold Interest in the Site"** shall mean all interest of Developer under the Conforming Lease.

**"Debt Service"** shall mean payments made in a calendar year pursuant to the approved loans (including the Primary Loan and other approved financing) obtained for the acquisition of a Conforming Leasehold Interest, construction, ownership, and operation of the Project in accordance with the Agreement, but excluding payments made pursuant to the Additional Authority Loan Note, and further excluding payments on the HOME Loan Note, that are payable from Residual Receipts.

**"Deferred Developer Fee"** shall mean the portion of the Developer Fee, if any, to be paid from Project cash flow, as approved by Authority pursuant to Section 209 of the Agreement in the amount described in Section 209.1(d) of the Agreement, which as of the Date of Agreement is \$501,730.

**"Developer's Share of Residual Receipts"** shall mean fifty percent (50%) of Residual Receipts.

**"Operating Budget"** shall mean the annual operating budget for the Project that sets forth the projected Operating Expenses for the upcoming year that is submitted to and reviewed and approved by Authority Director in his reasonable discretion (and which may also be subject to review

by Lender, if required by the Primary Loan documents.) The Operating Budget is further described in Section 1211 of the Agreement.

**“Operating Expenses”** shall mean actual, reasonable and customary (for comparable High Quality, multi-family rental housing developments in Orange County) costs, fees and expenses directly incurred and attributable to the operation, maintenance, and management of the Project in a calendar year, which are in accordance with the Operating Budget (or any amendments thereto) approved by Authority through the Authority Director pursuant to Section 1211 of the Agreement, and not a part or paid as a part of the Construction of the Site, including, without limitation, Debt Service; painting, cleaning, repairs, alterations, landscaping; utilities, refuse removal, certificates, permits and licenses, sewer charges, taxes, filing fees, assessments, insurance, security, advertising and promotion, janitorial services, cleaning and building supplies, purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings which are not paid from the Capital Replacement Reserve, fees and expenses of property management (not exceeding the Maximum Property Management Fee) and common area expenses, fees and expenses of accountants, attorneys and other professionals, the cost of social services in an amount equal to \$25,000 (subject to annual increases of 3%), and other actual, reasonable and customary operating costs which are directly incurred and paid by Developer, but which are not paid from reserve accounts, and provided however that any fees incurred or services provided by Developer or any Affiliate shall not exceed fair market fees or rates for goods or services that are customary and prevailing in the City for such fees, goods, or services. To the extent Developer’s only asset is the Project, Operating Expenses shall include actual, reasonable and customary costs, fees and expenses paid to unaffiliated third parties for the operation of Developer, including administrative, accounting and legal fees and expenses. Operating Expenses may include costs, fees or expenses paid to unaffiliated third parties that were not set forth in the approved Operating Budget to the extent such costs, fees or expenses were not foreseen at the time the applicable Operating Budget was created, but nonetheless were actual, reasonable and customary for comparable developments; provided, evidence of such expenses must be submitted to Authority Director for verification purposes prior to payment thereof (except in emergency situations, in which case evidence of such expenses must be submitted to Authority Director for verification purposes as soon as reasonably practicable).

The term “Operating Expenses” shall not include any of the following: (i) salaries of employees of Developer or Developer’s general overhead expenses, or expenses, costs and fees paid to an Affiliate of Developer, to the extent any of the foregoing exceed the expenses, costs or fees that would be payable in a bona fide arms’ length transaction between unrelated parties in the City for the same work or services; (ii) any amounts paid directly by a tenant of the Project to a third party in connection with expenses which, if incurred by Developer, would be Operating Expenses; (iii) optional or elective payments with respect to any financing senior to the HOME Loan unless approved by Authority which approval shall not be unreasonably withheld or delayed; (iv) any payments with respect to any Project-related loan or financing other than Debt Service; (v) expenses, expenditures, and charges of any nature whatsoever arising or incurred by Developer prior to completion of the Construction of the Project with respect to the development, maintenance and upkeep of the Project, or any portion thereof, including, without limitation, all costs and expenses incurred by Developer in connection with the acquisition of the Conforming Leasehold Interest in the Site, all pre development and pre-Construction activities conducted by Developer in connection with the Project, including without limitation, the preparation of all plans and the performance of any tests, studies, investigations or other work, and the Construction of the Project and any on-site or off-

site work performed in connection therewith; (vi) depreciation, amortization, and accrued principal and interest expense on deferred payment debt; (vii) any Partnership Related Fees/Expenses to the extent they are not paid as capitalized expenses; (viii) other expenses not related to the operation, maintenance, or management of the Project; and (ix) ground rent paid under the Ground Lease.

***“Partnership Agreement”*** shall mean the agreement which sets forth the terms of Developer’s limited partnership, as such agreement may be amended from time to time (so long as any and all amendments that materially affect the contribution of capital or the cash flow priorities are consistent with the Agreement and subject to prior submission to Authority Director for review and approval), which approval shall not be unreasonably withheld or delayed). The Partnership Agreement shall include provisions which incorporate, defer to or otherwise substantially conform to the cash flow priorities included in the definition of “Residual Receipts” set forth in the Agreement.

***“Partnership Related Fees/Expenses”*** shall mean fees and expenses of the Developer entity (or partners or Affiliates thereof pursuant to the Partnership Agreement) actually incurred, which are reasonable and customary to developer/owner entities (other than Developer Fees) for similar projects in Southern California, and may include, but shall not exceed:

- (i) a general partner asset management fee payable to the general partner(s) not to exceed Fifteen Thousand Dollars (\$15,000) per year, increased annually by 3%; and
- (ii) a limited partner administrative fee payable to the Tax Credit Investor not to exceed Ten Thousand Dollar (\$10,000) per year, increased annually by 3%.

In no event shall the fees for (i) and (ii) above cumulatively exceed Twenty-Five Thousand Dollars (\$25,000) in any one year (increased annually by 3%). In the event insufficient Annual Project Revenues exist to provide for payment of all or part of the specific Partnership Related Fees/Expenses listed above, no interest shall accrue on the unpaid portions of such Partnership Related Fees/Expenses, but the unpaid balance will be added to the Partnership Related Fees/Expenses due in the following year. In the event that the State (or HUD) were to disallow, or cap, or reduce the 3% escalation of the Partnership Related Fees/Expenses in connection with its/their review or actions relating to the federal and state funding sources hereunder, then Developer acknowledges and agrees that such cap, limitation or reduction will also apply to the definition of “Partnership Related Fees/Expenses” under this Note and the Agreement.

***“Project Documents”*** shall mean the following documents evidencing the HOME Loan and required as consideration for Authority to make the HOME Loan and provide the Additional Authority Loan and for the City to make the City DA Fee Deferral Loan: (i) the Agreement, (ii) this Note; (iii) the HOME Loan Deed of Trust; (iv) the Regulatory Agreement; (v) the Security Agreement (UCC-1 Financing Statement); (vi) the Request for Notice of Default; (vii) the Additional Authority Loan Note; (viii) the Additional Authority Loan Deed of Trust; (ix) the City DA Fee Deferral Loan Note; (x) the City DA Fee Deferral Loan Deed of Trust; and (xi) any other agreement, document, or instrument that Authority may reasonably require Developer to execute in connection with the execution of the Agreement or the provision of the HOME Loan to Developer or otherwise, from time to time, to effectuate the purposes of and to implement the Agreement.

