AFFORDABLE HOUSING / DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

CITY OF COSTA MESA
a California municipal corporation

and

JHC-ACQUISITIONS LLC,
a California limited liability company

an affiliate of

JAMBOREE HOUSING CORPORATION,
a California nonprofit public benefit corporation

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AFFORDABLE HOUSING /
DISPOSITION AND DEVELOPMENT AGREEMENT

This Affordable Housing/Disposition and Development Agreement ("**Agreement**" and sometimes referred to as the "**AH/DDA**") is entered into as of _____, 2024 ("**Effective Date**") by and between CITY OF COSTA MESA, a California municipal corporation (the "**City**"), and JHC-ACQUISITIONS LLC, a California limited liability company (the "**Developer**"). City and Developer (individually referred to herein as a "**Party**," and collectively referred to herein as the "**Parties**") hereby agree as follows:

1. SUBJECT OF AGREEMENT

1.1 Purpose of Agreement

The purpose of this Agreement is to assist in the financing and development of an up to seventy (70) unit senior affordable rental housing project on the "Site," with sixty-nine (69) of such units to be restricted for rental to and occupancy by "Eligible Tenants" at an "Affordable Rent" (as those terms are hereinafter defined), and related improvements (collectively the "**Project**").

As used herein, the term "**Unit**" refers to each of the up to sixty-nine (69) rental dwelling unit on the Property, and the term "**Units**" refers to all of the rental dwelling units on the Property. Each Unit will be subject to the "City Regulatory Agreement" (as that term is hereinafter defined).

The development of the Site and the occupancy of the affordable rental housing project as developed for households of limited incomes, all as provided in this Agreement, are in the vital and best interests of the City of Costa Mesa and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements under which the Project has been undertaken.

1.2 The Site

The "Site" comprises approximately one and five-tenths (1.5) acres of that certain real property owned in fee by City and located at 695 W. 19th Street (APN 424-211-01) (the "**City Property**"). The City Property is improved with the Costa Mesa Senior Center and adjoining parking lot. The Site is a portion of the parking lot area of the City Property. The Site is depicted on the Site Map, which is attached hereto and incorporated herein as Attachment No. 1. At such time as the Site is established as a separate legal parcel, the legal description of the Site shall be inserted into Attachment No. 2, which is attached hereto and incorporated herein by this reference.

1.3 Parties to the Agreement

1.3.1 The City

City is the City of Costa Mesa, a California municipal corporation. The principal office of City is located at 77 Fair Drive, Cosa Mesa, California 92626, or such other address as City shall hereafter designate in writing to Developer.

1.3.2 The Developer

Developer is JHC-Acquisitions LLC, a California limited liability company. The principal office and mailing address of Developer for purposes of this Agreement is 17701 Cowan Avenue, Suite 200, Irvine CA 92614.

By executing this Agreement, each person signing on behalf of Developer warrants and represents to City that Developer has the full power and authority to enter into this Agreement, that all authorizations required to make this Agreement binding upon Developer have been obtained, and that the person or persons executing this Agreement on behalf of Developer are fully authorized to do so.

Whenever the term "**Developer**" is used in this Agreement, such term shall include any and all nominees, assignees, or successors in interest as herein provided.

1.4 Definitions

"**30% Low Income Household**" shall mean those households whose household income does not exceed thirty percent (30%) of the Orange County Median Income, as determined in accordance with Section 42(g) of the IRC, as published from time to time by TCAC.

"**Affiliate**" means any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the subject entity which, if the subject entity is a partnership or limited liability company, shall include each of the constituent members or partners, respectively thereof. The term "control" as used in the immediately preceding sentence, means, with respect to a person that is a corporation, the right to the exercise, directly or indirectly, of more than fifty percent (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.

"**Affordable Rent**" shall mean the amount of monthly rent, including a reasonable utility allowance, that does not exceed the maximum allowable rent to be charged by Developer and paid by 30% Low Income Households or Low Income Households, as the case may be, occupying the Units as determined in accordance with Section 42(g)(2) of the IRC, and as published from time to time by TCAC.

"**Annual Financial Statement**" shall mean the financial statements prepared by Developer for each calendar year, including a balance sheet, income statement, statement of retained earnings, statement of cash flow, and footnotes thereto, prepared in accordance with generally accepted accounting principles consistently applied, as audited by an independent certified public accountant.

"**Approved Title Exceptions**" shall have the meaning ascribed in Section 2.3.3.a hereof.

"**City Ground Lease**" shall mean a ground lease substantially in the form attached hereto and incorporated herein as Attachment No. 9.

"**City Manager**" shall mean the individual duly appointed to the position of City Manager of the City, or his or her authorized designee. Whenever an administrative action is required by City to implement the terms of this Agreement, the City Manager, or his or her authorized designee, shall have authority to act on behalf of City, except with respect to matters reserved for City Council determination.

"**City Regulatory Agreement**" shall mean a regulatory agreement and declaration of covenants and restrictions, substantially in the form attached hereto and incorporated herein as Attachment No. 5. The City Regulatory Agreement shall be recorded against the Site which is subject to this Agreement, upon establishment of the Site as a separate legal parcel prior to the development of the Project.

"**City Title Policy"** shall mean a standard Lessor's title insurance policy, together with such endorsements as may be reasonably requested by City, showing Developer's leasehold interest in the Site, and insuring the validity and priority (in accordance with this Agreement) of, respectively, the Memorandum of Ground Lease, City Regulatory Agreement, and Notice of Affordability Restrictions, and subject only to the Permitted Exceptions, to be prepared and issued as a Closing Condition.

"**Close of Escrow**" or "**Closing Date**" shall mean the date set forth in Section 2.2.2.c hereof, on which all of the following occur: (i) Escrow closes and Developer or an Affiliate of Developer obtains a leasehold interest in the Site, (iii) the close of the Construction Loan and any other funding obtained by Developer to construct the Project on the Site; and (iii) Developer's receipt of its first tranche of Tax Credit equity from the Qualified Tax Credit Investor.

"**Closing Conditions**" shall mean collectively the City Closing Conditions and Developer Closing Conditions set forth in Section 2.3.2 hereof.

"**Construction Lender**" shall mean the first trust deed lender that provides the Construction Loan to Developer. The Construction Lender may or may not also be the Take-Out Lender.

"**Construction Loan**" shall mean the construction loan for the Project, currently estimated to be in the approximate amount of _____ Dollars ($_____), to be provided by the Construction Lender.

"**Days**" shall mean calendar days and the statement of any time period herein shall be calendar days, and not business days, unless otherwise specified. "**Business days**" (whether or not such term is capitalized) shall mean any days on which City Hall for the City is open to the public.

"**Deferred Developer Fee**" shall mean the portion of the Developer Fee, if any, to be paid from Net Operating Income. The Deferred Developer Fee is anticipated to be approximately [Three Hundred Eighty-Five Thousand Dollars ($385,000)].

"**Density Bonus Laws**" shall be the state density bonus law, California Government Code section 65915, *et seq.,* and the City density bonus ordinance, Costa Mesa Municipal Code section 13-153, *et seq.*, as those sections may be amended from time to time. If there is an

irreconcilable contradiction in requirements or limits in the state or City density bonus laws, the state density bonus law shall control; provided, however, that the preceding clause is to be narrowly construed and to the greatest extent possible all provisions in the state and City density bonus laws shall be given operation and effect.

"**Developer Entities**" shall have the meaning ascribed in Section 3.5 hereof.

"**Developer Fee**" shall mean the fee to be paid to the Developer for constructing the Project, in the amount of [Two Million Eight Hundred Thousand Dollars ($2,800,000)].

"**Disapproved Title Exceptions**" shall have the meaning ascribed in Section 2.3.3.a hereof.

"**Due Diligence Period**" shall have the meaning ascribed in Section 2.3.4.a hereof.

"**Effective Date**" shall be the date set forth in the preamble.

"**Eligible Tenant**" shall mean a household which qualifies as (i) a Senior Household, and (ii) a 30% Low Income Household or a Low Income Household, as applicable pursuant to this Agreement and the City Regulatory Agreement.

"**Escrow**" shall mean the escrow established with Escrow Agent for City's conveyance of a leasehold interest in the Site to Developer, and for the recording of the City Regulatory Agreement, Memorandum of Ground Lease, Notice of Affordability Restrictions and any other recordable instruments against the Site.

"**Escrow Agent**" shall mean First American Title Insurance Company, or another escrow company mutually acceptable to City and Developer.

"**Force Majeure**" shall mean an enforced delay as described in Section 6.3 hereof.

"**Hazardous Materials**" shall have the meaning ascribed in Section 3.19.2 hereof.

"**IRC**" shall mean the United States Internal Revenue Code of 1986, as amended.

"**Jamboree**" shall mean Jamboree Housing Corporation, a California nonprofit public benefit corporation.

"**Low Income Household**" shall mean those households whose household income does not exceed sixty percent (60%) of the Orange County Median Income, as determined in accordance with Section 42(g) of the IRC, as published from time to time by TCAC.

"**Management Unit**" shall mean the one (1) unit in the Project that may be occupied by on-site management and staff.

"**Memorandum of Ground Lease**" shall mean a memorandum, substantially in the form attached as Exhibit B to the Ground Lease, to be recorded against the Site on the Closing Date.

"**Notice of Affordability Restrictions**" shall mean a notice of affordability restrictions on Transfer of property substantially in the form attached hereto and incorporated herein as Attachment No. 8. The Notice of Affordability Restrictions shall be recorded against Developer's leasehold interest in the Site.

"**Net Operating Income**" shall mean, for the applicable period, (i) the amount, if any, by which Operating Income for such period exceeds Operating Expenses paid by Developer during such period; and, provided there is such an excess, less (ii) Deferred Developer Fee, until such fee is paid in full, and provided that there is any remaining amount, less (iii) the Partnership Asset Management Fee.

"**Opening of Escrow**" shall have the meaning and be the date set forth in Section 2.3.2.a hereof.

"**Operating Expenses**" shall mean, for the applicable period of time, all costs and expenses reasonably incurred by Developer in the ordinary course of the management, ownership, and/or operation of the Site by Developer, including the payment of debt service, the funding of reasonable reserves including reserves required by any lender or the tax credit investor, and the payment of the following fees, paid annually: (a) the Social Services Fee, as defined hereinbelow; (b) a property management fee in the amount of [Nine Hundred Dollars ($900.00)] per Unit per year, increasing by 3% per annum following the first year of operation, and the monitoring payment required to be paid pursuant to Section 3.14 of the City Regulatory Agreement; (c) any tax benefit payments payable out of net cash flow to Developer's limited partner(s); (d) amounts expended to restore the Project after a casualty or condemnation, and (e) repayments of any completion or operating deficit loans advanced by a partner or member of Developer or their Affiliates. Operating Expenses shall not include depreciation or any expenses for capital improvements, except for capital improvements allowed in the "Approved Budget" (as defined in the City Regulatory Agreement), approved by any lender providing a Senior Loan, or approved, with such approval not to be unreasonably withheld or delayed, by the City Manager. Operating Expenses shall be calculated on a cash basis.

"**Operating Income**" shall mean, for the applicable period of time, all proceeds received by Developer from the operation of the Site and from any and all sources resulting from or attributable to the operation of the Site, including, without limitation, all rentals, laundry income received by Developer, forfeited security deposits, and all expense reimbursements paid to Developer by tenants of the Site. Operating Income shall be calculated on a cash basis. Operating Income excludes insurance proceeds, condemnation proceeds, loan proceeds and/or capital contributions.

"**Orange County Median Income**" shall mean the median household income for the County of Orange, adjusted for family size, to be determined in accordance with Section 42(g) of the IRC, as published from time to time by TCAC.

"**Outside Closing Date**" shall mean the date that is One Hundred Ninety-Four (194) days after the first date on which Developer has received the allocation of 9% Tax Credits from TCAC for the Project.

"**Partnership Agreement**" shall mean the agreement that sets forth the terms of Developer's limited partnership, as such agreement may be amended from time to time.

"**Partnership Asset Management Fee**" shall mean (i) the Limited Partner Asset Management Fee of [Five Thousand Dollars ($5,000) per year, payable for fifteen (15) years, and increased by three percent (3%) each year following the first year of operation, and (ii) the Managing General Partner Fee of [Twenty Thousand Dollars ($20,000)] per year, and increased by three percent (3%) each year following the first year of operation. After fifteen (15) years of operation, no Limited Partner Asset Management Fee shall be paid, except in connection with a resyndication.

"**Permitted Exceptions**" shall have the meaning ascribed in Section 2.3.6.a hereof.

"**Project**" shall mean the construction on the Site of an affordable rental housing complex with not less than sixty (60) units and up to seventy (70) units, with all but one (1) of such units restricted for rental to and occupancy by Eligible Tenants, related interior and exterior improvements and amenities appropriate and/or necessary for the development. The Project, including the Project improvements and amenities, is more particularly described in the Scope of Development attached hereto and incorporated herein as Attachment No. 3.

"**Project Budget**" shall mean, collectively, that certain budget, sources and uses of funds statement, and cash flow projection referred to in Section 2.1.4 of this Agreement and attached hereto as Attachment No. 7 which is incorporated herein by this reference, which budget, sources and uses of funds statement, and cash flow projection may not be materially changed without the prior approval of the City Manager, which approval shall not be unreasonably withheld (a material change is one or more change(s) that causes the total Project cost to increase or decrease by a cumulative amount of five percent (5%) or more from what is shown in Attachment No. 7); notwithstanding the foregoing, Developer shall promptly notify City, in writing, if Developer makes changes to the Project Budget which cause the total Project cost to increase or decrease by a cumulative amount of more than five percent (5%) from what is shown in Attachment No. 7.

"**Project Entitlements**" shall mean, collectively, any and all permits and approvals required in connection with the Project, and all conditions of approval issued in connection with any of the foregoing, and as any of such permits and/or approvals are amended from time to time. "Project Entitlements" shall not include grading permits and/or building permits.

"**PTRs**" or "**Preliminary Title Report(s)**" shall have the meaning ascribed in Section 2.3.3 hereof.

"**Qualified Tax Credit Investor**" shall mean a person or entity who (i) is an experienced limited partner and investor in multifamily housing developments receiving low income housing tax credits issued by the State of California or the United States federal government and (ii) has obtained or is contractually obligated to obtain a limited partnership or limited liability company membership interest in Developer whereby it will receive ninety percent (90%) or more of the Tax Credits generated in connection with the Project. City shall have the right to reasonable prior approval of any person or entity proposed by Developer as the Qualified Tax Credit Investor and of the terms and conditions of the Partnership Agreement. City shall diligently review any

documents and/or proposals submitted by Developer with respect to the proposed Qualified Tax Credit Investor and Partnership Agreement.

"**Release of Construction Covenants**" shall mean a release of construction covenants, substantially in the form attached hereto and incorporated herein as Attachment No. 6.

"**Released/Indemnified Parties**" shall have the meaning ascribed in Section 3.5 hereof.

"**Schedule of Performance**" shall mean that certain schedule attached hereto and incorporated herein as Attachment No. 4.

"**Senior Household**" shall mean a household in which at least one member of the household is sixty-two (62) years of age or older and no member is less than fifty-five years of age, except as may otherwise be provided by applicable law.

"**Senior Loan**" shall mean the Construction Loan and the Take-Out Loan and any Refinancing thereof.

"**Site**" shall have the meaning ascribed in Section 1.2 hereof.

"**Social Services Fee**" shall mean a minimum of [One Hundred Fifty-Two Thousand Dollars ($152,000)] per year, increasing annually by three percent (3%).

"**Take-Out Lender**" shall mean the lending institution that makes the Take-Out Loan. The Take-Out Lender may or may not also be the Construction Lender.

"**Take-Out Loan**" shall mean the permanent financing to be obtained by Developer in order to take out the Construction Loan.

"**Tax Credit Program**" shall mean the low-income housing tax credit program authorized pursuant to Internal Revenue Code Section 42, California Health and Safety Code Sections 50199.6-50199.19, Revenue and Taxation Code Sections 17057.5, 17058, 23610.4, 23610.5, and applicable federal and State regulations.

"**Tax Credits**" shall mean the low income housing tax credits granted by TCAC for the Project pursuant to Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code, Sections 17057.5, 17058, 23610.4, 23610.5 and California Health and Safety Code Section 50199, *et seq*.

"**Tax Credit Regulatory Agreement**" shall mean that certain regulatory agreement to be recorded against the Site as a condition of the receipt by the Project of an allocation by TCAC of nine percent (9%) Tax Credits.

"**TCAC**" shall mean the California Tax Credit Allocation Committee.

"**Title Company**" shall mean First American Title Insurance Company, or another title company mutually acceptable to City and Developer.

"**Unit**" and "**Units**" shall have the meaning ascribed in Section 1.1 hereof.

1.5 Prohibition Against Change in Ownership, Management and Control of Developer and Prohibition Against Transfer of the Site

The qualifications and identity of Developer are of particular concern to City. It is because of these qualifications and identity that City intends to and has entered into this Agreement and the City Ground Lease with Developer. Consequently, no person, whether a voluntary or involuntary successor of Developer, shall acquire any rights or powers under this Agreement and/or the City Gound Lease nor shall Developer assign all or any part of this Agreement, the City Ground Lease, the Site, or the City Regulatory Agreement without the prior written approval of City. A voluntary or involuntary sale or transfer of any interest in Developer or the Site during the term of this Agreement shall be deemed to constitute an assignment or transfer for the purposes of this Section 1.5, and the written approval of City shall be required prior to effecting such an assignment or transfer. Any purported transfer, voluntarily or by operation of law, except with the prior written consent of City, shall render this Agreement absolutely null and void and shall confer no rights whatsoever upon any purported assignee or transferee. During the term of this Agreement and the City Regulatory Agreement, Developer shall not, except as permitted by this Agreement, assign or attempt to assign this Agreement or any rights or duties herein, nor make any total or partial sale, transfer, conveyance, or assignment of the whole or any part of the Site or any of the improvements thereon.