***“Refinancing Net Proceeds”*** shall mean the proceeds of any approved refinancing of any of the Primary Loans or other approved financing secured by the Site, net of: (i) the amount of

the financing which is satisfied out of such proceeds; (ii) reasonable and customary costs and expenses incurred in connection with the refinancing; (iii) the balance, if any, of the Deferred Developer Fee; (iv) the balance of permitted or authorized loans to the Project made by the partners of Developer for development or operating deficits (as approved by Authority after review and verification by Authority Director of documentation provided by Developer showing propriety of such loans), amounts expended to maintain compliance with the Tax Credit Regulatory Agreement, or permitted contributions for capital expenditures in excess of available Project revenues, if any, including interest at the Applicable Federal Rate (as approved by Authority, after review and verification by Authority Director of documentation provided by Developer showing propriety of such loans); (v) the return of capital contributions, if any, to the Project made by Developer that were used to pay the Deferred Developer Fee; (vi) payment of unpaid Tax Credit adjustment amounts or reimbursement of Tax Credit adjustment amounts paid by the administrative and/or managing general partners and/or the guarantors to the Project pursuant to the approved Partnership Agreement, if any; (vii) the payment to the administrative general partner of Developer's limited partnership entity of a refinancing fee, as set forth in the Partnership Agreement, which fee shall not exceed six percent (6%) of the amount of the approved refinancing; (viii) any unpaid Operating Expenses; (ix) the amount of proceeds required to be reserved for the Construction of the Project; (x) the amount of proceeds required for necessary repairs or rehabilitation to the Project as reasonably approved by the Authority Director; (xi) the amount of proceeds necessary to satisfy the City DA Fee Deferral Loan Note; and (xii) the payment of any unpaid Partnership Related Fees/Expenses.

***“Residual Receipts”*** shall mean Annual Project Revenue less the sum of:

- (i) Operating Expenses;
- (ii) Debt Service;
- (iii) Reserve Deposits to the Capital Replacement Reserve;
- (iv) Reserve Deposits to the Capitalized Operating Reserve;
- (v) Partnership Related Fees/Expenses;
- (vi) payment of unpaid Tax Credit adjustment amounts or reimbursement of Tax Credit adjustment amounts paid by the administrative and/or managing general partners and/or the guarantors to the Project pursuant to the approved Partnership Agreement, if any (after review and verification by Authority Director of documents provided by Developer showing propriety of such amounts and payments);
- (vii) repayment of loans, if any, made by the limited partner(s) of Developer's limited partnership entity, including interest as set forth in the Partnership Agreement;
- (viii) Deferred Developer Fee for the Project which remains unpaid, if any, including interest at the Applicable Federal Rate; and
- (ix) repayment of outstanding development and operating loans and/or contributions for capital expenses for which no Project revenues are available, if any, made by the administrative and/or managing general partners and/or the guarantors to the Project, including

interest at the Applicable Federal Rate (as approved by Authority after review and verification by Authority Director of documentation provided by Developer showing the propriety of such loans).

Developer's annual loan payments on the HOME Loan shall be paid by Developer to Authority under the HOME Loan after payment in full is made to the Authority satisfying the Additional Authority Loan Note and shall include:

The Authority's Share of Residual Receipts received from operation of the Project shall be paid to Authority on an annual basis until payment in full of the HOME Loan. The Developer's Share of Residual Receipts received from the operation of the Project shall be retained by Developer or used by Developer to pay any fees or charges not specifically deducted from Annual Project Revenues above.

In the event any calculation of Annual Project Revenue less subsections (i) through (ix) inclusive above results in a negative number, then Residual Receipts shall be zero (\$0) for that year.

In addition, none of the fees, costs, expenses, or items described above in calculation of Residual Receipts shall include any duplicate entry/item, or double accounting for a cost item. For example, an audit fee incurred by Developer (or any partner of Developer or an Affiliate) and deducted or included above in category/subsection (i) Operating Expenses shall not also be deducted or included in category/subsection (v) Partnership Related Fees in the calculation of Residual Receipts.

*"Transaction Documents"* shall mean all Project Documents and any and all financing documents in connection with the Primary Loan or other financing sources for the Project.

*"Transfer Net Proceeds"* shall mean the proceeds of any transfer, in whole or in part, of Developer's interest in the Site or any sale, assignment, sublease, or other transfer, in whole or in part of Developer's interests in the Site, net only of (i) the reasonable and customary costs and expenses incurred in connection with such transfer; (ii) the amount of the financing which is satisfied out of such proceeds, (iii) the balance, if any, of the Deferred Developer Fee, (iv) the balance, if any, of permitted or authorized loans to the Project made by the limited partners of Developer for development or operating deficits (as approved by Authority after review and verification by Authority Director of documentation provided by Developer showing propriety of such loans), including interest thereon as provided in the Partnership Agreement (as approved by Authority after review and verification by Authority Director of documentation provided by Developer showing the propriety of such loans), (v) the balance, if any, of operating loans or development loans made by the general partners of Developer, including interest thereon as provided in the Partnership Agreement (as approved by Authority after review and verification by Authority Director of documentation provided by Developer showing the propriety of such loans), (vi) the return of capital contributions, if any, to the Project made by the general partners of Developer that were used to pay the Deferred Developer Fee (as approved by Authority after review and verification by Authority Director of documentation provided by Developer showing the propriety of such contributions), (vii) payment of any unpaid Partnership Related Fees/Expenses, and (viii) the payment of any unpaid Operating Expenses.

“*UMC*” shall mean the United Methodist Church of Garden Grove, a California corporation, the current owner of the Site, as referenced in Recital C of the Agreement, and the ground lessor/landlord under the Ground Lease.

b. *Calculation of Residual Receipts.* Residual Receipts shall be determined on the basis of the Annual Financial Statement and the Residual Receipts Report submitted to Authority by Developer pursuant to the Agreement.

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

**5. Application of Payments.** All payments shall be applied (i) first, to costs and fees owing hereunder, (ii) second, to the payment of unpaid accrued interest owing hereunder for each calendar year in which no payment was made by Developer pursuant to Section 3 hereof, (iii) third, to the payment of accrued interest for the preceding calendar year, and (iv) fourth, to the payment of principal.

**6. Prepayment.** At any time, Developer may prepay in whole or in part the outstanding principal balance under this Note, together with all accrued interest, if any, and unpaid fees, costs and expenses, if any, payable hereunder, without penalty or premium. In the event of prepayment by Developer, the Regulatory Agreement, in particular the covenants with respect to affordable housing for 50% AMI Very Low Income Households and 59% AMI Low Income Households, both for Senior Citizen Households and Non-Senior/Family Households, as set forth in the Agreement and the Regulatory Agreement, shall remain intact, and shall be unaffected by the prepayment of this Note by Developer.

**7. Security.** This Note and all amounts payable hereunder are secured by the HOME Loan Deed of Trust, a third trust deed, of even date herewith (“Deed of Trust”), executed by Developer in favor of Authority and recorded against the Site in the Official Records of Orange County, which Deed of Trust shall only be subordinate to the deed of trust securing (i) the repayment of the Primary Loan, and (ii) the repayment of the Additional Authority Loan Note, and such other encumbrances reasonably approved by Authority in writing. The terms of the Deed of Trust are incorporated herein and made a part hereof to the same extent and with the same force and effect as if fully set forth herein. A default under any of the provisions of the Deed of Trust shall be a default hereunder, and a default hereunder shall be a default under the Deed of Trust.

**8. Acceleration and Other Remedies.** If elected by Authority pursuant to the following sentence, the entire balance due under this Note shall be paid to Authority upon the earlier of any of the following (each, a “Default”): (i) the uncured default of Developer under the Project Documents, this Note, or the Deed of Trust, in each case, after delivery of notice and expiration of the applicable cure period provided in the respective agreement; or (ii) the sale, lease or other transfer or conveyance (other than the permitted rentals and conveyances under the Agreement) of all or any part of the Project, or any interest therein (individually or collectively a “Transfer”), without the prior written consent of Authority in accordance with the Agreement, in each case, after delivery of notice and expiration of the applicable cure period provided in the applicable Project Document. Upon the occurrence and during the continuance of a Default, Authority may, at Authority’s option, declare the outstanding principal amount of this Note, together with the then accrued and unpaid interest thereon and other charges hereunder, and all other sums secured by the Deed of Trust, to be due and payable



immediately, and upon such declaration, such principal and interest and other sums shall immediately become and be due and payable without demand or notice, all as further set forth in the Deed of Trust. All costs of collection, including, but not limited to, reasonable attorneys' fees and all expenses incurred in connection with protection of, or realization on, the security for this Note, may be added to the principal hereunder, and shall accrue interest as provided herein. Authority shall at all times have the right to proceed against any portion of the security for this Note in such order and in such manner as Authority may consider appropriate, without waiving any rights with respect to any of the security. Any delay or omission on the part of Authority in exercising any right hereunder, under the Agreement, the Project Documents or under the Deed of Trust shall not operate as a waiver of such right, or of any other right. No single or partial exercise of any right or remedy hereunder or under the Agreement, the Project Documents, the Deed of Trust or any other document or agreement shall preclude other or further exercises thereof, or the exercise of any other right or remedy. The acceptance of payment of any sum payable hereunder, or part thereof, after the due date of such payment shall not be a waiver of Authority's right to either require prompt payment when due of all other sums payable hereunder or to declare a Default for failure to make prompt or complete payment. In addition, upon any Default, the Note Amount and all outstanding amounts due under this Note shall accrue interest at the default rate of ten percent (10%) per annum (based on a 360-day year and charged on the basis of the actual number of days elapsed) ("Alternate Rate").

**9. Waivers.** Except to the extent notice is required under any of the Project Documents, Developer and all endorsers, guarantors and sureties hereof jointly and severally waive presentment, demand, notice of protest and nonpayment, notice of default or delinquency, notice of acceleration, notice of costs, expenses or leases or interest thereon, notice of dishonor, diligence in collection or in proceeding against any of the rights or interests in or to any and all property securing this Note, and the benefit of any exemption under any homestead exemption laws, if applicable. Developer expressly agrees that this Note or any payment hereunder may be extended from time to time at Authority's sole discretion and that Authority may accept security in consideration for any such extension or release any security for this Note at its sole discretion all without in any way affecting the liability of Developer. No extension of time for payment of this Note made by agreement by Authority with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Developer under this Note, either in whole or in part. The obligations of Developer under this Note shall be absolute and Developer waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever. No previous waiver and no failure or delay by Authority in acting with respect to the terms of this Note or the Deed of Trust shall constitute a waiver of any breach, default, or failure or condition under this Note, the Deed of Trust or the obligations secured thereby. A waiver of any term of this Note, the Deed of Trust or any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

**10. Consents.** Developer and all endorsers, guarantors and sureties consent to: (a) any renewal, extension or modification (whether one or more, and subject to the terms and provisions of the Agreement relating to modification, extension, and/or amendment) of the terms of the Agreement as such terms relate to this Note or the terms or time of payment under this Note, (b) the release or surrender or exchange or substitution of all or any part of the security, whether real or personal, or direct or indirect, for the payment hereof to the extent requested or approved by Developer, (c) the granting of any other indulgences to Developer, and (d) the taking or releasing of other or additional parties primarily or contingently liable hereunder. Except as otherwise set forth above, any such

renewal, extension, modification, release, surrender, exchange or substitution may be made without notice to Developer or to any endorser, guarantor or surety hereof, and without affecting the liability of said parties hereunder.

**11. Successors and Assigns.** Whenever "Authority" is referred to in this Note, such reference shall be deemed to include the Garden Grove Housing Authority, and its successors and assigns, including, without limitation, any subsequent assignee or holder of this Note. All covenants, provisions and agreements by or on behalf of Developer, and on behalf of any makers, endorsers, guarantors and sureties hereof which are contained herein shall inure to the benefit of Authority and Authority's successors and assigns. Authority may, at its option, assign its right to receive payment under this Note without necessity of obtaining the consent of Developer. Whenever "Developer" is referred to in this Note, such reference shall be deemed to include Garden Grove Housing Partners LP and its approved successors and assigns, including, without limitation, any approved subsequent assignee or obligor of this Note, if such approval is given in accordance with the Agreement. In no event shall Developer assign or transfer any portion of this note without the prior express written consent of Authority, except as permitted in the Agreement.

**12. Usury.** It is the intention of Developer and Authority to conform strictly to the Interest Law, as defined below, applicable to this loan transaction. Accordingly, it is agreed that notwithstanding any provision to the contrary in this Note, or in any of the documents securing payment hereof or otherwise relating hereto, the aggregate of all interest and any other charges or consideration constituting interest under the applicable Interest Law that is taken, reserved, contracted for, charged or received under this Note, or under any of the other aforesaid agreements or otherwise in connection with this loan transaction, shall under no circumstances exceed the maximum amount of interest allowed by the Interest Law applicable to this loan transaction. If any excess of interest in such respect is provided for in this Note, or in any of the documents securing payment hereof or otherwise relating hereto, then, in such event:

- (a) the provisions of this paragraph shall govern and control;
- (b) neither Developer nor Developer's heirs, legal representatives, successors or assigns shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest allowed by the Interest Law applicable to this loan transaction;
- (c) any excess shall be deemed canceled automatically and, if theretofore paid, shall be credited on this Note by Authority or, if this Note shall have been paid in full, refunded to Developer; and
- (d) the effective rate of interest shall be automatically subject to reduction to the Maximum Legal Rate of Interest (as defined below), allowed under such Interest Law, as now or hereafter construed by courts of appropriate jurisdiction. To the extent permitted by the Interest Law applicable to this loan transaction, all sums paid or agreed to be paid to Authority for the use, forbearance or detention of the indebtedness evidenced hereby shall be amortized, prorated, allocated and spread throughout the full term of this Note. For purposes of this Note, "Interest Law" shall mean any present or future law of the State of California, the United States of America, or any other jurisdiction which has application to the interest and other charges under this Note. The "Maximum Legal Rate of Interest" shall mean the maximum rate of interest that Authority may from time to time

charge Developer, and under which Developer would have no claim or defense of usury under the Interest Law.

**13. Costs of Enforcement.** Developer agrees to pay upon demand all reasonable costs and expenses, including attorneys' fees, expert witness fees, and costs of suit (including appeals), incurred by Authority to enforce the terms hereof. In addition to the foregoing award of attorneys' fees, Authority shall be entitled to its reasonable attorneys' fees incurred in any post-judgment proceedings to enforce any judgment in connection with this Note. This provision is separate and several and shall survive the merger of this provision into any judgment.