Notwithstanding any other provision of this Agreement to the contrary, City approval of an assignment of this Agreement or transfer of the Site, or any interest therein, shall not be required in connection with:

a. the conveyance or dedication of any portion of or interest in the Site to City, or other appropriate governmental agency, including public utilities, where the granting of such conveyance or easement permits or facilitates the development of the Project on the Site or is otherwise required to provide public access to the City's property and for parking;

b. any assignment of the limited partner interests in Developer to an Affiliate of Developer or Jamboree;

c. the transfer of the Project or any interest in the Site to Jamboree, an entity controlled by Jamboree, a nonprofit corporation in which a majority of the board of directors are members of the board of directors of Jamboree (any of the foregoing a "Jamboree Affiliate Entity"), or a partnership or limited liability company in which a Jamboree Affiliate Entity is a general partner or managing member;

d. any mortgage, deed of trust, or other form of conveyance required for any reasonable method of financing or refinancing the development of the Project on the Site that is contemplated in the Project Budget or has otherwise been approved, in writing, by the City Manager, including all direct and indirect costs related thereto, and any refinancing of such mortgage, deed of trust, or other form of conveyance provided such refinancing does not result in a loan to value ratio in excess of 80% or a debt coverage ratio of less than 1.15 to 1;

e. transfers of limited partnership interests resulting from the death or mental or physical incapacity of an individual;

f. transfers of limited partnership interests in trust for the benefit of a spouse, children, grandchildren, or other family member, or for charitable purposes;

g. the admission of the Qualified Tax Credit Investor to Developer as a limited partner thereof;

h. the transfer of limited partnership interests by the Qualified Tax Credit Investor to an entity that has the same general partner or managing member as the Qualified Tax Credit Investor or an Affiliate thereof;

i. the transfer of the Project or Site after expiration of the fifteen (15) year compliance period to a Jamboree Affiliate Entity or a partnership or limited liability company in which a Jamboree Affiliate Entity is a general partner or managing member pursuant to a purchase option or right of first refusal agreement entered into in accordance with Developer's limited partnership agreement;

Notwithstanding anything in this Section 1.5 to the contrary, (i) any transfer or assignment by Developer or any successor in interest to Developer not requiring approval by City shall be effective when made but shall not be deemed to relieve Developer or any successor party from the obligation to timely complete development of the Project unless and until the transferor and transferee execute and deliver to City an assignment and assumption agreement in a form and with content reasonably acceptable to City's legal counsel; and (ii) any transfer or assignment by Developer or any successor in interest to Developer requiring the approval by City pursuant to this Section 1.5 shall not be effective and shall not be deemed to relieve Developer or any successor party from the obligation to timely complete development of the Project unless and until the transferor and transferee execute and deliver to City an assignment and assumption agreement in a form and with content reasonably acceptable to City's legal counsel.

This Section 1.5 shall not be applicable to the leasing of individual Units to Eligible Tenants in accordance with this Agreement and the City Regulatory Agreement, and no assignment and assumption agreement shall be required in connection therewith.

1.6 Representations by Developer

Developer represents and warrants to City as follows:

a. Developer is duly established and in good standing under the laws of the State of California and has duly authorized, executed and delivered 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. This Agreement is enforceable against Developer in accordance with its terms.

b. Developer does not have any contingent obligations or contractual agreements which will adversely affect the ability of Developer to carry out its obligations hereunder.

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

d. The execution and delivery of this Agreement and all other documents to be executed by Developer pursuant to this Agreement will not constitute or result in any default or event that with notice or the lapse of time, or both, would be a default, breach, or violation of any other agreement, instrument, or arrangement by which Developer is bound.

e. The execution and delivery of this Agreement and all other documents to be executed by Developer pursuant to this Agreement and the consummation of the transactions contemplated herein will not violate any provision of or require any consent, authorization, or approval under any law or administrative regulation or any other order, award, judgment, writ, injunction or decree applicable to, or any governmental permit or license issued to Developer.

f. To Developer's knowledge, no representation, warranty, or covenant of Developer in this Agreement, or in any document or certificate furnished or to be furnished to City pursuant to this Agreement, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

g. All financial information delivered to City, including, without limitation, information relating to the financial condition of Developer, the Site, and the Project accurately represents such financial condition and has been prepared in accordance with accepted accounting principles consistently applied, unless otherwise noted in such information.

h. Developer reasonably believes that it has, and will as required by its obligations hereunder, dedicate, allocate and otherwise make available, sufficient financial and other resources to perform its obligations under this Agreement. Nothing contained herein shall be deemed to require Developer's partners to contribute additional capital to Developer.

Each of the representations and warranties contained in this Section 1.6 shall be restated as of the Close of Escrow. If Developer becomes aware of any fact or circumstance which would materially change or render materially incorrect, in whole or in part, any representation or warranty made by Developer under this Agreement, whether as of the date given or at any time thereafter through the Close of Escrow (whether or not the representation or warranty was based on knowledge as of a particular date), Developer will get prompt written notice of such changed fact or circumstance to City Manager and City may, as its sole remedy, terminate this Agreement by written notice to Developer. All representations or warranties herein shall survive the Close of Escrow. As used in this Section 1.6, the term "knowledge" or "known" shall mean the actual (not constructive or imputed) knowledge of the Executive Vice President and Chief Development Officer of Jamboree without any investigation or inquiry or duty of investigation or inquiry.

1.7 Representations by City

City represents and warrants to Developer as follows:

a. City is a California municipal corporation. The execution, performance, and delivery of this Agreement by City has been fully authorized by all requisite actions on the part of City. The persons who have executed this Agreement on behalf of City are authorized to bind City by their signatures hereto.

b. City does not, as far as is known to City, have any contingent obligations or contractual agreements which will adversely affect the ability of City to carry out its obligations hereunder.

c. There are no pending or, to City's knowledge, threatened, legal proceedings to which City is or may be made a party or to which it or any of its property is or may become subject, which will adversely affect the ability of City to carry out its obligations hereunder.

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

e. City is not the subject of a bankruptcy proceeding.

f. To City's knowledge, the execution and delivery of this Agreement and all other documents to be executed by City pursuant to this Agreement will not constitute or result in any default or event that with notice or the lapse of time, or both, would be a default, breach, or violation of any other agreement, instrument, or arrangement by which City is bound.

g. To City's knowledge, the execution and delivery of this Agreement and all other documents to be executed by City pursuant to this Agreement and the consummation of the transactions contemplated herein will not violate any provision of or require any consent, authorization, or approval under any law or administrative regulation or any other order, award, judgment, writ, injunction or decree applicable to, or any governmental permit or license issued to City.

h. To City's knowledge, no representation, warranty, or covenant of City in this Agreement, or in any document or certificate furnished or to be furnished to Developer pursuant to this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

i. City has not entered into and, to City's knowledge, there are no unrecorded purchase agreements, option agreements, rights of first refusal, conditional sales contracts or other title retention agreements which would prevent City from conveying a leasehold interest to the Site to Developer pursuant to the terms of the Agreement.

j. To City's knowledge, there is not currently any contemplated eminent domain proceeding that would affect the Site.

k. There is no pending or, to City's knowledge, threatened claims, allegations or lawsuits of any kind, whether for personal injury, property damage, landlord tenant disputes, property taxes or otherwise, that could materially and adversely affect the development or operation of the Project in accordance with this Agreement.

l. To the City's knowledge, no Hazardous Materials are or have heretofore been generated, treated, used, stored, disposed of or deposited in or otherwise exist in or on any portion of the Site, and no Hazardous Materials exist in or on the Site that would cause the Site to be unsuitable for the development or operation of the Project or that may support a claim for damages result in liability at common law or under applicable federal, state or local environmental statute, rule, regulation or ordinance and no underground storage tanks, pipelines or clarifiers are located on the Site.

m. To City's knowledge, there are no current zoning, building, environmental protection, clear air, pollution, fire or health code violations with respect to the Site or current violations pertaining to the use and occupancy of the Site.

n. City has not entered into and, to City's knowledge, there are no leases, occupancy agreements, licenses or other rights to occupy all or any portion of the Site.

o. To City's knowledge, there are no service, supply, management or other contracts or agreements affecting the Site that will survive the Close of Escrow, except for the Approved Title Exceptions.

Each representation and warranty contained in this Section 1.7 shall be restated as of the Close of Escrow. If City becomes aware of any fact or circumstance which would materially change or render materially incorrect, in whole or in part, any representation or warranty made by City under this Agreement, whether as of the date given or at any time thereafter through the Close of Escrow (whether or not the representation or warranty was based on knowledge as of a particular date), City will get prompt written notice of such changed fact or circumstance to Developer and Developer may, as its sole remedy, terminate this Agreement by written notice to City. All representations or warranties herein shall survive the Close of Escrow. As used in this Section 1.7, the term "knowledge" or "known" shall mean the actual (not constructive or imputed) knowledge of the City Manager, without any investigation or inquiry or duty of investigation or inquiry.

1.8 Covenants of City. From the effective date of this Agreement through the Close of Escrow, City covenants and agrees as follows:

a. City will not enter into a lease or license of the Site without the prior written approval of Developer, which shall not be unreasonably withheld or delayed.

b. City will continue to maintain in effect all policies of insurance currently maintained on the Site.

c. City will continue to maintain the Site in substantially the same manner as it has prior to the execution of this Agreement.

d. City shall not take any action or consent to any action which would cause a lien, obligation or encumbrance to be placed or imposed upon the Site, take or consent to any action affecting title to the Site or amend, modify or extend the term of any matter affecting title to the Site that results in any exception to title existing as of the Close of Escrow without the prior written consent of Developer.

e. City shall not construct or install or permit to be constructed or installed any improvements on the Site without the prior written approval of Developer, which shall not be unreasonably withheld or delayed.

f. City will provide prompt written notice to Developer of any casualty or condemnation affecting any portion of the Site, any matter relating to zoning changes, increase in tax assessments, notices of violations issued by any governmental authority with respect to the Site or any litigation, arbitration or other judicial or administrative proceeding which concerns or affects the Site of which the City obtains knowledge.

1.9 Risk of Physical Loss. Prior to City's delivery of possession of the Site to Developer at the Close of Escrow, the risk of loss or damage to the Site shall remain upon the City. If the Site suffers a material release of a Hazardous Material and such release is known to the City and not caused by the Developer, then City shall give written notice thereof to Developer promptly and in such event, or in the event Developer otherwise learns of such a release Developer shall have the right to terminate this Agreement upon written notice to the City given prior to the Close of Escrow.

1.10 Condemnation. In the event that, prior to the Close of Escrow, any governmental entity (other than City) shall commence any action of eminent domain or similar type proceedings to take any portion of the Site, City shall give prompt notice thereof to Developer and Developer or City, or both, shall have the option either to (i) elect not to lease the Site, in which event this Agreement shall terminate or (ii) complete the lease of the Site, in which case City shall be entitled to all proceeds of such taking against the Site; provided, however, that City agrees that it shall not settle or compromise the proceedings with respect to the Site without Developer's prior written consent, which will not be unreasonably withheld.

2. FINANCING THE PROJECT; DISPOSITION OF THE SITE

2.1 Developer's Financing Plan

Developer contemplates financing the development of the Project (other than permanent financing) with a combination of funds from the proceeds of the following: (i) 9% Tax Credits; (ii) the Construction Loan; and (iii) such other financing sources as may be obtained by Developer in accordance with the terms and conditions of this Agreement. Developer shall utilize all of such funding exclusively for development of the Project thereon, and not for any other purpose.

2.1.1 [Intentionally Omitted]

2.1.2 Application to TCAC

Developer shall prepare and submit a complete application to TCAC for an allocation of 9% Tax Credits as soon as reasonably practicable following the Effective Date.

Developer agrees to promptly submit to City all of the following documents at such time as the same are submitted by Developer to TCAC or other applicable body or when such documents are received by Developer, as applicable (any documents submitted prior to the Effective Date shall also have been submitted by Developer to City prior to the Effective Date):

a. A true and correct copy of the preliminary reservation letter from TCAC, a copy of the letter of intent from the Qualified Tax Credit Investor reflecting the total amount of the syndication proceeds and the timing of the payment of such proceeds.

b. A copy of the Placed in Service Application submitted to TCAC, including any cost certification submitted in connection therewith.

c. A complete copy of the regulatory agreement between TCAC and Developer. (As more fully discussed in Section 3.11 of the City Regulatory Agreement, should City be prevented by a final order of a court of competent jurisdiction, applicable and binding appellate opinion, or regulatory body with jurisdiction from enforcing, for any reason, the affordability restrictions set forth in this Agreement, City shall be a third-party beneficiary under said agreement and shall have full authority to enforce any breach or default by Developer thereunder in the same manner as though it were a breach or default under this Agreement.)

d. Complete copies of all correspondence or transmittals from TCAC or other jurisdiction (such as the Internal Revenue Service) containing any notification regarding the Project's noncompliance with applicable provisions of the Low-Income Housing Tax Credit Program.

In addition to the foregoing sources of funding for the Project, Developer, in consultation with City, shall diligently seek other sources of funding that are or may be available to help fund the Project.

In the event that Developer timely submits a complete application for Tax Credits as set forth above, but due to no fault of Developer does not receive an allocation of Tax Credits in that Round, Developer shall be permitted hereunder to submit an application for Tax Credits in the next successive round of applications for 9% Tax Credits following the first application submittal.

In the event that Developer timely submits a complete application for Tax Credits in the next Round as set forth above, but due to no fault of Developer does not receive an allocation of Tax Credits in the Second Round, Developer shall be permitted hereunder to submit an application for Tax Credits in the next successive round of applications for 9% Tax Credits.

In the event that Developer timely submits a complete application for Tax Credits in the following round as set forth above, but due to no fault of Developer does not receive an allocation of Tax Credits in the following Round, Developer shall be permitted hereunder to submit an application for Tax Credits in the next successive round of applications for 9% Tax Credits. Developer shall not be permitted to submit an application for Tax Credits after the last Round without City's consent in the event Developer does not receive an allocation in the last Round.

2.1.3 Project Budget

The development budget for the Project, anticipated sources and uses of funds for the development of the Project and the financial projections for the Project are set forth in the Project Budget (Attachment No. 7).

2.1.4 Developer Submittals

Promptly upon Developer's receipt of a notification of an award of any of the financing described in the Project Budget, Developer shall submit to the City Manager a copy of such award or evidence of such award.

Within five (5) days after the Effective Date, Developer shall provide to City a copy of Developer's most recently prepared Annual Financial Statement, and a copy of Developer's most recent internally prepared, unaudited financial statement, which shall include a balance sheet, income statement, statement of retained earnings, statement of cash flows, and footnotes thereto, prepared in accordance with generally accepted accounting principles consistently applied.

2.2 Disposition of Site

2.2.1 Ground Lease of Site

In accordance with and subject to the terms and conditions of this Agreement, City agrees to ground lease the Site to Developer, and Developer agrees to ground lease the Site from City pursuant to the terms of the Ground Lease.

2.2.2 Escrow

a. The ground lease of the Site shall take place through the Escrow with the Escrow Agent. The opening of the Escrow (the "**Opening of Escrow**") shall be deemed to be the date that a fully executed copy of this Agreement is delivered to the Escrow Agent, which shall occur not later than five (5) days after receipt by Developer of a preliminary reservation letter from TCAC for 9% Tax Credits. Developer shall have the obligation to deliver this Agreement to Escrow Agent, and Escrow Agent is instructed to notify City and Developer in writing of the date of the Opening of Escrow.

b. This Agreement, once deposited in Escrow, shall constitute the joint escrow instructions of City and Developer to Escrow Agent. Additionally, if Escrow Agent so requires, City and Developer agree to execute the form of escrow instructions that Escrow Agent customarily requires in real property escrows administered by it. In the event of any conflict or

inconsistency between Escrow Agent's standard instructions and the provisions of this Agreement, the provisions of this Agreement shall supersede and be controlling.

c. Escrow shall close on the Closing Date, which shall be the date that is two (2) business days after each of the Closing Conditions set forth below has been satisfied or waived by the benefited Party or Parties; provided that, subject to extensions of time attributable to Force Majeure, Escrow shall close on or before the Outside Closing Date. If any Party reasonably determines that a Closing Condition for its benefit will not or cannot be satisfied prior to the Outside Closing Date, the Parties shall meet and confer in a good faith effort to determine whether such Closing Condition will be waived or modified, provided that each Party reserves the right to insist upon the full and timely satisfaction of all of the Closing Conditions for its benefit in its sole and absolute discretion. If such meet and confer process is unsuccessful in resolving the matter, any Party not then in Default may terminate this Agreement by delivery of written notice to the other Party or Parties and all funds and documents deposited with Escrow Agent shall be promptly refunded or returned, as the case may be, by Escrow Agent to the depositing Party; provided, however, that if Escrow is so terminated, the Parties shall bear their own costs for Escrow, and termination of this Agreement shall be the sole and exclusive remedy at law or in equity by the Parties.

d. Developer shall be solely responsible for all costs and expenses related to the Survey (as defined below), the costs of extended title insurance coverage, any marginal cost to obtain title insurance coverage in excess of the value of Developer's leasehold estate in the Site, any title insurance endorsements (other than those obtained by City to "insure-over" a title exception), and fifty percent (50%) of the Escrow fees. City shall be responsible for the other fifty percent (50%) of the Escrow Fees, documentary transfer taxes, the costs of the standard leasehold owner's policy of title insurance in the amount of the value of Developer's leasehold estate, and any endorsements obtained by City to "insure-over" title exceptions. Escrow Agent is authorized on the Close of Escrow to pay and charge the Developer for any fees, charges, and costs payable under this paragraph as set forth on the settlement statements approved by the Parties. Before such payments are made, Escrow Agent shall notify City and Developer of the fees, charges, and costs necessary to close under the Escrow, by delivering draft settlement statements to the Parties for their mutual approval.