**14. Miscellaneous.** Time is of the essence hereof. If this Note is now, or hereafter shall be, signed by more than one party or person, it shall be the joint and several obligation of such parties or persons (including, without limitation, all makers, endorsers, guarantors and sureties), and shall be binding upon such parties and upon their respective successors and assigns. This Note shall be governed by and construed under the laws of the State of California. Developer irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of Orange or the United States District Court of the Central District of California, as Authority hereof may deem appropriate, in connection with any legal action or proceeding arising out of or relating to this Note. Developer also waives any objection regarding personal or in rem jurisdiction or venue to the extent such action is filed in the above-referenced courts. In the event of a conflict between the provisions of this Note and the Agreement, this Note shall control.

**15. Non-Recourse Obligation.** In the event of any Default under the terms of the Agreement or any of the other Project Documents, the sole recourse of Authority for any such Default shall be Developer's interest in the Site and the Project and Developer and its partners and Affiliates shall not be personally liable for the payment of any obligations under the Agreement; provided, however, that the foregoing shall not in any way affect any rights Authority may have hereunder, or any right of Authority to recover or collect funds, damages or costs (including without limitation reasonable attorneys' fees and costs) incurred by Authority as a result of fraud, intentional misrepresentation or bad faith waste, and/or any costs and expenses incurred by Authority in connection therewith (including without limitation reasonable attorneys' fees and costs).

**IN WITNESS WHEREOF**, the parties hereto have caused this HOME Loan Note, Promissory Note Secured by Deed of Trust to be executed on the date first set forth above.

**Developer:**

GARDEN GROVE HOUSING PARTNERS LP,  
a California limited partnership

By: JHC-GARDEN GROVE LLC,  
a California limited liability company,  
Its General Partner

By: Jamboree Housing Corporation,  
a California nonprofit public benefit  
corporation, its Managing Member

By: \_\_\_\_\_  
Marcy V. Finamore, Executive Vice  
President and Chief Financial Officer

**ATTACHMENT NO. 4**  
**HOME LOAN DEED OF TRUST**

Recording Requested By and  
When Recorded Mail To:

**Garden Grove Housing Authority**  
**11222 Acacia Parkway**  
**Garden Grove, California 92840**  
**Attention: Authority Director**

(Space above for Recorder's use.)

(This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.)

**LEASEHOLD DEED OF TRUST AND ASSIGNMENT OF RENTS**

This **LEASEHOLD DEED OF TRUST AND ASSIGNMENT OF RENTS** ("Deed of Trust"), dated as of \_\_\_\_\_, 2015, is executed by **GARDEN GROVE HOUSING PARTNERS LP**, a California limited partnership ("Trustor"), as trustor, whose address is 17701 Cowan Avenue, Suite 200, Irvine, California 92614, in favor of **FIRST AMERICAN TITLE INSURANCE COMPANY** ("Trustee"), as trustee, for the benefit of the **GARDEN GROVE HOUSING AUTHORITY**, a public body, corporate and politic ("Beneficiary"), as beneficiary, whose address is 11222 Acacia Parkway, Garden Grove, California 92840, Attention: Authority Director. Each capitalized term used herein and not otherwise defined herein shall have the meaning given such term in the "Agreement" (as defined in Section 2.1(b), below).

**ARTICLE I**

**GRANT OF SECURITY**

1.1 Grant of Security. FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt and adequacy of which are hereby acknowledged, Trustor hereby irrevocably grants, transfers and assigns to Trustee, IN TRUST, WITH POWER OF SALE, AND RIGHT OF ENTRY AND POSSESSION, for the benefit and security of Beneficiary, all rights, titles, interests, estates, powers and privileges that Trustor now has or may hereafter acquire in or to the following property and interests therein (collectively, the "Site"):

(a) That certain real property ("Land" or "Site") in the City of Garden Grove, County of Orange, State of California, more particularly described on Exhibit "A" attached hereto;

(b) All buildings and other improvements now or hereafter located on the Land, including, but not limited to, the Fixtures (as defined below) and any and all other equipment,

machinery, appliances and other articles attached to such buildings and other improvements (collectively, the "Improvements");

(c) All fixtures (collectively, the "Fixtures") now or hereafter located on, attached to, installed in or used in connection with the Land and the Improvements, including all awnings, boilers, furnaces, pipes, plumbing, elevators, cleaning, call and sprinkler systems, fire extinguishing machinery and equipment, water tanks, heating, ventilating, air conditioning and air cooling machinery and equipment, gas and electric machinery and equipment, and other equipment, machinery and appliances and other fixtures of every kind and nature;

(d) All rights, rights-of-way, easements, licenses, profits, privileges, tenements, hereditaments and appurtenances now owned or hereafter acquired by Trustor and used in connection with the Land and the Improvements or as a means of access to either or both;

(e) All of Trustor's right, title and interest now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Land, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Land and Improvements;

(f) All oil, gas and other mineral rights in or relating to the Land, and all royalty, leasehold and other rights of Trustor in or relating thereto;

(g) All water, water rights and riparian rights (including, without limitation, shares of stock evidencing the same) in or relating to the Land;

(h) All leases and subleases relating to all or any part of the Land and the Improvements or any interest therein, now or hereafter existing or entered into, including all deposits, advance rentals and other payments of a similar nature but not including the Rents, as defined and separately assigned in Article 4;

(i) All options to purchase or lease all or any part of the Land or Improvements or any interest therein (and any greater estate in the Land or Improvements now owned or hereafter acquired pursuant thereto);

(j) All other estates, easements, licenses, interests, rights, titles, claims or demands, both in law and in equity, which Trustor now has or may hereafter acquire in the Land and the Improvements, including, without limitation, (1) any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of all or any part of the Site, including any award resulting from a change of grade of streets and any award for severance damages, and (2) any and all proceeds of any insurance covering the Site.

## ARTICLE II

### SECURED OBLIGATIONS

2.1 Secured Obligations. This Deed of Trust, and the lien created hereby, is made for the purpose of securing the following obligations (collectively, the "Secured Obligations"):

### ATTACHMENT NO. 4 HOME LOAN DEED OF TRUST

(a) the payment and performance by Trustor of all indebtedness and other obligations evidenced by that certain HOME Loan Note, Promissory Note Secured by Deed of Trust ("Note") dated of even date herewith, made by Trustor to the order of Beneficiary, in the original principal amount of Two Million Ten Thousand Five Hundred Sixty-One Dollars (\$2,010,561), together with interest on such indebtedness and costs of enforcement according to the terms of the Note;

(b) the payment and performance of all indebtedness and each and every promise, agreement, covenant, and obligation of Trustor to Beneficiary contained in (i) that certain HOME Funds Commitment and Agreement (Garden Grove United Methodist Church Apartments Project) ("Agreement"), dated as of June \_\_\_, 2015, between Beneficiary and Trustor, (ii) that certain Regulatory Agreement with Right of First Offer ("Regulatory Agreement") dated concurrently herewith, by and between Beneficiary and Trustor and recorded against the Site in the Official Records of Orange County, (iii) this Deed of Trust, and (iv) the other "Project Documents" (as defined in the Note and Agreement), whether or not the total amount thereof may exceed the face amount of the Note, shall be secured hereby to the same extent as though said Agreement, Regulatory Agreement, and Project Documents were fully incorporated in this Deed of Trust;

(c) the payment and performance of all indebtedness and other obligations of Trustor to Beneficiary, or its successors or assigns, when such indebtedness and obligations are contained in a document which recites that the obligations thereunder are secured by this Deed of Trust;

(d) the payment by Trustor of all amounts advanced by or on behalf of Beneficiary or Trustee to improve, protect or preserve the Site or the security of this Deed of Trust, with interest thereon as provided herein; and

(e) the payment and performance of all amendments, modifications, extensions, renewals and replacements of or for any of the foregoing (including, without limitation, (i) amendments or modifications of the required principal payment dates or interest payment dates, or both, as the case may be, accelerating or deferring such interest payment dates in whole or in part, or (ii) amendments, modifications, extensions or renewals at a different rate of interest), whether or not any such amendment, modification, extension, renewal or replacement is evidenced by a new or additional promissory note or other document.