2.2.3 Condition of Title; Developer Title Insurance

a. No later than ten (10) business days after the Opening of Escrow, Developer shall promptly obtain a preliminary title report for the Site (the "**PTR**") from the Title Company and shall deliver a copy (or cause a copy to be delivered) to City together with copies of (or hyperlinks to) all of the title exception documents. Developer shall have until 5:00 p.m. Pacific Time on the date that is thirty (30) days after obtaining the PTR to review and approve or disapprove any title exceptions in the PTR, and notify City in writing of any such title exceptions to which Developer objects. Developer's failure to timely deliver such written notice of approved/disapproved title exceptions shall constitute Developer's disapproval of all title exceptions. Developer shall also cause an ALTA survey ("**Survey**") to be performed within thirty (30) days after Developer obtains the PTR and shall promptly deliver a copy of the Survey to City together with any objections (if any) to any title exceptions shown on the Survey within said thirty (30) day period. City shall have ten (10) business days after delivery by Developer to City of any

written objection to a title exception to notify Developer in writing that City will: (a) remove one or more of the applicable exception(s) or cause them to be removed by the end of the Due Diligence Period (as defined below) or reasonably insured over by the Title Company (subject, however, to Developer's approval of the form of such insurance); or (b) decline to remove exceptions (or to cause them to be reasonably insured); provided, however, that City shall cause to be removed from title any deeds of trust, liens or other monetary encumbrances (other than non-delinquent real property taxes) at or prior to the Close of Escrow all of which shall constitute a "Disapproved Title Exception" (as hereinafter defined). Failure by City to so notify Developer shall be deemed to be City's election not to remove or otherwise address the applicable title exception(s). If City notifies Developer that City will remove (or cause to be removed) one or more of such title exceptions, then City shall do so on or before the Close of Escrow (unless this Agreement is terminated by Developer pursuant to this Agreement). If the City fails to so notify Developer as to any exception initially disapproved by Developer, or if City expressly declines in writing to remove or insure over title exceptions, then Developer shall have an additional ten (10) day period after the expiration of City's 10-day response period or the date Developer receives City's timely response, whichever first occurs, to notify City in writing of Developer's election to either (a) terminate this Agreement or (b) accept title subject to the title exceptions that City has not agreed to remove. A failure of Developer to timely respond shall constitute Developer's election to terminate thi7s Agreement. If Developer fails to so terminate this Agreement, Developer shall be deemed to have approved and accepted the applicable title exceptions (which, together with any title exceptions approved or created by Developer, are hereinafter referred to as the "**Approved Title Exceptions**"). As used herein, the term "**Disapproved Title Exceptions**" shall mean any title exceptions that the City has agreed to remove, cause to be removed, or cause to be "insured over."

b. In the event that the Title Company amends or updates the PTR after the Developer's approval of the initial PTR (any such update, a "**PTR Update**"), Developer shall furnish City with a written statement of approval or objections to any matter first raised in a PTR Update within five (5) business days after its receipt of such PTR Update and a copy of each new exception raised therein (each, a "**PTR Update Review Period**"). Should Developer fail to notify City in writing of any objections to any matter first disclosed in a PTR Update prior to the expiration of the PTR Update Review Period, as applicable, Developer shall be deemed to have approved such matters which shall then be considered Approved Title Exceptions. If, however, Developer objects to such new exception, then City shall have until 5:00 p.m. Pacific Time on the fifth (5th) business day after receipt of Developer's objections in which to notify Developer, in City's sole discretion, that City will either (i) remove one or more of the applicable exception(s) or cause them to be removed by the Close of Escrow or reasonably insured over by the Title Company (subject, however, to Developer's approval of the form of such insurance); or (b) decline to remove exceptions (or to cause them to be reasonably insured) (except that City shall remove all Disapproved Title Exceptions). If City fails to so notify Developer as to any exception, or declines to remove or insure over title exceptions, then Developer shall have until 5:00 p.m. Pacific Time on the fifth (5th) business after City's election (or deemed election) not to cure the disapproved exception in which to elect (A) to terminate this Agreement by written notice to City or (B) to waive in writing Developer's previous disapproval of (and thereby accept) any items that City does not elect to remove. If Developer gives City such written notice of termination, then this Agreement shall thereupon terminate without further action by the Parties. If Developer fails to make an election within the five (5) business day period referenced above, then Developer shall

be deemed to have agreed to accept title subject to the matters first disclosed in the PTR Update and such matters shall be deemed to be Approved Title Exceptions hereunder.

2.2.4 Due Diligence Review; Physical and Environmental Condition of Site; "As-Is" Sale.

a. Due Diligence Period. No later than ten (10) business days after the Opening of Escrow, City shall deliver to Developer copies of all materials documents in the possession of City that pertain to the Site (the "**Documents**"). Upon the execution of this Agreement until the date that is sixty (60) days after the date on which the Documents have been delivered to Developer (the "**Due Diligence Period**"), Developer and its contractors and consultants who are designated in writing to City ("**Developer Designee's**") shall have the right to enter onto the Site for the purpose of performing the Survey, hazardous materials inspections, soils inspections and other physical inspections and investigations; provided, however, that: (a) Developer shall deliver copies of all final inspection reports to City; (b) no inspections or investigations shall damage the Site or any improvements thereon or shall be "invasive" unless City has received a plan describing the scope of the inspection or investigation and the City Manager has approved such plan in writing, which approval shall not be unreasonably withheld; (c) Developer shall immediately repair all damage caused by or related to its inspections; and (d) neither Developer nor any of Developer's Designees shall enter the Site unless Developer has provided City reasonable written evidence (such as insurance certificates and/or copies of policies) that the activities of Developer and the Developer Designees are covered by reasonable liability insurance naming City as an additional insured. Developer shall defend, indemnify and hold City harmless from and against any and all claims, liabilities, losses, damages, costs and expenses (including, without limitation, attorneys' fees and cost) resulting from the entry onto the Site for such purposes or for purposes of performing the Survey; provided, however, such indemnification shall not extend to Developer's mere discovery of pre-existing conditions on the Site or damage caused by the negligence or willful misconduct of the City or its agents or employees. If Developer disapproves of any condition of the Site or any Document, which approval or disapproval shall be in Developer's sole and absolute discretion, then Developer may terminate this Agreement by written notice to City given on or prior to 5:00 P.M. Pacific Time on the last day of the Due Diligence Period that sets forth the basis for the disapproval.

b. "As-Is" Acquisition, "With All Faults". Developer acknowledges and agrees that, except as expressly set forth herein, Developer is acquiring a leasehold interest in the Site in its "AS IS" physical and environmental condition, WITH ALL FAULTS, IF ANY, AND, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. Except as expressly set forth in this Agreement, including, without limitation, in Section 1.7 above, neither City nor any agents, representatives, officers, or employees of City have made any representations or warranties, direct or indirect, oral or written, express or implied, to Developer or any agents, representatives, or employees of Developer with respect to the physical and environmental condition of the Site, its fitness for any particular purpose, or its compliance with any laws, and Developer is not aware of and does not rely upon any such representation to any other party. Except as expressly set forth herein, including, without limitation, in Section 1.7 above, neither

City nor any of its representatives is making or shall be deemed to have made any express or implied representation or warranty, of any kind or nature, as to (a) the physical and environmental status of the Site, (b) the Site's compliance with applicable laws pertaining to its physical and environmental condition, (c) the accuracy or completeness of any information or data provided or to be provided by City with respect to the physical and environmental condition of the Site, or (d) any other matter relating to the physical and environmental condition of the Site.

c. Termination and Waiver. Developer acknowledges and agrees that in the event Developer does not approve of the condition of the Site under this Section 2.2.4, Developer's sole right and remedy shall be to terminate this Agreement under and in accordance with Section 2.2.4.a (above). Consequently, subject to City's representations and warranties in this Agreement, including, without limitation, in Section 1.7 above, Developer hereby waives any and all objections to or complaints regarding the Site, and its condition, including, but not limited to, federal, state or common law based actions and any private right of action under state and federal law to which the Site is or may be subject, including, but not limited to, any federal and state and local laws pertaining to Hazardous Materials, physical characteristics and existing conditions, including, without limitation, structural and geologic conditions, subsurface soil and water conditions and solid and hazardous waste and Hazardous Materials on, under, adjacent to or otherwise affecting the Site. Subject to City's representations and warranties in this Agreement, including, without limitation, in Section 1.7 above, Developer further hereby assumes the risk of changes in applicable laws and regulations relating to past, present and future environmental conditions on the Site and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of Hazardous Materials or other contaminants, may not have been revealed by its investigations.

d. Releases and Waivers. Except for (a) a breach by City of any representation, warranty or covenant contained in this Agreement, and (b) any "Property Condition Claims" (as defined below) to the extent caused by the sole negligence or willful misconduct of any of the "Released Parties" (as defined below), Developer and anyone claiming by, through or under Developer also hereby waives its right to recover from and fully and irrevocably releases City and its council members, board members, employees, officers, directors, representatives, agents, servants, attorneys, successors and assigns ("**Released Parties**") from any and all claims, responsibility and/or liability that it may now have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to (i) the condition (including any defects, errors, omissions or other conditions, latent or otherwise, and the presence in the soil, air, structures and surface and subsurface waters of materials or substances that have been or may in the future be determined to be Hazardous Materials or otherwise toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Site under current or future federal, state and local laws regulations or guidelines), valuation, salability or utility of the Site, or its suitability for any purpose whatsoever (collectively, the "**Property Condition Claims**"), and (ii) any information furnished by the Released Parties under or in connection with this Agreement (other than the City's representations and warranties hereunder). With the exception of any claims excluded pursuant to clauses (a) and (b) above in this paragraph d, this release includes claims of which Developer is presently unaware or which Developer does not presently suspect to exist which, if known by Developer, would materially affect Developer's release to City. Developer

specifically waives the provision of California Civil Code Section 1542, which provides as follows:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN TO HIM OR HER, WOULD HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

In this connection and to the extent permitted by law, Developer hereby agrees, represents and warrants that Developer realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that with the exception of any claims excluded pursuant to clauses (a) and (b) above in this Section 2.2.4.d, Developer nevertheless hereby intends to release, discharge and acquit Released Parties from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which might in any way be included as a material portion of the consideration given to City by Developer in exchange for City's performance hereunder.

Developer hereby agrees that, if at any time after the Close of Escrow any third party or any governmental agency seeks to hold Developer responsible for the presence of, or any loss, cost or damage associated with, Hazardous Materials in, on, above or beneath the Site, or emanating therefrom, then with the exception of (x) a breach by City of any representation, warranty or covenant contained in this Agreement, and (y) any Property Condition Claims to the extent caused by the solenegligence or willful misconduct of any of the Released Parties, (I) Developer waives any rights it may have against City in connection therewith, including, but not limited to, any federal and state and local laws pertaining to Hazardous Materials, and (II) Developer agrees that it shall not (i) implead City, (ii) bring a contribution action or similar action against City, or (iii) attempt in any way to hold City responsible with respect to any such matter. The provisions of this Section shall survive the Close of Escrow.

City and Developer have each initialed this Section 2.2.4 to further indicate their awareness and acceptance of each and every provision hereof:

_____ _____

CITY'S INITIALS DEVELOPER'S INITIALS

e. Environmental Indemnity. From or after the Close of Escrow, Developer shall indemnify, protect, defend and hold harmless City, and City's officials, officers, attorneys, employees, consultants, agents and representatives, from and against any and all claims, liabilities, suits, losses, costs, expenses and damages, including but not limited to attorneys' fees and costs, arising directly or indirectly out of any claim for loss or damage to any property,

including the Site, injuries to or death of persons, or for the cost of cleaning up the Site, and removing Hazardous Materials or toxic substances, materials and waste therefrom, by reason of contamination or adverse effects on the environment, or by reason of any statutes, ordinances, orders, rules or regulations of any governmental entity or agency requiring the cleanup of any Hazardous Materials caused by or resulting from any Hazardous Material, or toxic substances or waste first released onto any portion of the Site after the Close of Escrow. For the avoidance of doubt, the environmental indemnity in this paragraph e shall not apply with respect to any Hazardous Materials or toxic substances, materials and/or waste therefrom that first came onto the Site, or were released onto the Site, prior to the Close of Escrow.

2.2.5 Ground Lease; Possession

a. Close of Escrow. At the Close of Escrow, the City shall convey a ground leasehold interest in the Site to Developer pursuant to the Ground Lease. Such conveyance shall be subject to: (i) current real property taxes and assessments not yet due for the tax year during which the conveyance occurs, (ii) all Approved Title Exceptions, and (iii) the instruments required to be recorded pursuant to this Agreement, including the City Regulatory Agreement, Notice of Affordability Restrictions, Memorandum of Ground Lease and any such grants of easements for public egress, access and use of parking facilities on the Site as are provided for in any Agreements between City and Developer (collectively, the "**Permitted Exceptions**").

b. Possession of Site; Use and Occupancy of Units and Other Improvements. Possession of the Site shall be delivered by City to Developer upon the Close of Escrow as provided for in Agreement. Upon possession of the Site, Developer may commence the construction of the Project pursuant to this Agreement. Developer shall not permit the possession, use, or occupancy of any Units or other improvements on the Site, for Eligible Tenants or for any other persons or entities, unless and until Developer has obtained from City and any other governmental agency with jurisdiction over the Project and Site any and all necessary permits, including certificates of occupancy for the Units being sought by Developer to be used and occupied pursuant to this Agreement.

2.2.6 Disposition Conditions

Subject to City and Escrow Agent executing escrow instructions consistent with the requirements of this Agreement, City's obligation to close Escrow on the Site shall be conditional and contingent upon the satisfaction, or waiver by City in its sole and absolute discretion, of each and all of the following conditions (collectively, the "**City Disposition Conditions**"):

a. Developer shall have delivered to Escrow Agent (i) City Regulatory Agreement, (ii) Notice of Affordability Restrictions, and (iii) Memorandum of Ground Lease, all duly executed and acknowledged by Developer for recordation, and Escrow Agent shall have recorded, or shall record, each of the same.

b. Developer shall have obtained all of the Project Entitlements for the development of the Project on the Site in accordance with this Agreement.

c. Developer shall have processed through City a parcel map that established the Site as a separate legal parcel, subject to easements for public egress, access and parking.

d. Developer has obtained permits for grading and building for the Project on the Site.

e. Developer shall have executed and delivered to Escrow Agent the City Ground Lease.

f. Developer shall have submitted to the City Manager the evidence of insurance required pursuant to Section 3.5 of this Agreement.

g. Developer shall have delivered to the City Manager the financial statements and other documents required by Section 2.1.5 herein, and the City Manager shall have approved the same (such approval not to be unreasonably withheld or delayed).

h. Developer shall have obtained and delivered to the City Manager conditional financing commitment letters for all of the financing set forth in the Project Budget outlining the financial terms, conditions and requirements of an investment in or loan to the Developer's limited partnership in the forms required by TCAC pursuant to its tax credit application.

i. Developer has closed on the Construction Loan and all of the construction financing set forth in the Project Budget; or, concurrent with the Close of Escrow, Developer will close on the Construction Loan and all of the construction financing set forth in the Project Budget.

j. The Title Company shall be irrevocably committed to issue the City Title Policy.

k. No administrative action/quasi-judicial proceeding or litigation has been filed or is pending or will be pending as of the Close of Escrow.

l. Each of Developer's representations and warranties contained in this Agreement are true and correct in all material respects as of the date made and as of the Close of Escrow.

m. Developer is not in material default of this Agreement.

2.2.7 Developer Acquisition Conditions

Subject to Developer and Escrow Agent executing escrow instructions consistent with the requirements of this Agreement, Developer's obligation to acquire a leasehold interest in the Site shall be conditional and contingent upon the satisfaction, or waiver by Developer in its sole and absolute discretion, of each and all of the following conditions (collectively, the "**Developer Acquisition Conditions**"):

a. City shall have delivered to Escrow Agent (i) Memorandum of Ground Lease; and (ii) City Regulatory Agreement(iii) Notice of Affordability Restrictions, all duly executed and acknowledged by Developer for recordation, and Escrow Agent shall have recorded, or shall record, each of the same.

b. Developer shall have obtained all of the Project Entitlements for the development of the Project on the Site in accordance with this Agreement.

c. City shall have approved a parcel map establishing the Site as a separate legal parcel, subject to easements for public egress, access and parking.

d. Developer has obtained permits for grading and building for the Project on the Site.

e. City shall have executed and delivered to Escrow Agent the City Ground Lease.

f. The City Manager shall have approved ~~(such approval not to be unreasonably withheld, conditioned, or delayed)~~ Developer's evidence of insurance required pursuant to Section 3.5 of this Agreement.

g. The City Manager shall have approved ~~(such approval not to be unreasonably withheld, conditioned, or delayed)~~ Developer's financial statements and other documents required by Section 2.1.5 herein.

h. Developer shall have obtained conditional financing commitment letters for all of the financing set forth in the Project Budget outlining the financial terms, conditions and requirements of an investment in or loan to the Developer's limited partnership in the forms required by TCAC pursuant to its tax credit application.

i. Developer has closed on the Construction Loan and all of the construction financing set forth in the Project Budget; or, concurrent with the Close of Escrow, Developer will close on the Construction Loan and all of the construction financing set forth in the Project Budget.

j. The Title Company shall be irrevocably committed to issue to Developer on the Close of Escrow an ALTA owner's leasehold title policy consistent with the provisions in Section 2.3.3 hereof and subject only to the Permitted Exceptions.

k. No administrative action/quasi-judicial proceeding or litigation has been filed or is pending or will be pending as of the Close of Escrow.

l. City is not in material default of this Agreement.

m. Each of the City's representations and warranties contained in this Agreement are true and correct in all material respects as of the date made and as of the Close of Escrow.

n. No material change has occurred to the physical condition of the Site except as permitted by this Agreement.

2.2.8 Waivers

City may at any time or times, at its election, waive any of the City Disposition Conditions, but any such waiver shall be effective only if contained in a writing signed by City and delivered to Developer. Developer may at any time or times, at its election, waive any of the Developer Acquisition Conditions, but any such waiver shall be effective only if contained in a writing signed by Developer and delivered to City.

2.2.9 Failure to Meet Closing Conditions; Termination

In the event that each of the Closing Conditions is not fulfilled, or waived by City or Developer pursuant to Section 2.2.8, the other Party not in default under this Agreement may, at its option, terminate this Agreement, thereby releasing the Parties from further obligations hereunder. In the event this Agreement is terminated, all documents and funds delivered by Developer to City or the Escrow Agent shall be returned to Developer and all documents and funds delivered by City to Developer or the Escrow Agent shall be returned to City. Nothing in this paragraph shall be construed as releasing any Party from liability for any default of its obligations hereunder or breach of its representations and warranties under this Agreement occurring prior to the termination of this Agreement.

2.2.10 City's Delivery of Documents and Funds to Escrow. No later than 12:00 noon on the day that is two (2) business days before the anticipated Closing Date, City shall deliver to Escrow Agent the following:

a. City Regulatory Agreement, duly executed and acknowledged for recordation.

b. Notice of Affordability Restrictions, duly executed and acknowledged for recordation.

c. Memorandum of Ground Lease, duly executed and acknowledged for recordation.

d. Executed City Ground Lease.

e. An executed certificate of non-foreign status in a form provided by the Escrow Agent and approved by City and Developer.

f. Any and all other sums and documents required by Escrow Agent to carry out and close the Escrow pursuant to this Agreement, including City's portion for any title insurance or escrow fees.

2.2.11 Developer's Delivery of Documents and Funds to Escrow. No later than 12:00 noon on the day that is two (2) business days before the anticipated Closing Date (except as noted below), Developer shall deliver to Escrow Agent the following:

a. City Regulatory Agreement, duly executed and acknowledged for recordation.

b. Notice of Affordability Restrictions, duly executed and acknowledged for recordation.

c. Memorandum of Ground Lease, duly executed and acknowledged for recordation.

d. Executed City Ground Lease.

e. Executed deed of trust for the Construction Loan.

f. Any and all other sums (which may be deposited on the Close of Escrow) and documents required by Escrow Agent to carry out and close the Escrow pursuant to this Agreement, including Developer's portion of any title insurance or escrow fees.