### ARTICLE III

#### COVENANTS

3.1 Payment of Secured Obligations. Trustor shall pay and perform the Secured Obligations when due.

3.2 Maintenance, Repair, Alterations. Trustor shall maintain and preserve the Site in good condition and repair; Trustor, except upon the prior written consent of Beneficiary, shall not remove, demolish or materially alter any of the Improvements, other than to make repairs in the ordinary course of business of a non-structural nature which serve to preserve or increase the value of the Site; Trustor shall complete promptly and in a good and workmanlike manner any Improvement which may be now or hereafter constructed on the Land, shall promptly restore in like manner any

Improvement which may be damaged or destroyed thereon from any cause whatsoever, and shall pay when due all claims for labor performed and materials furnished therefor; Trustor shall comply with all laws, ordinances, rules, regulations, orders, covenants, conditions, restrictions and "Permitted Encumbrances" (as hereinafter defined) now or hereafter affecting the Site, or any part thereof, or the conduct or operation of Trustor's business; Trustor shall not commit, suffer or permit any act to be done in, upon or to all or any part of the Site in violation of any such laws, ordinances, rules, regulations, orders, covenants, conditions or Permitted Encumbrances now or hereafter affecting the Site; Trustor shall not commit or permit any waste or deterioration of the Site, and shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; Trustor shall not take (nor fail to take) any action, which if taken (or not so taken) would increase in any way the risk of fire or other hazard occurring to or affecting the Site or which otherwise would impair the security of Beneficiary in the Site; Trustor shall comply with the provisions of all leases, if any, constituting a portion of the Site; Trustor shall not abandon the Site or any portion thereof or leave the Site unprotected, unguarded, vacant or deserted; Trustor shall not initiate, join in or consent to any change in any zoning ordinance, general plan, specific plan, private restrictive covenant or other public or private restriction limiting the uses which may be made of the Site by Trustor or by the owner thereof without the prior written consent of Beneficiary; Trustor shall secure and maintain in full force and effect all permits necessary for the use, occupancy and operation of the Site; except as otherwise prohibited or restricted by the Project Documents, or any of them, Trustor shall do any and all other acts which may be reasonably necessary to protect or preserve the value of the Site and the rights of Trustee and Beneficiary with respect thereto.

3.3 Insurance. Trustor shall at all times maintain in full force and effect, at Trustor's sole cost and expense, policies of insurance in form, substance, amounts and with companies as required by the Agreement. In the event of any damage or destruction to the Site, all insurance proceeds shall be applied in accordance with the terms and provisions of the Agreement or, in the absence thereof, as required by law.

3.4 Condemnation and Other Awards. Upon learning of the condemnation or other taking for public or quasi-public use of, or of the institution or the threatened institution of any proceeding for the condemnation or other taking for public or quasi-public use of, all or any part of the Site, Trustor shall promptly notify Beneficiary and Trustee of such fact. Subject to the requirements under senior loan documents, Trustor shall take all actions reasonably required by Beneficiary or Trustee in connection therewith to defend (using counsel reasonably acceptable to Beneficiary) and protect the interests of Trustor, Beneficiary and/or Trustee in the Site. At Beneficiary's option, Beneficiary or Trustor may be the nominal party in such proceeding but in any event Beneficiary shall be entitled, without regard to the adequacy of its security, to participate in and to control its own defense and any settlement affecting the Beneficiary's interest in the Site and to be represented therein by counsel of its choice. Subject to the requirements under senior loan documents, Trustor hereby assigns to Beneficiary, as security for the Secured Obligations, all compensation, awards, damages and other amounts payable to Trustor in connection with any condemnation or other taking of all or any part of the Site for public or semi-public use (including, but not limited to, the proceeds of any settlement, regardless of whether or not condemnation or other taking proceedings are instituted in connection therewith). Upon receipt, subject to the requirements under senior loan documents, Trustor shall immediately deliver all such compensation, awards, damages and other amounts to Beneficiary. All such proceeds shall first be applied to reimburse Beneficiary and Trustee for all costs and expenses, including reasonable attorneys' fees, incurred in



connection with the collection of such award or settlement. The balance of such award or settlement shall be applied as required by law. Application or release of such proceeds as provided herein shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

3.5 Taxes and Impositions. After Trustor's acquisition of the Conforming Leasehold Interest from UMC, Trustor shall be responsible to and shall pay or cause to be paid, prior to delinquency, all of the following (collectively, the "Impositions"): (i) all general and special real property taxes and assessments imposed on the Site; and (ii) all other taxes and assessments and charges of every kind that are assessed upon the Site and that create or may create a lien upon the Site (or upon any personal property or fixtures used in connection with the Site), including nongovernmental levies and assessments pursuant to applicable covenants, conditions or restrictions. If permitted by law, Trustor may pay any Imposition in installments (together with any accrued interest).

(a) Right to Contest. Trustor shall not be required to pay any Imposition so long as (a) the validity of such Imposition is being actively contested in good faith and by appropriate proceedings, and (b) either (i) Trustor has demonstrated to Beneficiary's reasonable satisfaction that leaving such Imposition unpaid pending the outcome of such proceedings could not result in conveyance of any parcel in satisfaction of such Imposition or otherwise impair Beneficiary's interests under the Project Documents, or (ii) Trustor has furnished Beneficiary with a bond or other security satisfactory to Beneficiary in an amount not less than 120% of the applicable claim (including interest and penalties).

(b) Evidence of Payment. Upon demand by the Beneficiary from time to time, Trustor shall deliver to the Beneficiary within thirty (30) days following the due date of any Imposition, evidence of payment of said Imposition reasonably satisfactory to the Beneficiary, unless Trustor is contesting the imposition in conformity with Section 3.5(a). In addition, upon demand by Beneficiary from time to time, Trustor shall furnish to Beneficiary a tax reporting service for the Site of a type and duration, and with a company, reasonably satisfactory to Beneficiary.

3.6 Utilities. Except to the extent paid directly by tenants, Trustor shall promptly pay all gas, electricity, water, sewer and other utility charges which are incurred for the benefit of the Site or which may become a lien against the Site and all other assessments and other charges of a similar nature, public or private, relating to the Site or any portion thereof, regardless of whether or not any such charge is or may become a lien thereon.

3.7 Liens. Trustor shall not cause, incur, suffer or permit to exist or become effective any lien, encumbrance or charge upon all or any part of the Site or any interest therein. Trustor shall pay and promptly discharge, at Trustor's sole cost and expense, all liens, encumbrances and charges upon all or any part of the Site or any interest therein, or contest such claim in conformity with Sections 1001.1 and 1102 of the Agreement. If Trustor shall fail to remove and discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same, without notice to or demand on Trustor, and without inquiring into the validity of such lien, encumbrance or charge or the existence of any defense or offset thereto, either by paying the amount claimed to be due, or by procuring the discharge of such lien, encumbrance or charge by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or in any other manner permitted or required by law.

Subject to the rights of Trustor pursuant to Sections 1001.1 and 1102 of the Agreement, the Trustor shall, within twenty (20) days after demand therefor by Beneficiary (together with sufficient evidence substantiating such expenditures by Beneficiary), pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, together with interest thereon from the date of such expenditure until paid at the "Alternate Rate" (as defined in the Note).

3.8 Sale or Lease of Site. Except as otherwise permitted under the Agreement, Trustor shall not sell, lease or otherwise transfer all or any part of the Site or any interest therein without the prior written consent of Beneficiary.

3.9 Inspections. Beneficiary, Trustee and their respective agents, representatives and employees, are each authorized, upon notice reasonable under the circumstances (which may be written or oral), to enter at any time upon any part of the Site during normal business hours for the purpose of inspecting the same and for the purpose of performing any of the work Beneficiary and/or Trustee are authorized to perform hereunder or under the terms of any of the Project Documents. Such entry by the Beneficiary shall be upon 48-hours' prior notice, and shall be undertaken at Beneficiary's expense, with Beneficiary holding harmless the Trustor from any claims or injuries which occur in connection with the exercise of the Beneficiary's rights pursuant to this Section 3.9. The rights of Beneficiary to enter and inspect pursuant to this Section 3.9 are in addition to and do not limit Authority's rights to conduct building inspections.

3.10 Defense of Actions. Trustor, at no cost or expense to Beneficiary or Trustee, shall appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust, any of the other Project Documents, all or any part of the Site or any interest therein, any additional or other security for the obligations secured hereby, or the interests, rights, powers or duties of Beneficiary or Trustee hereunder, provided that Trustee or Beneficiary shall have first tendered the defense to Trustor. If Beneficiary or Trustee elects to become a party to such action or proceeding, or is made a party thereto, Trustor shall indemnify, defend and hold Trustee and Beneficiary harmless from all liability, damage, cost and expense incurred by Trustee and Beneficiary, or either of them, by reason of such action or proceeding (including, without limitation, reasonable attorneys' fees and expenses), whether or not such action or proceeding is prosecuted to judgment or decision.

3.11 Protection of Security. If Trustor fails to make any payment or to do any act as and in the manner provided in this Deed of Trust or any of the other Project Documents, Beneficiary and/or Trustee, each in its own discretion, without obligation so to do, without further notice or demand, and without releasing Trustor from any obligation, may make or do the same in such manner and to such extent as either may reasonably deem necessary to protect the security of this Deed of Trust. In connection therewith (without limiting their general powers), Beneficiary and Trustee shall each have and are hereby given the right, but not the obligation and subject to the terms and conditions set forth herein: (i) to enter upon and take possession of the Site; (ii) to make additions, alterations, repairs and improvements to the Site which in the judgment of either may be necessary or proper to keep the Site in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of either may affect or appears to affect the security of this Deed of Trust or may be, or to appear to be, prior or superior hereto; and (v) in exercising such

powers, to pay all necessary or appropriate costs and expenses and employ necessary or desirable consultants.

3.12 Beneficiary's Powers. Without affecting the liability of Trustor or any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Site not then or theretofore released as security for the full amount of all Secured Obligations, Beneficiary may, from time to time and without notice (i) release any person so liable, (ii) extend the maturity or alter any of the terms of any such obligation (provided, however, that the consent of Trustor shall be required with respect to the extension or alteration of any unpaid obligation of Trustor to Beneficiary), (iii) waive any provision contained herein or grant other indulgences, (iv) release or reconvey, or cause to be released or reconveyed at any time at Beneficiary's option any parcel, a portion or all of the Site, (v) take or release any other or additional security for any obligation herein mentioned, or (vi) make compositions or other arrangements with debtors in relation thereto. By accepting payment or performance of any obligation secured by this Deed of Trust after the payment or performance thereof is due or after the filing of a notice of default and election to sell, Beneficiary shall not have thereby waived its right to require prompt payment and performance, when due, of all other obligations secured hereby, or to declare a default for failure so to pay or perform, or to proceed with the sale under any notice of default and election to sell theretofore given by Beneficiary, or with respect to any unpaid balance of the indebtedness secured hereby. The acceptance by Beneficiary of any sum in an amount less than the sum then due shall not constitute a waiver of the obligation of Trustor to pay the entire sum then due.

3.13 Costs, Fees and Expenses. Upon the occurrence of a Default, Trustor shall pay, on demand, all costs, fees, expenses, advances, charges, losses and liabilities paid or incurred by Beneficiary and/or Trustee under or in connection with this Deed of Trust, the enforcement of this Deed of Trust, the collection of the Secured Obligations, and/or the exercise of any right, power, privilege or remedy given Beneficiary and/or Trustee under this Deed of Trust, including, (a) foreclosure fees, trustee's fees and expenses, receiver's fees and expenses and trustee's sale guaranty premiums, (b) costs and expenses paid or incurred by Beneficiary and/or Trustee and/or any receiver appointed under this Deed of Trust in connection with the operation, maintenance, management, protection, preservation, collection, sale or other liquidation of the Site, (c) advances made by Beneficiary and/or Trustee to complete or partially construct all or any part of any improvements which may have been commenced on the Land or otherwise to protect the security of this Deed of Trust, (d) costs of evidence of title, costs of surveys and costs of appraisals, and (e) the fees, costs and expenses of attorneys, accountants and other consultants; together with interest thereon from the date of expenditure until so paid at the Alternate Rate.

#### ARTICLE IV

##### ASSIGNMENT OF RENTS, ISSUES AND PROFITS

4.1 Assignment of Rents, Issues and Profits. While this Deed of Trust is outstanding, Trustor hereby absolutely and irrevocably assigns and transfers to Beneficiary all of its right, title and interest in and to all rents, issues, profits, royalties, income and other proceeds and similar benefits derived from the Site (collectively, the "Rents"), and hereby gives to and confers upon Beneficiary the right, power and authority to collect such Rents. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at the option of Beneficiary, at any time and from time to time, to

demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in its name or in the name of Trustor, for all Rents, and to apply the same to the obligations secured hereby; provided, however, that Trustor shall have a license to collect Rents (but not more than one month in advance unless the written approval of Beneficiary has first been obtained, which approval shall not be unreasonably withheld or delayed), and to retain and enjoy the same, so long as a Default shall not have occurred hereunder and be continuing. The assignment of the Rents in this Article 4 is intended to be an absolute assignment from Trustor to Beneficiary and not merely the passing of a security interest.

4.2 Collection Upon Default. Upon the occurrence and during the continuance of a Default hereunder, Trustor's license to collect the Rents shall automatically terminate and Beneficiary may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the obligations hereby secured, enter upon and take possession of the Site, or any part thereof, and, with or without taking possession of the Site or any part thereof, in its own name sue for or otherwise collect such Rents (including those past due and unpaid, and all prepaid Rents and all other monies which may have been or may hereafter be deposited with Trustor by any lessee or tenant of Trustor to secure the payment of any Rent or for any services thereafter to be rendered by Trustor or any other obligation of any tenant to Trustor arising under any lease, and Trustor agrees that, upon the occurrence of any Default hereunder, Trustor shall promptly deliver all Rents and other monies to Beneficiary), and Beneficiary may apply the same, less costs and expenses of operation and collection, including, without limitation, attorneys' fees, whether or not suit is brought or prosecuted to judgment, upon any indebtedness or obligation of Trustor secured hereby, and in such order as Beneficiary may determine notwithstanding that said indebtedness or the performance of said obligation may not then be due. The collection of Rents, or the entering upon and taking possession of the Site, or the application of Rents as provided above, shall not cure or waive any default or notice of default hereunder or invalidate any act performed in response to such default or pursuant to such notice of default or be deemed or construed to make Beneficiary a mortgagee-in-possession of all or any part of the Site.