2.2.12 Close of Escrow; Recording of Instruments; Disbursement of Funds. On the Closing Date, and only after all of the Closing Conditions have been met or waived pursuant to this Agreement, Escrow Agent (or Title Company as the case may be) shall perform the following:

a. Record the following instruments in the following order: (i) Memorandum of Ground Lease, (ii) City Regulatory Agreement, and (iii) Notice of Affordability Restrictions.

b. Deliver to the City Manager and Developer conformed copies of all recorded instruments identified in Sections 2.3.12.a above.

c. Deliver to the City Manager the City Title Policy.

d. Deliver to the Developer an ALTA owner's leasehold title policy consistent with the provisions of this Agreement and subject only to the Permitted Exceptions.

e. Pro-rate and pay all taxes, escrow fees, recording costs, and other costs of closing the Escrow pursuant to this Agreement and in accordance with a closing statement that has been delivered by Escrow Agent (or Title Company as the case may be) and has been mutually agreed upon by the Parties prior to the Closing Date.

f. Perform any other actions mutually agreed upon by the Parties that may be necessary or proper to Close the Escrow and commence the development of the Project on the Site.

2.3 City Title Insurance.

As one of the City Disposition Conditions, Developer shall pay for and City shall obtain from the Title Company an ALTA lessor's policy of title insurance together with such endorsements as may be reasonably requested by City with liability in the amount of $_____, showing Developer leasehold interest in the Site, and insuring the validity and priority (in accordance with this Agreement) of, respectively, the Memorandum of Ground Lease, City Regulatory Agreement, and Notice of Affordability Restrictions, and subject only to the Permitted Exceptions (the "**City Title Policy**").

2.4 Subordination

Subject to the requirements of this Agreement, City agrees to subordinate the City Regulatory Agreement and Notice of Affordability Restrictions to the deed of trust securing the Construction Loan and to the deed of trust securing the Take-Out Loan and any refinancing of the Take-Out Loan pursuant to a written subordination agreement approved by City's legal counsel (such approval not to be unreasonably withheld, conditioned or delayed) (the "**Subordination Agreement**"). The City Regulatory Agreement and Notice of Affordability Restrictions may only be subordinated to a deed of trust or other mortgage security instrument securing the Construction Loan or Take-Out Loan or refinancing of the Take-Out Loan, pursuant to this Agreement, if and only if the affordability covenants and related preservation thereof in Articles 1, 2, 3 (other than Sections 3.12 and 3.13), 12 and 13 of the City Regulatory Agreement have priority over any such deed of trust or other mortgage security instrument and shall remain binding and run with the land for the "Term" of the City Regulatory Agreement in the event of foreclosure or deed in lieu of foreclosure or any other action taken pursuant to such deed of trust or other mortgage security instrument. The Subordination Agreement shall expressly provide for all of the matters described in this paragraph.

2.5 City to Pay No Broker's Fees

City hereby represents and warrants that no third party broker has acted on its behalf with the ground lease of the Site, and further represents and warrants that it has no knowledge either constructive or actual whether Developer has engaged the services of a third party broker for the ground lease of the Site. In addition to any other indemnities provided in this Agreement, Developer and City shall indemnify, protect, defend and hold harmless the other and their respective officials, officers, directors, attorneys, employees, consultants, agents and representatives, from and against any and all claims, liabilities, suits, losses, costs, expenses and damages, including but not limited to attorneys' fees and costs, arising directly or indirectly out of any claims for loss or damages brought by any third party claiming a commission or any fee whatsoever by acting on behalf of such party as a broker or agent in connection with the ground lease of the Site. The provisions of this Section shall survive the Close of Escrow.

3. DEVELOPMENT OF THE SITE

3.1 Scope of Development

a. Development Obligation. The Project shall be comprised of the construction of an affordable rental housing development containing not less than sixty (60) and up to seventy (70) apartment dwelling units (the "**Units**"), which includes one management unit,

and shall include all of the onsite private amenities and improvements appropriate and/or necessary for the development, as described and set forth in the Project Entitlements and all public improvements required pursuant to the Project Entitlements, all in accordance with the Project Entitlements and any other approved plans and permits, and as set forth in this Agreement, the Scope of Development, and City Regulatory Agreement.

b. Parcel Map. As of the Effective Date, the Site comprises a portion of the City Property, and does not constitute a separate legal parcel. Prior to the Effective Date, Developer submitted an application for a parcel map that, if approved, will establish the Site as a separate legal parcel. Nothing in this paragraph does or shall be deemed to be a discretionary or ministerial approval by the City of a parcel map or any adjustment of the boundary lines of the City Property, which may only be approved in accordance with the procedures and standards under applicable laws.

3.2 Changes to Construction Plans

If Developer desires to make any material changes in the construction plans for the Project after the approval thereof by City, Developer shall submit the proposed changes to City for approval. Any such proposed changes that conform to the requirements of the Costa Mesa Municipal Code and this Agreement, including, without limitation, the Scope of Development, shall be approved. City shall approve or disapprove any such change within seven (7) business days of Developer's written request. Failure of City to respond to any such request within said seven (7) business day period shall be deemed to constitute approval of the change.

3.3 Cost of Development

All costs for planning, designing, and constructing the Project, including but not limited to all development and building fees, Site remediation (if any), grading and preparation costs, off-site and on-site construction and improvement costs shall be borne exclusively by Developer. Developer shall also bear all costs related to discharging the duties of Developer set forth in this Agreement.

3.4 Construction Contract; Construction Schedule

Prior to commencing construction of the Project, Developer shall provide to City a copy of a stipulated sum-based construction contract or guaranteed maximum price construction contract between Developer and its general contractor for all of the improvements required to be constructed by Developer hereunder, certified by Developer to be a true and correct copy thereof. The construction contract or design-build contract for the Project shall be competitively bid; unless the general contractor is an affiliate of the Developer, in which event the construction contract shall be guaranteed maximum price construction contract in compliance with TCAC Regulation 10327(c)(1).

Developer shall obtain building permits, and commence and complete construction of the Project by the respective times established therefor in the Schedule of Performance.

3.5 Indemnity; Insurance Requirements

a. Developer shall indemnify, defend, with attorneys of City's choosing or otherwise acceptable to the City, and hold harmless City and City's officials, officers, members, employees, agents, and representatives, and all entities, boards, commissions, and bodies related to any of them (all of the foregoing, collectively, the "**Released/Indemnified Parties**") from all claims or suits for, and damages to, property and injuries to persons, including accidental death (including expert witness fees, attorney's fees, and costs), which may be caused by any of the activities of Developer or any of Developer's affiliates, successors, assigns, and successors-in-interest in and to this Agreement, the Site and the Project (collectively, the "**Developer Entities**") under this Agreement.

b. Commencing on the Closing Date and continuing throughout the term of the City Regulatory Agreement, Developer shall procure and maintain, at its sole cost and expense, in a form and content reasonably satisfactory to the City Manager, the following policies of insurance:

(i) Commercial General Liability Insurance on a per occurrence basis with limits not less than Three Million Dollars ($3,000,000) per occurrence. Any general aggregate limit shall apply to this Project only. Such insurance shall be endorsed to designate the Released/Indemnified Parties as additional insureds, including for the completed operations exposure, and shall be primary and not contribute with any insurance or self-insurance maintained by City. The foregoing limit may be obtained with a combination of Commercial General Liability and Umbrella Liability policies.

(ii) To the extent Developer has any employees, worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure, and provide legal defense for Developer against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Developer in the course of carrying out the work or services contemplated in this Agreement, and Employers Liability Insurance in an amount not less than One Million Dollars ($1,000,000) per occurrence for bodily injury or disease. The workers' compensation policy shall be endorsed to waive the insurer's right of subrogation against the Released/Indemnified Parties.

(iii) To the extent Developer has any employees, business Automobile insurance in an amount not less than Three Million Dollars ($3,000,000) per accident covering all owned, hired, and non-owned vehicles used in connection with the development of the Project. The foregoing limit may be obtained with a combination of Business Automobile and Umbrella Liability policies.

c. Commencing on the Closing Date and continuing until City issues a Release of Construction Covenants for the Project, Developer shall procure and maintain, at its sole cost and expense, in a form and content reasonably satisfactory to the City Manager, "All Risks" Builder's Risk (course of construction) insurance coverage on a replacement cost basis in an amount equal to the full cost of the hard construction costs of the Project. Such insurance shall

contain no coinsurance provision, and cover, at a minimum: all work, materials, and equipment to be incorporated into the Project; the Project during construction; the completed Project until such time as City issues a final certificate of occupancy for the Project, and storage, transportation, and equipment breakdown risks. Such insurance shall include coverage for flood, ordinance or law, temporary offsite storage, debris removal, pollutant cleanup and removal, preservation of property, landscaping, shrubs and plants and full collapse during construction. Such insurance shall protect/insure the interests of Developer/owner and all of Developer's contractor(s), and subcontractors, as each of their interests may appear. There shall be no exclusion for "design error.". City shall be a loss payee under such policy or policies.

d. Developer shall cause any general contractor with whom it has contracted for the performance of work on the Site to secure, prior to commencing any activities hereunder and maintain insurance that satisfies all of the requirements of Section 3.5(b) and (f).

e. Commencing on the date City issues a Release of Construction Covenants, and continuing throughout the term of the City Regulatory Agreement, Developer shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City Manager, the following types of insurance:

(i) "All Risks" property insurance on a replacement cost basis in an amount equal to full replacement cost thereof, as the same may change from time to time. The above insurance policy or policies shall contain no coinsurance provision. City shall be a loss payee under such policy or policies.

(ii) Business interruption, rental value, and extra expense insurance to protect Developer and City covering loss of revenues and/or extra expense incurred by reason of the total or partial suspension or delay of, or interruption in, the operation of the Project caused by loss or damage to, or destruction of, any part of the insurable real property structures or equipment as a result of the perils insured against under the all risk physical damage insurance, covering a period of suspension, delay or interruption of at least twelve (12) months, in an amount not less than the amount required to cover such business interruption, rental value, and/or extra expense loss during such period.

(iii) Boiler and machinery insurance in the aggregate amount of the full replacement value of the equipment typically covered by such insurance.

f. The following additional requirements shall apply to all of the above policies of insurance:

(i) All of said policies of insurance except workers compensation shall provide that said insurance may not be amended or canceled without providing thirty (30) days' prior written notice (ten (10) days for non-payment of premium) to City. In the event any of said policies of insurance are canceled, Developer shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the City Manager. Not later than the Effective Date, Developer shall provide

the City Manager with Certificates of Insurance and required endorsements evidencing the above insurance coverages.

(ii) The policies of insurance required by this Agreement shall be satisfactory only if issued by companies with an AM Best rating not less than "A-", VII or otherwise approved by City.

(iii) Self-insurance retentions must be declared to and approved by the City Manager.

g. Developer agrees that the provisions of this Section shall not be construed as limiting in any way City's right to indemnification or the extent to which Developer may be held responsible for the payment of damages to any persons or property resulting from Developer's activities or the activities of any person or persons for which Developer is otherwise responsible.

3.6 Remedies for Defaults Re: Insurance.

In addition to any other remedies City may have, if Developer commits a default hereunder by failing to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may at its sole option, and after delivery of written notice to Developer and expiration of a fifteen (15) day cure period, obtain such insurance and charge Developer for the amount of the premium for such insurance; provided, however, that if the City Manager reasonably determines that Developer, the Site, and/or Project will be uninsured or under-insured in the absence of any such insurance required hereunder, then City need not provide for any cure period in its notice of default to Developer, but may instead obtain such insurance immediately upon its provision of such notice. Exercise of the remedy set forth herein, however, is an alternative to other remedies City may have and is not the exclusive remedy for Developer's failure to maintain insurance or secure appropriate endorsements.

3.7 City and Other Governmental Agency Permits

Before commencement of construction or development of any buildings, structures or other works of improvement upon the Site or in connection with any off-site improvement, Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by City or any other governmental agency affected by such construction, development or work. It is understood that Developer's obligation is to pay all necessary fees and to timely submit to City final drawings with final corrections to obtain building permits; City will, without obligation to incur liability or expense therefor, use its reasonable efforts to expedite issuance of building permits and certificates of occupancy for construction that meet the requirements of the Costa Mesa Municipal Code.

3.8 Rights of Access

For purposes of assuring compliance with this Agreement, representatives of City shall have the right of access to the Site without charges or fees, upon reasonable advance notice of not less than forty-eight (48) hours and at normal business hours during the period of this Agreement for the purposes of this Agreement, including, but not limited to, the inspection of the work being

performed in constructing the Project, so long as they comply with all safety rules. Such representatives of City shall be those who are so identified in writing by the City Manager. City shall hold Developer harmless from any bodily injury or related damages and indemnify Developer and Developer Entities for all claims or suits for, and damages to, property and injuries to persons, including accidental death (including expert witness fees, and attorneys' fees, and costs) arising out of by the activities of City as referred to in this Section 3.8, except to the extent caused by Developer or its agents.

3.9 Local, State and Federal Laws

Developer shall carry out the construction of the Project in conformity with all applicable laws, regulations, and rules of the governmental agencies having jurisdiction, including without limitation the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Costa Mesa Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., the Unruh Civil Rights Act, Civil Code Section 51, et seq., and the California Building Standards Code, Health and Safety Code Section 18900, et seq., and all federal, state, and local labor laws and regulations, including, without limitation, if applicable, the requirements 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 Parties acknowledge that a financing structure utilizing certain federal and/or state funding sources and financing scenarios may trigger compliance with applicable state and federal prevailing wage laws and regulations.

Developer shall be solely responsible, expressly or impliedly, and legally and financially, for determining and effectuating compliance with all applicable federal, state and local public works requirements, prevailing wage laws, and labor laws and standards, and City makes no representation, either legally and/or financially, as to the applicability or non-applicability of any federal, state and local laws to the Project, either onsite or offsite. Developer expressly, knowingly and voluntarily acknowledges and agrees that City 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 required by, if applicable, 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. In addition to any other Developer indemnifications of City set forth in this Agreement, Developer shall indemnify, protect, pay for, defend (with legal counsel reasonably acceptable to City) and hold harmless the Released/Indemnified Parties from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorney's 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 with 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 of 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, if applicable, 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 by 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 3.9, 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.

3.10 Anti-Discrimination

Developer for itself and its successors and assigns, agrees, that in the construction of the Project on the Site or other performance under this Agreement, Developer shall not discriminate against any employee or applicant for employment on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code.

3.11 Taxes and Assessments

Developer shall pay prior to delinquency all real estate taxes and assessments on the Site so long as Developer retains a leasehold interest therein. Developer shall remove or have removed any levy or attachment made on the Site or any part thereof, or assure the satisfaction thereof within a reasonable time but in any event prior to any sale or transfer of Developer's leasehold interest thereof. Notwithstanding the above, Developer shall have the right to contest the validity or amounts of and to apply for any applicable exemption from any tax, assessment, or encumbrance available to Developer in respect thereto, and nothing herein shall limit the remedies available to the Developer in respect thereto.

3.12 Right of City to Satisfy Other Liens on the Site After Title Passes

After Developer has had written notice and has failed after a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Site which are not otherwise permitted under this Agreement, City shall have the right but no obligation to satisfy any such liens or encumbrances. Notwithstanding the above, Developer shall have the right to contest the validity or amounts of any tax, assessment, or encumbrance available to Developer in respect thereto.

3.13 Release of Construction Covenants

Within fifteen (15) business days after written request by Developer, and upon Developer's satisfactory completion of the Project, as evidenced by City's issuance of a certificate of occupancy (excluding any temporary certificate of occupancy issued by City), City shall issue to Developer a Release of Construction Covenants as long as Developer is not in default under this Agreement or any documents related hereto. The Release of Construction Covenants shall be, and shall so state, a conclusive determination of satisfactory completion of construction of the Project. After the date Developer is entitled to issuance of the Release of Construction Covenants, and notwithstanding any other provision of this Agreement to the contrary, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of any such ownership, purchase, lease, or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by the covenants herein that survive the issuance of the Release of Construction Covenants and the covenants set forth in the City Regulatory Agreement. The Release of Construction Covenants is not a notice of completion as referred to in California Civil Code Section 3093.

If City refuses or fails to furnish a Release of Construction Covenants after written request from Developer, City shall, within fifteen (15) days after the written request, provide Developer a written statement of the specific reasons City refused or failed to furnish a Release of Construction Covenants. The statement shall also contain City's opinion of the action Developer must take to obtain a Release of Construction Covenants. If City refuses or fails to furnish the Release of Construction Covenants for the reason that specific minor non-life safety items or materials are not available or landscaping or other punch-list items are not complete and the cost thereof is less than two percent (2%) of the hard costs, as set forth in the Project Budget, City shall issue the Release of Construction Covenants upon the posting by Developer with City of a cash deposit, bond, or irrevocable letter of credit (in a form acceptable to City), at Developer's option, in an amount representing one hundred percent (100%) of the fair value of the work not yet completed.

3.14 Limitation on Encumbrances, Including Mechanic's Liens

Except as otherwise permitted by this Agreement, Developer shall not mortgage the Site or any portion thereof or any interest therein, any other mortgages or conveyances for financing that encumber the Site or any portion thereof, without the prior written approval of the City Manager.

In explanation and not limitation of the foregoing paragraph, Developer shall take all actions reasonably necessary to remove any mechanic's liens or other similar encumbrances (including design professional liens) against the Site, or any part thereof, by reason of work, labor, services, or materials supplied or claimed to have been supplied to Developer or anyone holding the Site, or any part thereof, through or under Developer. Upon request by the City, Developer shall provide to City updated information from Developer's title insurer. City hereby reserves all rights to post notices of non-responsibility and any other notices as may be appropriate upon a filing of a mechanic's lien. Developer shall indemnify, protect, defend and hold harmless City, and City's officials, officers, attorneys, employees, consultants, agents and representatives, from and against any and all claims, liabilities, suits, losses, costs, expenses and damages, including but not limited to attorneys' fees and costs, arising directly or indirectly out of any claims for loss or

damages by reason of a mechanic's lien or work, labor, services, or materials supplied or claimed to have been supplied to Developer or anyone holding the Site, or any part thereof, through or under Developer.

3.15 Holder Not Obligated to Construct Improvements

The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion, nor shall any covenant or any other provision in the City Regulatory 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 in this Agreement.