## ARTICLE V

### REMEDIES UPON DEFAULT

5.1 Events of Default. The occurrence of any of the following events or conditions shall, subject to the cure rights set forth in the Agreement, constitute an event of default ("Default") hereunder:

5.1.1 Trustor shall fail to pay any amount owing under this Deed of Trust when due, and such failure is not cured within ten (10) days after Beneficiary gives Trustor notice of such failure;

5.1.2 Trustor shall fail to observe or perform any other obligation contained in this Deed of Trust, and such failure is not cured within thirty (30) days after Beneficiary gives Trustor notice of such failure; provided that, if cure cannot reasonably be effected within such 30-day period, such failure shall not be a Default so long as Borrower promptly (in any event, within thirty (30) days after receipt of such notice) commences cure, and thereafter diligently prosecutes such cure to completion;

## ATTACHMENT NO. 4 HOME LOAN DEED OF TRUST

5.1.3 The occurrence of a "Default" under the Agreement, the Regulatory Agreement, the Note, or other Project Documents;

5.1.4 A default under any other document or agreement secured hereby, subject to any applicable cure period; or

5.1.5 Authority exercises Authority's right to cure a default by Developer under the Primary Loan or other financing senior to the HOME Loan and Developer does not reimburse Authority for the cost to cure such default within ten (10) days following written demand for payment from Authority

5.2 Acceleration Upon Default; Additional Remedies. Upon the occurrence and during the continuance of a Default, Beneficiary may, at its option, terminate its obligations under the Project Documents and declare all Secured Obligations to be immediately due and payable without any presentment, demand, protest or further notice of any kind; and whether or not Beneficiary exercises said option, Beneficiary may:

5.2.1 Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Site, or any part thereof, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to complete the construction of the Improvements on the Land, to preserve the value, marketability or rentability of the Site, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Site, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including attorneys' fees, upon any Secured Obligations, all in such order as Beneficiary may determine. The entering upon and taking possession of the Site, the collection of such Rents and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession by Trustee, Beneficiary or a receiver of all or any portion of the Site or the collection, receipt and application of any of the Rents, the Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Project Documents or by law upon occurrence of any Default, including the right to exercise the power of sale;

5.2.2 Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants contained herein;

5.2.3 Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Site to be sold, which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of the County in which the Site are located;

5.2.4 Exercise any and/or all of the rights and remedies available to a secured party under the California Uniform Commercial Code in such order and in such manner as Beneficiary, in its sole discretion, may determine (including, without limitation, requiring Trustor to assemble the collateral and make the collateral available to Beneficiary at a reasonably convenient location); provided, however, that the expenses of retaking, holding, preparing for sale or the like as provided

thereunder shall include reasonable attorneys' fees and other expenses of Beneficiary and Trustee and shall be additionally secured by this Deed of Trust; and/or

5.2.5 Exercise all other rights and remedies provided herein, in any Project Document or other document or agreement now or hereafter securing all or any portion of the obligations secured hereby, or provided by law or in equity.

5.3 Foreclosure By Power of Sale.

5.3.1 Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

5.3.2 Upon receipt of notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such notice of default and election to sell as is then required by law. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such notice of default and after notice of sale having been given as required by law, sell the Site at the time and place of sale fixed by it in said notice of sale, either as a whole, or in separate lots or parcels or items and in such order as Beneficiary may direct Trustee so to do, at public auction to the highest bidder for cash in lawful money of the United States of America payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matter or fact shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale.

5.3.3 After deducting all fees, costs and expenses incurred by Beneficiary or Trustee in connection with such sale, including costs of evidence of title, Beneficiary shall apply the proceeds of sale in the following priority, to payment of (i) first, all amounts expended under the terms hereof, not then repaid, with accrued interest at the Alternate Rate; (ii) second, all other Secured Obligations; and (iii) the remainder, if any, to the person or persons legally entitled thereto.

5.3.4 Subject to applicable law, Trustee may postpone the sale of all or any portion of the Site by public announcement at the time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

5.3.5 A sale of less than the whole of the Site or any defective or irregular sale made hereunder shall not exhaust the power of sale provided for herein; and subsequent sales may be made hereunder until all obligations secured hereby have been satisfied, or the entire Site sold, without defect or irregularity.

5.4 Appointment of Receiver. Upon the occurrence of a Default under this Deed of Trust, Beneficiary, as a matter of right and without notice to Trustor or anyone claiming under Trustor, and without regard to the then value of the Site or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Site, and

Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided herein and shall continue as such and exercise all such powers until the date of confirmation of sale of the Site unless such receivership is sooner terminated.

5.5 Application of Funds After Default. Except as otherwise herein provided, upon the occurrence of a Default hereunder, Beneficiary may, at any time without notice, apply any or all sums or amounts received and held by Beneficiary to pay insurance premiums, Impositions, or either of them, or as rents or income of the Site, or as insurance or condemnation proceeds, and all other sums or amounts received by Beneficiary from or on account of Trustor or the Site, or otherwise, upon any Secured Obligation, in such manner and order as Beneficiary may elect, notwithstanding that such Secured Obligation may not yet be due. The receipt, use or application of any such sum or amount shall not be construed to affect the maturity of any indebtedness secured by this Deed of Trust, or any of the rights or powers of Beneficiary or Trustee under the terms of the Project Documents, or any of the obligations of Trustor or any guarantor under the Project Documents; or to cure or waive any default or notice of default under any of the Project Documents; or to invalidate any act of Trustee or Beneficiary.

5.6 Remedies Not Exclusive. Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any indebtedness or obligation secured hereby and to exercise all rights and powers under this Deed of Trust or under any Project Document or other agreement or any law now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by guaranty, mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security for the obligations hereby secured now or hereafter held by Beneficiary or Trustee in such order and manner as they may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein, or granted to Beneficiary under any other agreement, or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or granted to Beneficiary under any other agreement, or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Project Documents to the Trustee or Beneficiary or to which either of them may be otherwise entitled may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Trustee or Beneficiary, and either of them may pursue inconsistent remedies. Trustor may be joined in any action brought by Beneficiary to foreclose under or otherwise enforce this Deed of Trust.

5.7 Request for Notice of Default. Trustor hereby requests that a copy of any notice of default and that a copy of any notice of sale hereunder be mailed to it at the address set forth in the first paragraph of this Deed of Trust.

## ARTICLE VI

### MISCELLANEOUS

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

6.2 Waivers. Trustor waives, to the extent permitted by law, (i) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the Site, and, whether now existing or hereafter arising or created, (ii) all rights of valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshaling in the event of foreclosure of the liens hereby created, and (iii) all rights and remedies which Trustor may have or be able to assert by reason of the laws of the State of California pertaining to the rights and remedies of sureties: provided, however, nothing contained herein shall be deemed to be a waiver of Trustor's rights under Section 2924, 2924b and 2924c of the California Civil Code, or under Sections 580a or 726 of the California Code of Civil Procedure.

6.3 Statements by Trustor. Trustor shall, within twenty (20) days after notice thereof from Beneficiary, deliver to Beneficiary a written statement setting forth the amounts Trustor understands to be unpaid and secured by this Deed of Trust and stating whether any offset or defense exists against such amounts.

6.4 Statements by Beneficiary. For any statement or accounting requested by Trustor or any other entitled person pursuant to Section 2943 or Section 2954 of the California Civil Code or pursuant to any other provision of applicable law, or for any other document or instrument furnished to Trustor by Beneficiary, Beneficiary may charge the maximum amount permitted by law at the time of the request therefor, or if there be no such maximum, then in accordance with Beneficiary's customary charges therefor or the actual cost to Beneficiary therefor, whichever is greater.

6.5 Reconveyance by Trustee. Upon written request of Beneficiary stating that all Secured Obligations have been paid and fully performed, and upon surrender by Beneficiary of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees and the costs and expenses of executing and recording any requested reconveyance, Trustee shall reconvey to the person or persons legally entitled thereto, without warranty, any portion of the Site then held hereunder. The recitals in any such reconveyance of any matter or fact shall be conclusive proof of the truthfulness thereof. The grantee in any such reconveyance may be described as "the person or persons legally entitled thereto."

6.6 Notices. All notices, demands, approvals and other communications provided for herein shall be in writing and shall be personally delivered, delivered by reputable overnight courier service or mailed by United States mail, as certified or registered material, return receipt requested, postage prepaid, to the appropriate party at the address set forth in the first paragraph of this Deed of Trust. Addresses for notice may be changed from time to time by written notice to all other parties. All communications shall be effective when actually received: provided, however, that non-receipt of any communication as the result of a change of address of which the pending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.



A copy of each notice, demand, approval and communication directed to the Trustor shall be provided to the Tax Credit Investor at the following address: 101 Arch Street, Boston, MA 02110.

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

6.8 Headings. Article and Section headings are included in this Deed of Trust for convenience of reference only and shall not be used in construing this Deed of Trust.

6.9 Severability. Every provision of this Deed of Trust is intended to be severable. In the event any provision hereof is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of the remaining provisions hereof, which provisions shall remain binding and enforceable.

6.10 Subrogation. To the extent that proceeds of the Note are used, either directly or indirectly, to pay any outstanding lien, charge or prior encumbrance against the Site, Beneficiary shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether such liens, charges or encumbrances are released.

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

6.12 Statute of Limitations. The right to plead, use or assert any statute of limitations as a plea, defense or bar of any kind, or for any purpose, to any obligation secured hereby, or to any complaint or other pleading or proceeding filed, instituted or maintained for the purpose of enforcing this Deed of Trust or any rights hereunder, is hereby waived by Trustor to the full extent permitted by law.

6.13 Interpretation. In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires; and the word "person" shall include corporation, partnership or other form of association. Any reference in this Deed of Trust to any document, instrument or agreement creating or evidencing an obligation secured hereby shall include such document, instrument or agreement both as originally executed and as it may from time to time be modified.

6.14 Trust Irrevocable. The trust created hereby is irrevocable by Trustor. All amounts payable by Trustor pursuant to this Deed of Trust shall be paid without notice (except where notice is expressly required), demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction. Trustor hereby waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any amount secured hereby and payable by Trustor to Beneficiary or Trustee.

6.15 Further Assurances. Trustor agrees to do or cause to be done such further acts and things and to execute and deliver or to cause to be executed and delivered such additional assignments, agreements, powers and instruments, as Beneficiary or Trustee may reasonably require to correct any defect, error or omission in this Deed of Trust or the execution or acknowledgment of

this Deed of Trust, to subject to the lien of this Deed of Trust any of Trustor's property covered or intended to be covered hereby, to perfect and maintain such lien, to keep valid and effective the charges and lien hereof, to carry into effect the purposes of this Deed of Trust or to better assure and confirm to Beneficiary or Trustee their respective rights, powers and remedies hereunder.

6.16 Trustee's Powers. 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 secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness or the performance of any other obligation secured hereby or the effect of this Deed of Trust upon the remainder of the Site, Trustee may (i) reconvey all or any part of the Site, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon, or (iv) join in any extension agreement, agreement subordinating the lien or charge hereof, or other agreement or instrument relating hereto or to all or any part of the Site.

6.17 Substitution of Trustee. Beneficiary may, from time to time, by written instrument executed and acknowledged by Beneficiary and recorded in the county or counties where the Site are located, or by any other procedure permitted by applicable law, substitute a successor or successors for the Trustee named herein or acting hereunder.

6.18 Successors and Assigns. This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.

6.19 Non-Recourse Obligation. In the event of any Default under the terms of the Agreement or any of the other Project Documents, the sole recourse of Authority for any such Default shall be Developer's interest in the Site and the Project and Developer and its partners and Affiliates shall not be personally liable for the payment of any obligations under the Agreement; provided, however, that the foregoing shall not in any way affect any rights Authority may have hereunder, or any right of Authority to recover or collect funds, damages or costs (including without limitation reasonable attorneys' fees and costs) incurred by Authority as a result of fraud, intentional misrepresentation or bad faith waste, and/or any costs and expenses incurred by Authority in connection therewith (including without limitation reasonable attorneys' fees and costs).

IN WITNESS WHEREOF, Trustor has duly executed this HOME Loan Deed of Trust and Assignment of Rents as of the dates set forth below.

**“TRUSTOR”**

**GARDEN GROVE HOUSING PARTNERS LP,**  
a California limited partnership

By: JHC-GARDEN GROVE LLC,  
a California limited liability company,  
Its General Partner

By: Jamboree Housing Corporation,  
a California nonprofit public benefit  
corporation, its Managing Member

By: \_\_\_\_\_  
Marcy V. Finamore, Executive Vice  
President and Chief Financial Officer

**EXHIBIT "A" TO ATTACHMENT NO. 4**

**LEGAL DESCRIPTION**

PARCEL A:

PARCEL 2, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER PARCEL MAP FILED IN BOOK 137, PAGES 27 AND 28 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION OF SAID LAND DESCRIBED IN DEED RECORDED SEPTEMBER 13, 1990 AS INSTRUMENT NO. 90-487987, OFFICIAL RECORDS.

PARCEL B:

THOSE PORTIONS OF STANFORD AVENUE AND MAIN STREET, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, ADJOINING PARCEL 2 ON THE NORTH AND EAST, AS SHOWN ON A PARCEL MAP FILED IN BOOK 137, PAGES 27 AND 28 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BOUNDED WESTERLY BY THE NORTHERLY PROLONGATION OF THAT CERTAIN COURSE IN THE BOUNDARY OF SAID PARCEL 2 SHOWN AS "NORTH 0° 53' 09" 233.25 FEET" ON SAID PARCEL MAP AND BOUNDED SOUTHERLY BY THE EASTERLY PROLONGATION OF THAT CERTAIN COURSE SHOWN AS "NORTH 89° 23' 30" EAST 281.00 FEET" ON SAID PARCEL MAP.

PARCEL C:

THE WEST 110 FEET OF THE EAST 210 FEET OF THE NORTH 2 ACRES OF THE WEST HALF (W½) OF THE NORTHEAST QUARTER (NE¼) OF THE SOUTHEAST QUARTER (SE¼) OF THE SOUTHEAST QUARTER (SE¼) OF SECTION THIRTY-TWO (32), IN TOWNSHIP FOUR (4) SOUTH, RANGE TEN (10) WEST, SAN BERNARDINO BASE AND MERIDIAN.

APN(s): 089-202-28 and 089-202-54