3.16 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure

Whenever City shall deliver any notice or demand to Developer with respect to any breach or default by Developer in completion of construction of the Project, City shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement who has previously made a written request to City therefor. Each such holder shall (insofar as the rights of City 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 any such default and to add the cost thereof to the security interest debt and the lien on its security interest. In the event there is more than one such holder, the right to cure or remedy a breach or default of Developer under this Section 3.16 shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of Developer under this Section 3.16. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed Developer's obligations to City by written agreement satisfactory to City. 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 and submit evidence satisfactory to City that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing such improvements shall be entitled, upon written request made to City, to a Release of Construction Covenants from City.

3.17 Failure of Holder to Complete Improvements

In any case where, sixty (60) days after an uncured default by Developer in completion of construction under this Agreement, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the Site has not exercised the option to construct, or if it has exercised the option, has not proceeded diligently with construction, City may purchase the mortgage, deed of trust or other security interest by payment to the holder all amounts owing with respect to the secured obligation, including all accrued and unpaid interest. If Developer's leasehold interest in the Site has vested in the holder, City, if it so desires, shall be entitled to a

conveyance of the Site from the holder to City upon payment to the holder of an amount equal to the sum of the following:

1. The unpaid mortgage, deed of trust or other security interest debt at the time title 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);

2. All expenses with respect to foreclosure, including reasonable attorneys' fees and trustee's fees;

3. The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Site or part thereof;

4. The costs of any authorized improvements made by such holder; and

5. An amount equivalent to the interest that would have accrued on the aggregate of the amounts in Subparagraphs 1-4 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 City.

3.18 Right of City to Cure Mortgage, Deed of Trust or Other Security Interest Default

In the event of a default or breach by Developer of a mortgage, deed of trust or other security interest with respect to the Site prior to the completion of the Project, and the holder has not exercised its option to complete the construction, City may cure the default prior to completion of any foreclosure. In such event, City shall be entitled to reimbursement from Developer of all costs and expenses incurred by City in curing the default. City shall also be entitled to a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security interests executed for the sole purpose of obtaining funds to acquire and develop the Site as authorized herein.

3.19 Hazardous Materials

3.19.1 Indemnity

From and after the Close of Escrow, Developer agrees to defend, with attorneys of City's choosing or otherwise acceptable to the City, indemnify, protect and hold harmless the Released/Indemnified Parties from, regarding and against any and all liabilities, obligations, orders, decrees, judgments, liens, demands, actions, "Environmental Response Actions" (as defined in Section 3.19.2 below), claims, losses, damages, fines, penalties, expenses, "Environmental Response Costs" (as defined in Section 3.19.2 below) or costs of any kind or nature whatsoever, together with fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), occurring during and/or caused by Developer's use and occupancy of the Site, and resulting from or in connection with the actual or claimed generation, storage, handling, transportation, use, presence, placement, migration and/or release of Hazardous Materials at, on, in, beneath or from the Site, including Hazardous Materials which first came to be located on the Site after the Close of Escrow, except to the extent caused by the active negligence or willful misconduct of Released/Indemnified Parties. Developer's defense, indemnification, protection and hold harmless obligations herein shall include, without limitation,

the duty to notify the applicable governmental authority and/or respond to any governmental inquiry, investigation, claim or demand regarding the Hazardous Materials, at Developer's sole cost. Notwithstanding the foregoing or anything to the contrary contained herein, Developer's obligations pursuant to this Section 3.19.1 shall not extend to any Environmental Response Actions and/or Environmental Response Costs caused by the active negligence or willful misconduct of the Released/Indemnified Parties or relating to Hazardous Materials at, beneath or from the Site which first became located on the Site prior to the Close of Escrow, except if the introduction or occurrence of those Hazardous Materials resulted from Developer exercising a right of entry under this Agreement.

3.19.2 Definitions

a. As used in this Agreement, the term "**Environmental Response Actions**" means any and all activities, data compilations, preparation of studies or reports, interaction with environmental regulatory agencies, obligations and undertakings associated with environmental investigations, removal activities, remediation activities or responses to inquiries and notice letters, as may be sought, initiated or required in connection with any local, state or federal governmental or private party claims, including any claims by Developer.

b. As used in this Agreement, the term "**Environmental Response Costs**" means any and all costs associated with Environmental Response Actions including, without limitation, any and all fines, penalties and damages.

c. As used in this Agreement, the term "**Hazardous Materials**" means any substance, material or waste which is: (1) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of California or federal law; (2) regulated under California or federal law, including, without limitation, petroleum, asbestos, polychlorinated biphenyls, and/or radioactive materials; or (3) determined by a California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property or risk to the environment.

3.20 Materiality

Developer acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of Developer for the benefit of City set forth in this Agreement are a material element of the consideration to City for the performance of its obligations under this Agreement, and that City would not have entered this Agreement unless Developer's obligations were as provided for herein.

4. USE OF THE SITE

4.1 Uses In Accordance with City Regulatory Agreement

Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Site or any part thereof that Developer and such successors and assignees, shall devote the Site to the uses specified in the City Regulatory Agreement, and this Agreement for the periods of time specified therein and herein. The City Regulatory Agreement shall run with the land.

4.2 Nondiscrimination

Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person, or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, nor shall Developer, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site, or any part thereof. The foregoing covenants shall run with the land.

Developer agrees for itself and any successor in interest that Developer shall refrain from restricting the rental, sale, or lease of any portion of the Site, or contracts relating to the Site, on the basis of race, color, creed, religion, sex, marital status, ancestry, or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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

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

3. In contracts pertaining to the Site: "There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926,

12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of City and City's successors and assigns, and any successor in interest to the Site, together with any property acquired by Developer pursuant to this Agreement, or any part thereof. The covenants against discrimination shall remain in effect in perpetuity.

4.3 Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction

City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. This Agreement and the covenants shall run in favor of City, without regard to whether City has been, remains or is an owner of any land or interest therein in the Site. City shall have the right, if this Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other property proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

4.4 Maintenance of the Site

Developer shall maintain the Project on the Site in conformity with the Costa Mesa Municipal Code and the requirements of the City Regulatory Agreement, and shall keep the Site free from any graffiti and from any accumulation of debris or waste materials.

Developer shall maintain the driveways, parking lot and parking spaces in a safe condition, free of potholes and hazards. Developer shall also maintain the landscaping required to be planted under the Scope of Development in a healthy and attractive condition. If, at any time, Developer fails to maintain the Site or any portion thereof, and said condition is not corrected as soon as reasonably possible after written notice from City, City may enter the Site or applicable portion thereof to perform the necessary maintenance thereon and Developer shall pay such costs as are reasonably incurred for such maintenance plus a fifteen percent (15%) administrative fee. This covenant shall run with the land and shall remain in effect for the term of the City Regulatory Agreement.

5. DEFAULTS AND REMEDIES

5.1 Defaults – General

Subject to the extensions of time set forth in Section 6.3, failure or delay by either Party to perform any term or provision of this Agreement constitutes a default under this Agreement. If either Party defaults with regard to any of the provisions of this Agreement, the non-defaulting Party shall serve written notice of such default upon the defaulting Party. If a specific default is identified elsewhere in this Agreement and a specific cure provisions in provided with that specific default, those provisions shall govern; otherwise, if the default is not cured by the defaulting Party within thirty (30) days after service of the notice of default (or within such other period as is set forth herein), the non-defaulting Party shall be entitled to pursue whatever remedies to which such Party is entitled under this Agreement; provided however that if the default cannot reasonably be cured within such thirty (30) day period, the defaulting Party shall have such additional time to cure as is reasonable under the circumstances, as long as the defaulting Party commences to cure within such thirty (30) day period and diligently prosecutes such cure to completion.

5.2 Legal Actions

5.2.1 Specific Performance

The non-defaulting Party, upon expiration of applicable notice and cure periods, shall be permitted, but not obligated, to commence an action for specific performance of the terms of this Agreement, or to cure, correct or remedy any default hereunder or to obtain any other legal or equitable remedy consistent with the purpose of this Agreement. In this regard, Developer specifically acknowledges that City is entering into this Agreement for the purpose of assisting in the redevelopment of the Site and the provision of affordable housing and not for the purpose of enabling Developer to speculate in land. Each party shall also have the right to pursue damages for the other's defaults but in no event shall either party be liable for lost profits, consequential or punitive damages. The foregoing sentence shall not affect the right of either party to receive attorney's fees pursuant to Section 5.2.2 below.

5.2.2 Institution of Legal Actions; Attorney's Fees

Any legal actions must be instituted in the Superior Court of the County of Orange, State of California, or in the Federal District Court that serves the County of Orange as part of its jurisdiction. In the event of any litigation between the Parties hereto, the prevailing Party shall be entitled to receive, in addition to the relief granted, its reasonable attorney's fees and costs and such other costs incurred in investigating the action and prosecuting the same, including costs for expert witnesses, costs on appeal, and for discovery.

5.2.3 Applicable Law

The internal laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflict of law principles.

5.2.4 Acceptance of Service of Process

In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law.

In the event that any legal action is commenced by City against Developer, service of process on Developer shall be made by personal service upon any officer or director of Developer and shall be valid whether made within or without the State of California or in such other manner as may be provided by law.

5.3 Rights and Remedies Are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

5.4 Inaction Not a Waiver of Default

Any failures or delays by either 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 either 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.

5.5 Termination by City

In the event that prior to the Close of Escrow:

a. Developer (or any successor in interest) assigns or attempts to assign this Agreement or any rights therein or in the Site in violation of this Agreement; or

b. There is a change in the ownership of the Developer contrary to the provisions of Section 1.5 hereof; or

c. Developer does not submit certificates of insurance, the documents required to be submitted pursuant to this Agreement, construction plans, or drawings and related documents as required by this Agreement, in the manner and by the dates respectively provided in this Agreement therefor, or is otherwise in material default hereof, and such default or failure is not cured within thirty (30) days, or for those defaults which cannot reasonably be cured within thirty (30) days, commenced to be cured within said thirty (30) day period and thereafter diligently prosecuted to completion, after the date of written demand therefor by City; or

d. Developer fails to satisfy any or all of City Disposition Conditions by the Outside Closing Date;

then, at the option of City, upon such written notice thereof to Developer as may be set forth above, this Agreement shall be terminated, and thereafter neither Party shall have any further rights or

liability against the other under this Agreement, except as otherwise expressly provided for in this Agreement.

5.6 City's Option to Acquire Plans

If this Agreement is terminated by City, at the option of City, which may be exercised in City's sole and absolute discretion, Developer shall deliver to City all plans, blueprints, drawings, sketches, specifications, tentative or final subdivision maps, landscape plans, utilities plans, soils reports, noise studies, environmental assessment reports, grading plans and any other materials relating to the construction of the Project on the Site (the "**Plans**"), together with copies of all of the Plans, as have been prepared for the development of the Site to date of the termination. City's acquisition or use of the Plans or any of them shall be without any representation or warranty by Developer as to the accuracy or completeness of any such Plans, and City shall assume all risks in the use of the Plans. Subject to the following sentence, in connection with City's acquisition of the Plans pursuant to this Section, City shall be required to pay to Developer the reasonable costs incurred by Developer in preparing the Plans. Notwithstanding anything herein to the contrary, in the event City terminates this Agreement as a result of a default by Developer hereunder, City's acquisition of the Plans shall be at no cost to City.

6. GENERAL PROVISIONS

6.1 Notices, Demands and Communications Between Parties

Written notices, demands and communications between City and Developer shall be sufficiently given if (i) delivered by hand, (ii) delivered by reputable same-day or overnight messenger service that provides a receipt showing date and time of delivery, or (iii) dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of City and Developer at the addresses specified in Section 1.3.1 and 1.3.2, respectively. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by mail as provided in this Section 6.1.

Any written notice, demand, or communication shall be deemed received immediately if delivered by hand or delivered by messenger in accordance with the preceding paragraph, and shall be deemed received on the third (3rd) day from the date it is postmarked if delivered by registered or certified mail in accordance with the preceding paragraph.

6.2 Conflicts of Interest

No member, officer, official, or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any member, official or employee participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

6.3 Enforced Delay; Extension of Times of Performance

In addition to specific provisions of this Agreement, 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: war; insurrection; strikes;

lockouts; riots; floods; earthquakes; fires; casualties; 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; delays of any contractor; subcontractor or supplier; or any other causes beyond the control or without the default of the Party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days after the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Developer. The City Manager shall also have the authority on behalf of City to administratively approve extensions of time not to exceed a cumulative total of six (6) months.

Notwithstanding the foregoing portion of this Section 6.3, Developer is not entitled pursuant to this Section 6.3 to an extension of time to perform because of past, present, or future difficulty in obtaining suitable construction financing for the development of the Site, or because of economic or market conditions.

6.4 Non-Liability of Officials and Employees of City

No member, official or employee of City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by City, or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Agreement.

6.5 Interpretation; Entire Agreement, Waivers; Attachments

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of City and Developer, and all amendments hereto must be in writing by the appropriate authorities of City and Developer. Except as otherwise expressly provided, in any circumstance where under this Agreement either Party is required to approve or disapprove any matter, approval shall not be unreasonably withheld.

The exhibits and attachments to this Agreement are incorporated herein and made a part hereof.

6.6 Time of Essence

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

6.7 Maintenance of Books and Records

Developer shall prepare and maintain all books, records, and reports necessary to substantiate Developer's compliance with the terms of this Agreement.

6.8 Right to Inspect

City shall have the right, upon not less than forty-eight (48) hours' notice, at all reasonable times during business hours, to inspect the books and records of Developer pertinent to the purposes of this Agreement.

6.9 Binding Effect of Agreement

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their legal representatives, successors, and assigns. This Agreement shall likewise be binding upon and obligate the Site and the successors in interest, owner or owners thereof, and all of the tenants, lessees, sublessees, and occupants of such Site.

6.10 Severability

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

6.11 Counterparts

This Agreement may be executed in counterparts, each of which, when this Agreement shall have been signed by both of the Parties hereto, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

6.12 Amendments to this Agreement

Developer and City agree to mutually consider reasonable requests for amendments to this Agreement which may be made by either of the Parties hereto, the Qualified Tax Credit Investor, the Construction Lender or the Take-Out Lender, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein. The City Manager shall have the authority to approve, on behalf of City, amendments to this Agreement that would not substantially alter the basic business terms or substantially increase the cost or risk of this Agreement to City. All other amendments shall require the action of the Costa Mesa City Council. All amendments, including those authorized to be approved by the City Manager, shall be in writing and shall be signed by authorized representatives of City and Developer. The City Manager shall have the authority, on behalf of City, to approve extensions of time in Developer's performance under this Agreement, including, but not limited to, times of performance set forth in the Schedule of Performance, for a cumulative period of up to six (6) months.

6.13 Submission of Documents to the City for Approval.

Whenever this Agreement requires the Developer to submit plans, drawings or other documents to the City for approval, and there is no time specified herein for such approval, the Developer may submit a letter requiring approval or rejection by the City within sixty (60) days after submission.

6.14 Consents by City Manager.

Except when this Agreement or applicable law requires action by the City Council or other City governing board or commission, the City Manager shall have the authority to approve or grant, on behalf of the City, any approval, consent or waiver required under this Agreement by the City (and make any determination to be made by City under this Agreement). Nothing in this section shall prevent the City Manager from referring an approval, consent or waiver to the City Council or other legislative body of the City that otherwise may be acted upon by the City Manager under this Agreement.

6.15 Limited Recourse Obligations.

The obligations of Developer under this Agreement are a limited obligation of the Developer and no member, officer, partner or employee of Developer shall have any personal liability for the obligations of Developer contained in this Agreement.

[End of Agreement – Signature page follows]

IN WITNESS WHEREOF, City and Developer have signed this Agreement on the respective dates set forth below.

CITY OF COSTA MESA,
a California municipal corporation

Dated:_____ By: _____
Lori Ann Farrell Harrison, City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

JONES MAYER

_____
Counsel to the City of Costa Mesa

JHC-ACQUISITIONS LLC, a California limited liability company,

By: Jamboree Housing Corporation, a California nonprofit public benefit corporation, Manager

Dated:_____ By:_____
Michael Massie, Executive Vice President and Chief Development Officer

ATTACHMENT NO. 1

SITE MAP

[See attached documents]

ATTACHMENT NO. 2

LEGAL DESCRIPTION

[To be inserted prior to Close of Escrow]

ATTACHMENT NO. 3

SCOPE OF DEVELOPMENT

[To be inserted]

ATTACHMENT NO. 4

SCHEDULE OF PERFORMANCE

	ACTIVITY	TIME FRAME
1.	Developer submits application for 9% Tax Credits. (Section 2.1.3)	Deadline established by TCAC, up to four rounds.
2.	Developer provides Annual Financial Statement. (Section 2.1.5)	Within 5 days of Effective Date.
3.	Developer provides City notification of reservation of 9% Tax Credit. (Section 2.1.5)	Promptly upon receipt by Developer, not more than 2 business days after receipt.
4.	Opening of Escrow. (Section 2.3.2.a)	Within 2 days after Developer has obtained a reservation of 9% Tax Credits from TCAC.
5.	Developer submits preliminary applications to City for all Project Entitlements defined in Section 1.4.	Upon Opening of Escrow.
6.	PTR obtained, Documents to Developer. (Sections 2.3.3.a, 2.3.4.a, 2.3.5.a)	Within 10 business days after Opening of Escrow.
7.	Developer submits any supplemental or corrected applications to City for all Project Entitlements defined in Section 1.4	Within 30 days after Opening of Escrow.
8.	Developer approves/disapproves title conditions in PTR. (Section 2.2.3.a)	Within 30 days after delivery of PTR.
9.	City responds to Developer's approval/disapproval of title conditions in PTR. (Section 2.2.3.a)	Within 10 business days of Developer notice.
10.	Developer responds to City response to Developer's approval/disapproval of title conditions in PTR. (Section 2.2.3.a)	Within 10 days of City response.
11.	Due Diligence Period ends. (Section 2.3.4.a)	60 days after delivery of Documents.
12.	Developer obtains financing and delivers City evidence of financing Project. (Section 2.3.7)	Prior to Closing Date.
13.	Developer obtains Project Entitlements and permit-ready letters for grading and building the Project. (Section 2.3.7)	Prior to Closing Date.
14.	Delivery to Escrow City Ground Lease, Memorandum of Ground Lease and City Regulatory Agreementand Notice of Affordability Restrictions. (Sections 2.3.11 & 2.3.12)	No later than noon 2 days prior to anticipated Closing Date.
15.	Close of Escrow/Closing Date (Section 2.3.2.c)	2 business days after all Closing Conditions are met or waived.
16.	Issuance of title insurance for Developer and City. (Sections 2.2.3, 2.3)	Closing Date.

	ACTIVITY	TIME FRAME
17.	Developer commences construction for the Project.	Within 194 days after receiving a preliminary reservation letter from TCAC for 9% Tax Credits.
18.	Developer submits to City person or entity proposed as the Property Manager (City Regulatory Agreement, Section 5.2)	No later than one hundred 180 days prior to issuance of certificate of occupancy by City.
19.	Developer submits for City's review and approval, marketing and management plans for the Project. (City Regulatory Agreement, Sections 5.1, 5.2)	No later than 90 days prior to issuance of certificate of occupancy by City.
20.	Developer completes construction of the Project, obtains a certificate of occupancy from City, and requests City issuance of Release of Construction Covenants. (Section 3.13)	Within 3 years after Developer commences construction.
21.	City issues a Release of Construction Covenants for the improvements or provides Developer with a written explanation why a Release of Construction Covenants shall not be issued. (Section 3.13)	Within 15 business days after City receipt of written request from Developer for Release of Construction Covenants pursuant to Section 3.13 of the Agreement.
22.	Developer submits to City an accounting of the Capital Replacement Reserve. (City Regulatory Agreement, Section 5.6)	On or before October 1 of each year after completion of construction of the Project for term of the City Regulatory Agreement.
23.	Developer submits annual report pursuant to Health and Safety Code Section 33418 to City. (City Regulatory Agreement, Section 3.7)	Not later than the October 1 of each year for term of the City Regulatory Agreement.

It is understood that the foregoing Schedule is subject to all of the terms and conditions of the text of the Agreement including, without limitation, Section 6.3. The summary of items of performance in the Schedule is not intended to supersede or modify any more complete description in the text; in the event of any conflict or inconsistency between this Schedule and text of the Agreement, the text of the Agreement shall govern.

ATTACHMENT NO. 5

CITY REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS

[SEE FOLLOWING DOCUMENT]

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Costa Mesa
77 Fair Drive
Cosa Mesa, California 92626
Attn: City Manager

(Space Above This Line for Recorder's Office Use Only)
(Exempt from Recording Fee per Gov. Code § 27383)

REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS

This REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS ("**Agreement**") is made and entered into this ____ day of _____ ("**Effective Date**"), by and between the CITY OF COSTA MESA, a California municipal corporation ("**City**") and _____ LP, a California limited partnership ("**Developer**").

R E C I T A L S:

A. Developer is the owner of a leasehold interest in that certain real property located at 695 W. 19th Street (APN 424-211-01), in the City of Costa Mesa, County of Orange, State of California, as more particularly described in the legal description in Exhibit "A" attached hereto and incorporated herein by this reference (collectively, the "**Site**").

B. Pursuant to an Affordable Housing / Disposition and Development Agreement entered into by and between City and Developer, dated _____, 2024 (the "**AH/DDA**"), City has agreed to provide financial assistance to Developer in the form of a $1 per year lease of the Site and Developer has agreed to construct on the Site an affordable rental apartment complex consisting of not less than sixty (60), but up to seventy (70) units (the "**Project**"). The AH/DDA requires Developer to enter into this Agreement, which provides, among other requirements, that with the exception of the one (1) "Management Unit," all of the apartment units within the Project be rented to and occupied by "Eligible Tenants" (as those terms are defined in Article 1.0 below).

C. To assist Developer with financing the Project, Developer has applied for and been awarded an allocation of 9% low income housing tax credits from the Tax Credit Allocation Committee (the "**TCAC**") pursuant to Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code, Sections 17057.5, 17058, 23610.4, 23610.5 and California Health and Safety Code Section 50199, *et seq.* (the "**Tax Credits**"). As a condition to obtaining the Tax Credits, Developer will be required to enter into a regulatory agreement with TCAC (the "**Tax Credit Regulatory Agreement**"), with such agreement to be recorded in the Official Records of the County of Orange.

D. Pursuant to the AH/DDA, Developer has agreed to develop the Project on the Site and thereafter maintain the Project with no fewer than sixty (60) but up to seventy (70) units, with all units in the Project except for the one (1) Management Unit, restricted to rental to and occupancy by Eligible Tenants.

E. City and Developer now desire to place restrictions upon the use and operation of the Site, in order to ensure that the Site shall be operated continuously, for a period of ninety-nine (99) years, as an affordable rental apartment complex in accordance with the terms hereof.

AGREEMENT:

NOW, THEREFORE, the Developer and City declare, covenant and agree, by and for themselves, their heirs, executors, administrators, successors and assigns, and all persons claiming under or through them, that, commencing upon the Effective Date and continuing throughout the Term, as follows:

1.0 DEFINITIONS.

Unless specifically defined in this Agreement, capitalized terms in this Agreement shall have the same meanings ascribed in the AH/DDA.

1.1 30% Low Income Household. As used in this Agreement, the term "**30% Low Income Household**" shall mean those households whose household income does not exceed thirty percent (30%) of the Orange County Median Income, as determined in accordance with Section 42(g) of the IRC, as published from time to time by TCAC.

1.2 Affiliate. As used in this Agreement, the term "**Affiliate**" shall mean any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the subject entity which, if the subject entity is a partnership or limited liability company, shall include each of the constituent members or general partners, respectively, thereof. The term "control" as used in the immediately preceding sentence means, with respect to a person that is a corporation, the right to the exercise, directly or indirectly, of more than 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.

1.3 Affordable Rent. As used in this Agreement, the term "**Affordable Rent**" shall mean the amount of monthly rent, including a reasonable utility allowance, that does not exceed the maximum allowable rent to be charged Developer and paid by 30% Low Income Households or Low Income Households, as the case may be, occupying the Units as determined in accordance with Section 42(g)(2) of the IRC, and as published from time to time by TCAC.

1.4 Approved Budget. As used in this Agreement, the term "**Approved Budget**" has the meaning ascribed in Section 3.13 of this Agreement.

1.5 Capital Improvements. As used in this Agreement, the term "**Capital Improvements**" means all work and improvements with respect to the Site for which costs and

expenses may be capitalized in accordance with generally accepted accounting principles as in effect from time to time, consistently applied.

1.6 City. As used in this Agreement, the term "**City**" means the City of Costa Mesa, a California municipal corporation.

1.7 City Manager. As used in this Agreement, the term "**City Manager**" shall mean the individual duly appointed to the position of City Manager of the City, or his or her authorized designee. Whenever an administrative action is required by City to implement the terms of this Agreement, the City Manager, or his or her authorized designee, shall have authority to act on behalf of City, except with respect to matters reserved for City Council determination.

1.8 Construction Loan. As used in this Agreement, the term "**Construction Loan**" shall mean the construction loan for the Project, which shall be in the approximate amount of _____ Dollars ($_____).

1.9 CPI. As used in this Agreement, the term "**CPI**" means the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, for All Urban Consumers, Los Angeles-Long Beach-Anaheim Area, All Items (1982-84=100), or, if the CPI is discontinued, such official index as may then be in existence and which is most nearly equivalent to the CPI.

1.10 Density Bonus Laws. As used in this Agreement, the term "**Density Bonus Laws**" shall be the State density bonus law, California Government Code section 65915, *et seq.,* and the City density bonus ordinance, Costa Mesa Municipal Code section 13-152, *et seq*., as those sections may be amended from time to time. If there is an irreconcilable contradiction in requirements or limits in the State or City density bonus laws, the State density bonus law shall control; provided, however, that the preceding clause is to be narrowly construed and to the greatest extent possible all provisions in the State and City density bonus laws shall be given operation and effect.

1.11 Eligible Tenant. As used in this Agreement, the term "**Eligible Tenant**" shall mean a household that qualifies as (i) a Senior Household and (ii) a 30% Low Income Household or a Low Income Household, as applicable to this Agreement.

1.12 IRC. As used in this Agreement, the term "**IRC**" shall mean the United States Internal Revenue Code of 1986, as amended.

1.13 Jamboree. As used in this Agreement, the term "Jamboree" shall mean Jamboree Housing Corporation.

1.14 Low Income Household. As used in this Agreement, the term "**Low Income Household**" shall mean those households whose household income does not exceed sixty percent (60%) of the Orange County Median Income, as determined in accordance with Section 42(g) of the IRC, as published from time to time by TCAC.

1.15 Management Unit. As used in this Agreement, the term "**Management Unit**" shall have the meaning ascribed in Section 2.6 hereof.

1.16 Operating Expenses. As used in this Agreement, the term "**Operating Expenses**" shall mean, for the applicable period of time, all costs and expenses reasonably incurred by Developer in the ordinary course of the management, ownership, and/or operation of the Site by Developer, including the payment of debt service, the funding of reasonable reserves including reserves required by any lender or the tax credit investor, and the payment of the following fees, paid annually: (a) the Social Services Fee; (b) a property management fee in the amount of [Nine Hundred Dollars ($900.00)] per Unit per year, increasing by 3% per annum following the first year of operation, and the monitoring payment required to be paid pursuant to Section 3.14 of the City Regulatory Agreement; (c) any tax benefit payments payable out of net cash flow to Developer's limited partner(s); (d) amounts expended to restore the Project after a casualty or condemnation, and (e) repayments of any completion or operating deficit loans advanced by a partner or member of Developer or their Affiliates. Operating Expenses shall not include depreciation or any expenses for capital improvements, except for capital improvements allowed in the "Approved Budget" (as defined in the City Regulatory Agreement), approved by any lender providing a Senior Loan, and approved by the City Manager. Operating Expenses shall be calculated on a cash basis.

1.17 Operating Income. As used in this Agreement, the term "**Operating Income**" shall mean, for the applicable period of time, all proceeds received by Developer from the operation of the Site and from any and all sources resulting from or attributable to the operation of the Site, including, without limitation, all rentals, laundry income received by Developer, forfeited security deposits, and all expense reimbursements paid to Developer by tenants of the Site. Operating Income shall be calculated on a cash basis. Operating Income excludes insurance proceeds, condemnation proceeds, loan proceeds and/or capital contributions.

1.18 Orange County Median Income. As used in this Agreement, the term "**Orange County Median Income**" shall mean the median household income for the County of Orange, adjusted for family size, to be determined in accordance with Section 42(g) of the IRC, as published from time to time by TCAC.

1.19 Partnership Agreement. As used in this Agreement, the term "**Partnership Agreement**" shall mean the agreement that sets forth the terms of Developer's limited partnership, as such agreement may be amended from time to time.

1.20 Qualified Tax Credit Investor. As used in this Agreement, the term "**Qualified Tax Credit Investor**" shall mean a person or entity who (i) is an experienced limited partner and investor in multifamily housing developments receiving low income housing tax credits issued by the State of California or the United States federal government and (ii) has obtained or is contractually obligated to obtain a limited partnership or limited liability company membership interest in Developer whereby it will receive ninety percent (90%) or more of the Tax Credits generated in connection with the Project. City shall have the right to reasonable prior approval of any person or entity proposed by Developer as the Qualified Tax Credit Investor and of the terms and conditions of the Partnership Agreement. City shall diligently review any documents and/or proposals submitted by Developer with respect to the proposed Qualified Tax Credit Investor and Partnership Agreement.

1.21 Released/Indemnified Parties. As used in this Agreement, the term "**Released/Indemnified Parties**" as it relates to any indemnification or release and waiver of

claims for the benefit of the City means, City and City's officials, officers, members, employees, agents, and representatives, and all entities, boards, commissions, and bodies related to any of them.

1.22 Restricted Unit Mix. As used in the Agreement, the term "**Restricted Unit Mix**" shall mean the following mix:

a. One half of the one-bedroom Units (up to Thirty-Four (34)) are restricted to Low Income Households; and

b. One half of the one-bedroom Units (up Thirty-Four (34)), and one (1) two-bedroom Unit are restricted to 30% Low Income Households.

1.23 Senior Household. As used in this Agreement, the term "**Senior Household**" shall mean a household in which at least one member of the household is sixty-two (62) years of age or older and no member is less than fifty-five (55) years of age, except as may be required by applicable laws.

1.24 Tax Credit Program. As used in this Agreement, the term "**Tax Credit Program**" shall mean the low-income housing tax credit program authorized pursuant to Section 42 of the IRC, California Health and Safety Code Sections 50199.6-50199.19, Revenue and Taxation Code Sections 17057.5, 17058, 23610.4, 23610.5, and applicable federal and State regulations.

1.25 Tax Credits. As used in this Agreement, the term "**Tax Credits**" shall mean the low income housing tax credits granted by TCAC for the Project pursuant to Section 42 of the IRC and/or California Revenue and Taxation Code, Sections 17057.5, 17058, 23610.4, 23610.5 and California Health and Safety Code Section 50199, *et seq*.

1.26 Tax Credit Regulatory Agreement. As used in this Agreement, the term "**Tax Credit Regulatory Agreement**" shall have the meaning ascribed in Recital D of this Agreement.

1.27 TCAC. As used in this Agreement, "**TCAC**" shall mean the California Tax Credit Allocation Committee.

1.28 Term. As used in this Agreement, the term "**Term**" shall mean a period of ninety nine (99) years, commencing on the date all of the Units have been rented to and are occupied by Eligible Tenants (except the Management Unit).

1.29 Unit. As used in this Agreement, the term "**Unit**" or "**unit**" shall mean a rental apartment dwelling unit on the Site. The Units are comprised of between Fifty Eight (58) and Sixty-Eight (68) one-bedroom Units and one (1) two-bedroom Unit.

2.0 RESIDENTIAL RENTAL PROPERTY.

2.1 Construction of the Project on the Site. Developer shall construct the Project on the Site in accordance with the AH/DDA, including the Schedule of Performance set forth therein, for the purpose of providing the Units described herein and therein. Commencing on the Effective Date and continuing until expiration of the Term, the Project shall be owned, managed, and

operated as a rental apartment project, with each of the Units except the Management Unit rented to and occupied by Eligible Tenants at Affordable Rent, as provided in this Agreement.

2.2 Facilities. All of the Units in the Project shall contain facilities for living, sleeping, eating, cooking and sanitation in accordance with this Agreement, the AH/DDA, and all of the permits and approvals for the Project.

2.3 Residential Use. Without the City's prior written consent, which consent may be given or withheld in its sole and absolute discretion, none of the Units in the Project will at any time be utilized on a transient basis or will ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, medical treatment facility, sanitarium, sober living home, or trailer court or park, nor shall the Units be used as a place of business except as may otherwise be allowed by applicable law.

2.4 Conversion of Units. No part of the Project will at any time be owned by a cooperative housing corporation, nor shall the Developer take any steps in connection with the conversion to such ownership or uses to condominiums, or to any other form of ownership, without the prior written approval of City which approval may be given or withheld in its sole and absolute discretion.

2.5 No Preference. All of the Units will be available for rental in accordance with the terms of this Agreement, and the Developer shall not give preference to any particular class or group of Eligible Tenants in renting the Units in the Project, except as provided in Section 3.4 below.

2.6 Resident Manager and Staff Unit. Notwithstanding anything to the contrary in this Agreement, one (1) of the two-bedroom units at the Project may be occupied by on-site management (the "**Management Unit**").

2.7 Liability of Developer. Developer and any manager it employs shall not incur any liability under this Agreement as a result of fraud or intentional misrepresentation by a tenant.

3.0 OCCUPANCY OF RESTRICTED UNITS BY ELIGIBLE TENANTS.

Developer hereby represents, warrants, and covenants as follows:

3.1 Occupancy Levels. Except as expressly provided herein, throughout the term of this Agreement, the Units shall be continuously occupied or held vacant and available for occupancy at Affordable Rent for Eligible Tenants in accordance with the Restricted Unit Mix. Maximum occupancy for each Unit shall be two (2) persons for each bedroom in the Unit plus one (1) additional person; and minimum occupancy for each Unit shall be no less than one (1) person per bedroom in the Unit.

3.2 Occupancy By Eligible Tenant. A Unit occupied by an Eligible Tenant who qualified as an Eligible Tenant at the commencement of the occupancy shall be treated as occupied by an Eligible Tenant throughout their tenancy. A Unit previously occupied by an Eligible Tenant and then vacated shall be considered occupied by an Eligible Tenant until the Unit is reoccupied, provided Developer uses its best efforts to re-lease the vacant Unit to an Eligible Tenant in

compliance with the Restricted Unit Mix. Any vacated Unit shall be held vacant until re-leased to an Eligible Tenant. Developer shall take the following actions, as necessary, to locate Eligible Tenants for the Project: (i) notification to the City of the available Unit; and (ii) advertisement of the available Unit in a newspaper of general circulation in the City.

3.3 Income Computation and Certification. Immediately prior to an Eligible Tenant's occupancy of a Unit, Developer shall obtain an Income Computation and Certification Form in the form attached hereto and incorporated herein as Exhibit "B", or on a similar form required by TCAC (the "**TCAC Income Certification Form**") if the TCAC Income Certification Form requires inclusion of the same information as required in Exhibit "B", from each such Eligible Tenant dated no more than ninety (90) days prior to the date of initial occupancy in the Project by such Eligible Tenant. In addition, Developer shall provide such further information as may be reasonably required in the future by the City for purposes of verifying a tenant's status as an Eligible Tenant. Developer shall use good faith efforts to verify that the income provided by an applicant is accurate by taking the following steps as a part of the verification process: (i) obtain three (3) pay stubs for the most recent pay periods; (ii) obtain a written verification of income and employment from the applicant's current employer; (iii) obtain an income verification form from the Social Security Administration, California Department of Social Services, and/or California Employment Development Department if the applicant receives assistance from any of said agencies; (iv) if an applicant is unemployed or did not file a tax return for the previous calendar year, obtain other evidence and/or verification of such applicant's total income received during the calendar year from any source, taxable or nontaxable, or such other information as is satisfactory to the City. Developer shall maintain in its records each Income Computation and Certification Form obtained pursuant to this section for a minimum of five (5) years.

3.4 Rental Priority. Subject to (i) the requirements of any funding obtained by Developer to operate and/or develop the Project that has been approved by City, including the Tax Credit Program, and (ii) any applicable Federal, State or local law (including, without limitation, fair housing laws), during the term of this Agreement, Developer shall use its commercially reasonable efforts to lease the Units to credit-worthy Eligible Tenants in the following order of priority: (a) who have been or will be displaced by a City activity, or an activity of any other public agency with jurisdiction in all or any portion of the City of Costa Mesa; or (b) who live and/or work in the City of Costa Mesa. Developer shall, and City may, maintain a list (the "**Housing List**") of persons who have notified Developer and/or City of their desire to rent a Unit in the Project who qualify as a Senior Household and who have incomes which would qualify them as an Eligible Tenant, and Developer shall offer to rent Units on the above-referenced priority basis; provided, however, that Developer shall not be required to prequalify persons on the Housing List. Should multiple tenants be equally eligible (as to income, credit history, and other nondiscriminatory criteria) and qualified to rent a Unit, Developer shall rent available Units to Eligible Tenants on a first-come, first-served basis. For purposes of this Section 3.4 an Eligible Tenant shall be deemed to live in the City of Costa Mesa if their current residence is located within the City (e.g., street address to be provided), or if they are currently homeless in Costa Mesa as demonstrated by records of the City, or a local social services organization, and an Eligible Tenant shall be deemed to work in the City of Costa Mesa if they work in the City for at least twenty (20) hours per week.

3.5 Recertification. Within sixty (60) days prior to the first anniversary date of the occupancy of a Unit by an Eligible Tenant, and on each anniversary date thereafter, Developer shall recertify the income of such Eligible Tenant by obtaining a completed Income Recertification Form, in the form attached hereto and incorporated herein as Exhibit "C", or on a similar form required by TCAC (the "**TCAC Income Recertification Form**") if the TCAC Income Recertification Form requires inclusion of the same information as required in Exhibit "C", based upon the current income of each known occupant of the Unit; provided, however, that if Developer obtains the Tax Credits, and the TCAC Regulatory Agreement requires Developer to obtain a recertification form which requires inclusion of the same information as required in Exhibit "C", then Developer shall not be deemed to be in default hereunder if during the term of the TCAC Regulatory Agreement Developer obtains from each Eligible Tenant the TCAC recertification form.

3.6 Determination of Affordable Rent. All Units shall be rented at an Affordable Rent.

3.6.1 Rent Schedule and Utility Allowance. Developer shall submit to the City Manager for review and approval the Affordable Rents proposed by Developer for all of the Units. In determining the Affordable Rents, Developer shall utilize the maximum monthly allowances for utilities and services that is published by the County of Orange. City shall approve such proposal if it complies with the terms of this Agreement. The maximum monthly rent must be recalculated by Developer and submitted to the City annually. City shall be deemed to approve any proposed rent schedule if (a) the proposed rents constitute an Affordable Rent and (b) City fails to respond within ten (10) business days following Developer's submittal.

3.6.2 Adjustment of Rent. Rent 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 is subject to the provisions of outstanding leases. Developer must provide the City and all households occupying the Units not less than thirty (30) days prior written notice before implementing any rent increase.

3.7 Certification of Continuing Program Compliance. During the term of this Agreement, on or before each October 1 following the Effective Date, Developer shall annually advise the City of the occupancy of the Project during the preceding calendar year by delivering a Certification of Continuing Program Compliance in the form attached hereto and incorporated herein as Exhibit "E", stating (i) the Units of the Project which have been rented to and are occupied by Eligible Tenants and (ii) that to the knowledge of Developer either (a) no unremedied default has occurred under this Agreement, or (b) a default has occurred, in which event said certification shall describe the nature of the default and set forth the measures being taken by the Developer to remedy such default.

3.8 Maintenance of Records. Developer shall maintain complete and accurate records pertaining to the Units, and shall permit any duly authorized representative of the City, upon forty-eight (48) hours prior notice and during business hours, to inspect the books and records of Developer pertaining to the Project including, but not limited to, those records pertaining to the occupancy of the Units.

3.9 Reliance on Tenant Representations. Each tenant lease shall contain a provision to the effect that Developer has relied on the income certification and supporting information supplied by the tenant in determining qualification for occupancy of the Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease. Each such lease shall also include a lease rider substantially in the form attached hereto and incorporated herein as Exhibit "D" and shall state that occupation of the Unit is subject to the income restrictions described in this Agreement.

3.10 Remedy For Violation of Rental Requirements.

3.10.1 It shall constitute a default for Developer to charge or accept for any Unit rent amounts in excess of the amount provided for in Section 3.6 of this Agreement. In the event that Developer charges or receives such higher rental amounts, Developer shall be required to reimburse the tenant that occupied said Unit at the time the excess rent was received for the entire amount of such excess rent received, provided that such tenant can be found following reasonable inquiry, and to pay to such tenant interest on said excess amount, at the rate of six percent (6%) per annum, for the period commencing on the date the first excess rent was received from said tenant and ending on the date reimbursement is made to the tenant. For purposes of this Section 3.10, "reasonable inquiry" shall include Developer's review of information provided by the tenant as part of the tenant's application and forwarding information provided by the tenant, and Developer's reasonable attempts to contact the tenant and any other persons listed in either of such documents. If, after such reasonable inquiry, Developer is unable to locate the tenant, Developer shall pay all of such amounts otherwise to be paid to the tenant to the City.

3.10.2 Except as otherwise provided in this Agreement, it shall constitute a default for Developer to knowingly (or without investigation as required herein) initially rent any Unit to a tenant who is not an Eligible Tenant. In the event Developer violates this Section, in addition to any other equitable remedy City shall have for such default, Developer, for each separate violation, shall be required to pay to City an amount equal to (i) the total rent Developer received from such ineligible tenant, in excess of the total rent Developer was entitled to receive for renting that Unit, plus (ii) any relocation expenses incurred by City as a result of Developer having rented to such ineligible person. The terms of this Section shall not apply if Developer rents to an ineligible person as a result of such person's fraud or misrepresentation.

3.10.3 It shall constitute a default for Developer to knowingly (or without investigation as required herein) rent a Unit in violation of the leasing preference requirements of Section 3.4 of this Agreement. In the event Developer violates this Section, in addition to any other equitable remedy City shall have for such default, Developer, for each separate violation, shall be required to pay City an amount equal to one (1) month of rental charges.

THE PARTIES HERETO AGREE THAT THE AMOUNTS SET FORTH IN THIS SECTION 3.10 (THE "**DAMAGE AMOUNTS**") CONSTITUTE A REASONABLE APPROXIMATION OF THE ACTUAL DAMAGES THAT CITY WOULD SUFFER DUE TO THE DEFAULTS BY DEVELOPER SET FORTH IN SECTIONS 3.10.1 THROUGH 3.10.3, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO CITY AND ACCOMPLISHMENT OF CITY'S PURPOSE OF

ASSISTING IN THE PROVISION OF AFFORDABLE HOUSING TO ELIGIBLE TENANTS THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. THE AMOUNTS SET FORTH IN THIS SECTION 3.10 SHALL BE THE SOLE MONETARY DAMAGES REMEDY FOR THE DEFAULTS SET FORTH IN THIS SECTION 3.10, BUT NOTHING IN THIS SECTION 3.10 SHALL BE INTERPRETED TO LIMIT CITY'S REMEDY FOR SUCH DEFAULT TO SUCH A DAMAGES REMEDY AND IN THAT REGARD AND SUBJECT TO THE TERMS OF THE FOLLOWING PARAGRAPH CITY MAY DECLARE A DEFAULT UNDER THE TERMS OF THE AH/DDA. IN PLACING ITS INITIALS AT THE PLACES PROVIDED HEREINBELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY HAS BEEN REPRESENTED BY COUNSEL WHO HAS EXPLAINED THE CONSEQUENCES OF THE LIQUIDATED DAMAGES PROVISION AT OR PRIOR TO THE TIME EACH EXECUTED THIS AGREEMENT.

DEVELOPER'S INITIALS: CITY'S INITIALS:

_____ _____

Notwithstanding anything to the contrary in this Agreement, City shall have no right to commence foreclosure proceedings for any of the defaults described in this Section 3.10 until City has provided notice and an opportunity to cure pursuant to Article 10 and declared an "Event of Default" pursuant to the provisions of said Article 10.

3.11 Tax Credit Regulatory Agreement. Notwithstanding anything contained in this Agreement to the contrary, if and when the Site is subject to the requirements of the Tax Credit Program and there is a conflict between the requirements of the Tax Credit Program and the provisions set forth in this Agreement, then the provisions of the Tax Credit Program shall prevail except that the more restrictive rent (i.e., "**Affordable Rent**" as defined under this Agreement) shall apply and control. Except as provided in this Section, the fact that this Agreement and the Tax Credit Program provide for greater, lesser or different obligations or requirements shall not be deemed a conflict unless the applicable provisions are inconsistent and could not be simultaneously enforced or performed.

3.12 Annual Statements. On each October 1 following the Effective Date, Developer shall deliver to City (i) financial statements of Developer, including a profit and loss statement, and a consolidated statement of changes in financial position of the Project as at the close of and for the immediately preceding fiscal year, all in reasonable detail, certified by an officer or partner of Developer, and (ii) an annual operating statement showing all Operating Income and Operating Expenses, and any other amounts taken into consideration in computing Net Operating Income, certified by an operating officer or manager of the Developer as true and complete and in a format reasonably acceptable to the City Manager.

3.13 Pro Forma Budget. As soon as available and in any event not later than November 15th of each calendar year beginning with the year in which the Project is completed, Developer shall provide City with a detailed projection of Operating Income and budgets of estimated Operating Expenses for the immediately succeeding calendar year (the "**Pro Forma Budget**") and

a detailed cash flow projection for such year. Developer shall also submit to City on request additional detail, information and assumptions used in the preparation of the Pro Forma Budget. Developer shall use its commercially reasonable efforts to operate the Site during such calendar year within the Approved Budget.

3.14 Annual Monitoring Payment. On or before May 1 of each year after Developer's completion of the Project, Developer shall pay to City an annual payment in the amount of Three Thousand Four Hundred FiftyDollars ($3,450.00), increased annually by the CPI (but not to exceed 3% per annum), to reimburse City for the costs City incurs in monitoring Developer's compliance with the terms of this Agreement; provided, however, that if Developer completes the Project between January 1 and April 31, Developer's first such reimbursement payment shall not be due and payable until the subsequent May 1. For example, if Developer completes the Project on March 10, 2027, the first reimbursement payment will be due on May 1, 2028. During the initial fifteen (15) years of operation this payment will be made from a capitalized account created and controlled by Developer. Beginning in the sixteenth (16th) year of operation this payment will be paid as an Operating Expense.

4.0 MAINTENANCE.

4.1 Maintenance Obligation. Developer agrees to and shall maintain all interior and exterior improvements, including landscaping, driveways, walkways and parking spaces, on the Site in a good and safe condition and repair (and, as to landscaping, in a healthy condition) consistent with other similar, well operated housing developments in Costa Mesa, California and in accordance with all of the permits and approvals for the Project, and all other applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having jurisdiction and all their respective departments, bureaus, and officials. City places prime importance on quality maintenance to protect its investment and to ensure that all City-assisted affordable housing projects within the City are not allowed to deteriorate due to below-average maintenance. Normal wear and tear of the Site improvements will be acceptable to City assuming Developer agrees to perform all necessary Site improvements to assure the Site is maintained in good condition. Maintenance requirements shall include that: (a) no improperly maintained landscaping shall be visible from public rights-of-way, including (i) no trees, shrubbery, lawns, and other plant life dying from lack of water or other necessary maintenance, (ii) no trees, hedges, or shrubbery grown uncontrolled without proper pruning, (iii) no vegetation so overgrown as to be likely to harbor rats or vermin, and (iv) no dead, decayed, or diseased trees, weeds, and/or other vegetation; (b) no yard areas shall be left unmaintained, including (i) no broken or discarded furniture, appliances, or other household equipment stored in yard areas for periods exceeding one (1) week, (ii) no packing boxes, lumber, trash, dirt, or other debris stored in yards for periods exceeding one (1) week in areas visible from public property or neighboring properties, (iii) no unscreened trash cans, bins, or containers stored for unreasonable periods in areas visible from public property or neighboring properties, and (iv) no vehicles parked or stored in areas other than approved parking areas; (c) no buildings may be left in an unmaintained condition, including (i) no violations of state law, Uniform Codes, or City ordinances, (ii) no condition that constitutes an unsightly appearance that constitutes a private or public nuisance, (iii) no broken windows or chipped, cracked, or peeling paint, (iv) no conditions constituting hazards, such as potholes or cracks in the parking area, (v) no conditions inviting trespassers or malicious mischief, and (vi) no graffiti or accumulation of waste or debris.

Developer shall make all repairs and replacements necessary to keep the improvements in good condition and repair and shall promptly eliminate all graffiti, correct and repair any broken or damaged concrete or asphalt, and replace dead and diseased plants and landscaping with comparable approved materials. In the event that Developer breaches any of the covenants contained in this Section and Developer does not commence to cure such breach within five (5) business days after written notice from City (with respect to graffiti, debris, waste material, landscaping, and general maintenance) or thirty (30) days after written notice from City (with respect to building improvements), and after commencing the cure to diligently prosecute such cure to completion, then City, in addition to whatever other remedy it may have at law or in equity, shall have the right, but not the obligation, to enter upon the Site and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Site, and to attach a lien on the Site as provided in Section 4.2 below, or to assess the Site, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by City and/or costs of such cure, including a fifteen percent (15%) administrative charge, which amount shall be promptly paid by Developer to City upon thirty (30) days' written notice.

4.2 Lien. If the costs incurred pursuant to Section 4.1 are not reimbursed within thirty (30) days after Developer's receipt of notice thereof the same shall be deemed delinquent, and the amount thereof shall bear interest thereafter at a rate of six percent (6%) per annum until paid. Any and all delinquent amounts, together with said interest, costs and reasonable attorney's fees, shall, upon recordation of a notice of lien against the Property in the Official Records of the County of Orange, California in accordance with applicable law, be a lien and charge, with power of sale, upon the property interests of Developer, and the rents, issues and profits of such property. The priority of such lien shall date from the date of recordation. City may bring an action at law against Developer to pay any such sums or foreclose the lien against Developer's property interests. Any such lien may be enforced by sale by the City following recordation of a Notice of Default of Sale given in the manner and time required by law as in the case of a deed of trust; such sale to be conducted in accordance with the provisions of Section 2924, *et seq*., of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. No lien recorded by City pursuant to this Section 4.2 shall defeat or render invalid the lien of any senior mortgage or deed of trust.

5.0 MANAGEMENT.

5.1 Marketing Plan. Prior to the City's issuance of a Release of Construction Covenants for the Project, Developer shall submit for the approval of the City Manager, which approval shall not unreasonably be withheld, a plan for marketing the rental of the Units (the "**Marketing Plan**"). The Marketing Plan shall include affirmative marketing procedures and requirements. The Marketing Plan shall include a plan for publicizing the availability of the Units within the City in a manner which gives notice to residents of the City, such as notices in any City sponsored newsletter, newspaper advertising in local newspapers and notices in City offices and community centers.

5.2 Long Term Management of the Project. Prior to, and as a condition of, the City's issuance of a Release of Construction Covenants for the Project, Developer shall submit for the reasonable approval of the City Manager a "Management Plan" which sets forth in detail the identity and the duties of the person or entity proposed to be retained by Developer to operate and

manage the Project (the "**Property Manager**"), tenant selection criteria, the tenant selection and income certification process, a security system and crime prevention program, the procedures for determining Rent and for the collection of rent, occupancy limits, and the procedures for monitoring of occupancy levels, the procedures for eviction of tenants, the rules and regulations of the Project and manner of enforcement, the initial standard lease form, and other matters relevant to the management of the Project. Developer may from time to time submit amendments and modifications to the Management Plan for the reasonable approval of the City Manager. The management of the Project shall be in compliance with the Management Plan. City hereby approves Quality Management Group as the initial Property Manager.

5.3 Social Services. Developer shall provide a variety of social services at the Project; such social services are subject to the approval of the City Manager, in his or her reasonable discretion. Developer shall use its commercially reasonable efforts to create a comprehensive social service program that is targeted to the needs of the residents of the Project which may include adult education services and the availability of a bona fide services coordinator or social worker to the tenants. A list of the social services that initially will be provided is attached hereto and incorporated herein as Exhibit "F". Any substantive change in the scope, amount, or type of supportive services to be provided at the Site shall be subject to prior reasonable approval of City. City shall respond to any such changes within thirty (30) days after submittal to City by Developer. City's failure to so respond shall be deemed City approval.

5.4 Coordination with Costa Mesa Senior Center. Developer agrees to coordinate with the Costa Mesa Senior Center (the "Center") regarding the use of community space within the Project for special senior events held by the Center, such as, but not limited to, bingo nights.

5.5 Parking Access and Management Plan. Developer shall maintain full public access to the Site for pedestrian and vehicular ingress, egress, and parking at no charge. No physical barrier shall separate the parking spaces under the Project or on the remainder of the site from the City's property on which the Costa Mesa Senior Center is located. Prior to, and as a condition of, the City's issuance of a Release of Construction Covenants for the Project, Developer shall submit for the reasonable approval of the City Manager a "Parking Management Plan" which sets forth and implements the parking measures recommended in that certain Parking Demand Analysis" prepared by on August 21, 2024, by Linscott, Law & Greenspan, Engineers as LLC Reference No. 2.24.4822.1 for the Project (the "**Parking Management Plan**"). Developer shall be responsible to enforce the Parking Management Plan.

5.6 Gross Mismanagement; Requirement to Replace Property Manager. In the event of "Gross Mismanagement" (as that term is defined below) of the Project, City shall have the authority to require that such Gross Mismanagement cease immediately. City shall provide written notice to Developer of the event(s) of Gross Mismanagement occurring and Developer shall have ten (10) business days after receipt of such notice to commence to cure, correct, or remedy the event(s) of Gross Mismanagement identified in the City's notice and to notify the City Manager of the steps taken to effect such cure, correction, or remedy, and upon commencing such cure, correction, or remedy to thereafter diligently prosecute such cure, correction, or remedy to completion. If Developer fails to timely commence to cure and to thereafter diligently proceed to complete such cure, then subject to the approval of the senior lender and tax credit investor, City shall have the right to require the immediate replacement of the Property Manager.–For purposes

of this Agreement the term "**Gross Mismanagement**" shall mean management of the Project in a manner which materially violates the terms and/or intention of this Agreement to operate an affordable rental housing complex of the highest standard, and shall include, but is not limited to, the following:

5.6.1 Knowingly leasing a Unit to an ineligible tenant or tenants whose income exceeds the prescribed levels;

5.6.2 Knowingly allowing the tenants to exceed permitted occupancy levels (e.g., two (2) persons per bedroom plus one (1)) without taking immediate steps to stop such overcrowding;

5.6.3 Knowingly allowing a tenant to sublease his or her Unit;

5.6.4 Failing to timely maintain the Project and the Site in the manner required by this Agreement;

5.6.5 Failing to timely submit the reports as required by this Agreement (provided Developer shall have ten (10) business days after receipt of such notice to commence to cure, correct, or remedy);

5.6.6 Fraud in connection with any document or representation relating to this Agreement or embezzlement of Project monies; and

5.6.7 Failing to reasonably cooperate with law enforcement in its attempts to maintain a crime-free environment on the Site.

5.7 Lease Approval. The initial form lease agreement to be used by Developer for the rental of any of the Units ("**Lease Agreement**"), and any changes to such form Lease Agreement regarding the provisions required by this Agreement, including, but not limited to, the provisions required by Section 3.9, to be included in the form Lease Agreement, shall be reasonably approved in advance by the City Manager prior to the initial use of the lease form and prior to the first use of the changed form. City shall provide its approval, conditional approval or disapproval within thirty (30) days after Developer's submittal to City of any of the foregoing.

5.8 Capital Replacement Reserve. Commencing on the date Developer's construction loan converts to a permanent loan, Developer shall, or shall cause the Property Manager to, annually set aside a minimum of Three Hundred Dollars ($300) per Unit per year (for example, for 70 units, the annual amount would be Twenty OneThousand Dollars ($21,000) or such increased amount required by TCAC, the Tax Credit Regulatory Agreement, or a lender providing financing approved pursuant to the AH/DDA or by the City Manager, into a capital replacement reserve account (the "**Capital Replacement Reserve**"). Funds in the Capital Replacement Reserve shall be used for Capital Improvements.

As Capital Improvements become necessary, the Capital Replacement Reserve shall be the first source of payment therefor to the extent permitted by all applicable lenders and the tax credit investor (unless insurance proceeds are available).

Funds in the Capital Replacement Reserve account may be distributed to Developer (or others) only upon the prior written approval of the City Manager, which approval may be given or withheld in the City Manager's reasonable discretion. On or before each November 15th, commencing on the first November 15th after Developer's completion of construction of the Project, Developer shall submit to City, for the immediately preceding year, a reconciliation that sets forth (i) Developer's planned expenditures for Capital Improvements, as reflected in the Approved Budget for said year, (ii) Developer's actual expenditures for Capital Improvements during said year, and (iii) the balance in the Capital Replacement Reserve Account.

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 in the manner prescribed in this Agreement.

6.0 COMPLIANCE WITH LAWS; ENVIRONMENTAL MATTERS.

6.1 Compliance With Laws. Developer shall comply with (i) all ordinances, regulations and standards of the City, any regional governmental entity with jurisdiction over the Project and/or Site, the State of California, and the federal government applicable to the Project and/or Site; (ii) all rules and regulations of any assessment district of the City with jurisdiction over the Project and/or Site; and (iii) all applicable labor standards of California law and federal law; and (iv) the requirements of California law and federal law with respect to the employment of undocumented workers or illegal aliens.

6.2 Indemnity. Developer agrees to defend, with attorneys of City's choosing or otherwise acceptable to City, indemnify, protect and hold harmless the City, in its own capacity, and all of the City's officers, officials, members, employees, agents and representatives from, regarding and against any and all liabilities, obligations, orders, decrees, judgments, liens, demands, actions, "Environmental Response Actions" (as defined below), claims, losses, damages, fines, penalties, expenses, "Environmental Response Costs" (as defined below) or costs of any kind or nature whatsoever, together with fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), first occurring during and/or caused by Developer's use and occupancy of the Site, and resulting from or in connection with the actual or claimed generation, storage, handling, transportation, use, presence, placement, migration and/or release of Hazardous Materials at, on, in, beneath or from the Site, including Hazardous Materials which first came to be located on the Site after the date Developer acquired leasehold title to the Site, except to the extent caused by the active negligence or willful misconduct of City. Developer's defense, indemnification, protection and hold harmless obligations herein shall include, without limitation, the duty to notify the applicable governmental authority and/or respond to any governmental inquiry, investigation, claim or demand regarding Hazardous Materials at Developer's sole cost. Notwithstanding the foregoing or anything to the contrary contained herein, Developer's obligations pursuant to this Indemnity shall not extend to any Environmental Response Actions and/or Environmental Response Costs caused by the active negligence or willful misconduct of City.

For the purposes of this Agreement, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

The term "**Hazardous Materials**" shall mean any substance, material or waste which is: (1) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of California or federal law; (2) or is regulated under California or federal law, including, without limitation, petroleum, asbestos, polychlorinated biphenyls, and radioactive materials; (3) or is determined by a California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property or a risk to the environment.

The term "**Environmental Response Actions**" shall mean any and all activities, data compilations, preparation of studies or reports, interaction with environmental regulatory agencies, obligations and undertakings associated with environmental investigations, removal activities, remediation activities or responses to inquiries and notice letters, as may be sought, initiated or required in connection with any local, state or federal governmental or private party claims, including any claims by Developer.

The term "**Environmental Response Costs**" shall mean any and all costs associated with Environmental Response Actions including, without limitation, any and all fees, fines, penalties and damages.

The term "**Hazardous Materials Contamination**" shall mean the contamination first occurring on the Site after the date Developer acquired leasehold title to the Site or 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 first occurring on the Site after the date Developer acquired leasehold title to the Site.

The term "**Governmental Requirements**" shall mean all past, present and future laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State of California, the County of Orange, the City of Costa Mesa, or any other political subdivision in which the Site is located, and any other state, county, city, political subdivision, agency, instrumentality or other entity exercising jurisdiction over the Site.

6.3 Duty to Prevent Hazardous Material Contamination. Developer shall take commercially reasonable action to prevent the release of any Hazardous Materials into structures or into the environment in violation of applicable Governmental Requirements. Such precautions shall include compliance with all applicable Governmental Requirements 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 the standards generally applied by apartment complexes in Orange County, California as respects the disclosure, storage, use, removal, and disposal of Hazardous Materials.

6.4 Obligation of Developer to Remediate Premises. Notwithstanding the obligation of Developer to indemnify the Indemnified Parties pursuant to Section 6.2, Developer shall, at its sole cost and expense, promptly take (i) all actions required by any applicable federal, state, regional, or local governmental agency or political subdivision with jurisdiction over the Site or any applicable Governmental Requirements and (ii) all actions necessary to make full use of the Site for the purposes contemplated by this Agreement and the AH/DDA, which requirements or

necessity arise from the presence upon, about or beneath the Site of any Hazardous Materials or Hazardous Materials Contamination in violation of applicable Governmental Requirements. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Site, the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal or restoration work.

6.5 Environmental Inquiries. Developer, when it has received any notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, or cease and desist orders related to Hazardous Materials or Hazardous Materials Contamination from a governmental agency with jurisdiction over the Site, or when Developer is required to report to any governmental agency any violation or potential violation of any applicable Governmental Requirement pertaining to Hazardous Materials or Hazardous Materials Contamination, shall concurrently notify the City Manager and provide to him/her a copy or copies, of the environmental permits, disclosures, applications, entitlements or inquiries relating to the Site, the 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 applicable Governmental Requirement relating to Hazardous Materials and underground tanks, and Developer shall report to the City Manager, as soon as possible after each incident, any unusual, potentially important incidents.

In the event of a responsible release of any Hazardous Materials into the environment in violation of applicable laws, Developer shall, as soon as possible after it becomes aware of the release, furnish to the City Manager a copy of any and all final reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of the City Manager, Developer shall furnish to the City Manager 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.

7.0 INSURANCE.

7.1 Duty to Procure Insurance. Developer, for the term of this Agreement, shall procure and keep in full force and effect or cause to be procured and kept in full force and effect for the mutual benefit of Developer and City, and shall provide City evidence reasonably acceptable to the City Manager, insurance policies meeting the minimum requirements set forth below:

a. Commencing on the Effective Date and continuing throughout the term of this Agreement, the Developer shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to the City Manager, the following policies of insurance:

(i) Commercial General Liability Insurance on a per occurrence basis with limits not less than Three Million Dollars ($3,000,000) per occurrence. Any general aggregate limit shall apply to this Project only. Such insurance shall be endorsed to designate the City, its officials, officers, members, employees, representatives, and agents as additional insureds, including for the completed operations exposure, and shall be primary and not contribute with any insurance or self-insurance maintained by the City.

The foregoing limit may be obtained in a combination of Commercial General Liability and Umbrella Liability policies.

(ii) To the extent Developer has any employees, Worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure, and provide legal defense for the Developer against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Developer in the course of carrying out the work or services contemplated in this Agreement, and Employers Liability Insurance in an amount not less than One Million Dollars ($1,000,000) per occurrence for bodily injury or disease. The workers' compensation policy shall be endorsed to waive the insurer's right of subrogation against the City, its officials, officers, members, employees, representatives, and agents.

(iii) To the extent Developer has any employees, business Automobile insurance in an amount not less than Three Million Dollars ($3,000,000) per accident covering all owned, hired, and non-owned vehicles used in connection with the development of the Project. The foregoing limit may be obtained in a combination of Commercial General Liability and Umbrella Liability policies.

b. Commencing on the Effective Date and continuing until the City issues a Release of Construction Covenants for the Project, the Developer shall procure and maintain, at its sole cost and expense, in a form and content reasonably satisfactory to the City Manager, "All Risks" Builder's Risk (course of construction) insurance coverage on a replacement cost basis in an amount equal to the full cost of the hard construction costs of the Project. Such insurance shall contain no coinsurance provision, and cover, at a minimum: all work, materials, and equipment to be incorporated into the Project; the Project during construction; the completed Project until such time as the City issues a final certificate of occupancy for the Project, and storage, transportation, and equipment breakdown risks. Such insurance shall include coverage for flood, ordinance or law, temporary or offsite storage, debris removal, pollutant cleanup and removal, preservation of property, landscaping, shrubs and plants and full collapse during construction. Such insurance shall protect/insure the interests of Developer/owner and all of Developer's contractor(s), and subcontractors, as each of their interests may appear. If such insurance includes an exclusion for "design error," such exclusion shall only be for the object or portion which failed. The City shall be a loss payee under such policy or policies.

c. Developer shall cause any general contractor with whom it has contracted for the performance of work on the Site to secure, prior to commencing any activities hereunder and maintain insurance that satisfies all of the requirements of Section 7.1(a) and (e).

d. Commencing on the date City issues a Release of Construction Covenants, and continuing throughout the term of this Agreement, Developer shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City Manager, the following types of insurance:

(i) "All Risks" property insurance on a replacement cost basis in an amount equal to full replacement cost thereof, as the same may change from time to

time. The above insurance policy or policies shall contain no coinsurance provision. City shall be a loss payee under such policy or policies.

(ii) Business interruption, rental value, and extra expense insurance to protect Developer and City covering loss of revenues and/or extra expense incurred by reason of the total or partial suspension or delay of, or interruption in, the operation of the Project caused by loss or damage to, or destruction of, any part of the insurable real property structures or equipment as a result of the perils insured against under the all risk physical damage insurance, covering a period of suspension, delay or interruption of at least twelve (12) months, in an amount not less than the amount required to cover such business interruption, rental value, and/or extra expense loss during such period.

(iii) Boiler and machinery insurance in the aggregate amount of the full replacement value of the equipment typically covered by such insurance.

e. The following additional requirements shall apply to all of the above policies of insurance:

(i) All of said policies of insurance except workers' compensation shall provide that said insurance may not be amended or cancelled without providing thirty (30) days' prior written notice (ten (10) days for nonpayment of premium) to the City. In the event any of said policies of insurance are cancelled, the Developer shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the City Manager. Not later than the Effective Date, the Developer shall provide the City Manager with Certificates of Insurance and required endorsements evidencing the above insurance coverages.

(ii) The policies of insurance required by this Agreement shall be satisfactory only if issued by companies with an A.M. Best rating not less than "A-", VII or otherwise approved by City.

(iii) Self-insurance retentions must be declared to and approved by the City Manager.

f. City shall have the right, upon thirty (30) days' notice to Developer, to increase the required amount of General Liablity and Auto Liability coverage as commercially reasonable during the term of this City Regulatory Agreement.

g. Developer agrees that the provisions of this Section shall not be construed as limiting in any way the City's right to indemnification or the extent to which the Developer may be held responsible for the payment of damages to any persons or property resulting from the Developer's activities or the activities of any person or persons for which the Developer is otherwise responsible.

7.2 Remedies for Defaults Regarding Insurance.

In addition to any other remedies the City may have, if Developer commits a default hereunder by failing to provide or maintain any insurance policies or policy endorsements to the

extent and within the time herein required, the City may at its sole option, and after delivery of written notice to Developer and expiration of a fifteen (15) day cure period, obtain such insurance and charge Developer for the amount of the premium for such insurance; provided, however, that if City Manager reasonably determines that the Developer, Site, and/or Project will be uninsured or under-insured in the absence of such insurance, then City need not provide for any cure period in its notice of default to Developer, but may instead obtain such insurance immediately upon its provision of such notice. Exercise of the remedy set forth herein, however, is an alternative to other remedies the City may have and is not the exclusive remedy for Developer's failure to maintain insurance or secure appropriate endorsements.

8.0 OBLIGATION TO REPAIR.

8.1 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance. Subject to Section 8.3 below and the rights of any Senior 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 and to the extent of such proceeds, to promptly and diligently commence the repair or replacement of the Project to substantially the same condition in which the Project is required to be maintained pursuant to this Agreement, and Developer shall complete the same as soon as possible thereafter so that the Project can continue to be operated and occupied as an affordable housing project in accordance with this Agreement. Subject to extensions of time for "Enforced Delay" events (as defined in Section 22 of this Agreement) occurring after the casualty event, in no event shall the repair, replacement, or restoration period exceed twenty-four (24) months from the date Developer obtains insurance proceeds, unless the City Manager approves a longer period of time which approval will not be unreasonably withheld. City shall cooperate with Developer, at no expense to City, in obtaining any governmental permits required for the repair, replacement, or restoration and, upon issuance of such permits City shall promptly release control of any insurance proceeds within City's control.

If Developer fails to obtain insurance as required by this Agreement (and City has not procured such insurance and charged Developer for the cost), Developer shall be obligated to reconstruct and repair any partial or total damage to the Project and improvements located on the site in accordance with this Section 8.1, if the fire or other casualty would have been covered by the insurance required to be obtained by Developer pursuant to this Agreement.

8.2 Continued Operations. During any period of repair, Developer shall continue, or cause the continuation of, the operation of the apartment complex and the public parking on the Site to the extent reasonably practicable from the standpoint of prudent business management.

8.3 Damage or Destruction Due to Cause Not Required to be Covered by Insurance. If the improvements comprising the Project are completely destroyed or substantially damaged by a casualty against which Developer is not required to (and has not) insured, then Subject to the rights of any Senior Lender, Developer shall not be required to repair, replace, or restore such improvements and may elect not to do so by providing City with written notice of election not to repair, replace, or restore within one hundred twenty (120) days after such substantial damage or destruction. In such event, (i) Developer shall remove all debris from the Site and cause any liens

on the property, including that of Senior Lender, to be paid in full and/or removed from title on the Site, and (ii) upon removal of any other liens on the Site, the AH/DDA, the Ground Lease, and this Agreement shall automatically terminate and City shall cooperate to remove this Agreement, the Memorandum of Ground Lease, and the AH/DDA from title. As used in this Section 8.3, "substantial damage" shall mean damage or destruction which is thirty-five percent (35%) or more of the replacement cost of the improvements comprising the Project. In the event Developer does not timely elect not to repair, replace, or restore the improvements as set forth in the first sentence of this Section 8.3, Developer shall be conclusively deemed to have waived its right not to repair, replace, or restore the improvements and thereafter Developer shall promptly commence and complete the repair, replacement, or restoration of the damaged or destroyed improvements in accordance with Section 8.1 above and continue operation of the apartment complex and parking spaces during the period of repair (if practicable) in accordance with Section 8.2 above.

9.0 LIMITATION ON TRANSFERS.

The qualifications and identity of the Developer are of particular concern to the City. It is because of these qualifications and identity that the City is entering into the AH/DDA and this Agreement with the Developer. Consequently, no person, whether a voluntary or involuntary successor of Developer, shall acquire any rights or powers under this Agreement nor shall the Developer assign all or any part of this Agreement or the Site without the prior written approval of the City. A voluntary or involuntary sale or transfer of any interest in the Developer or the Site during the term of this Agreement shall be deemed to constitute an assignment or transfer for the purposes of this Article 9, and the written approval of the City shall be required prior to effecting such an assignment or transfer. Any purported transfer, voluntarily or by operation of law, except with the prior written consent of the City, shall be null and void. During the term of this Agreement the Developer shall not, except as permitted by this Agreement, assign or attempt to assign this Agreement or any rights or duties herein, nor make any total or partial sale, transfer, conveyance, or assignment of the whole or any part of the Site or any of the improvements thereon.

Notwithstanding any other provision of this Agreement to the contrary, City approval of an assignment of this Agreement or transfer of Developer's leasehold interest in the Site, or any interest therein, shall not be required in connection with:

a. the conveyance or dedication of any portion of the Site to the City, or other appropriate governmental agency, including public utilities, where the granting of such conveyance or easement permits or facilitates the development of the Project on the Site or is otherwise required to provide public access to the City's property and for parking; or

b. any assignment of the limited partner interests in Developer to an Affiliate of Developer or Jamboree;

c. the transfer of the Project or Site to Jamboree, an entity controlled by Jamboree, a nonprofit corporation in which a majority of the board of directors are members of the board of directors of Jamboree (any of the foregoing a "Jamboree Affiliate Entity"), or a partnership or limited liability company in which a Jamboree Affiliate Entity is a general partner or managing member;

d. any mortgage, deed of trust, or other form of conveyance required for any reasonable method of financing the development of the Project on the Site that is contemplated in the Project Budget attached to the AH/DDA or has otherwise been approved by the City Manager, including all direct and indirect costs related thereto, and any refinancing of any such mortgage, deed of trust, or other form of conveyance provided such refinancing does not result in a loan to value ratio in excess of 80% or a debt coverage ratio less than 1.15 to 1;

e. transfers of limited partnership interests resulting from the death or mental or physical incapacity of an individual;

f. transfers of limited partnership interests in trust for the benefit of a spouse, children, grandchildren, or other family member, or for charitable purposes;

g. the admissions of the Qualified Tax Credit Investor to Developer as a limited partner thereof;

h. the transfer by the Qualified Tax Credit Investor of its limited partnership interests to an entity that has the same general partner or managing member as the Qualified Tax Credit Investor or an Affiliate thereof.

Notwithstanding anything in this Article 9 to the contrary, any transfer or assignment by Developer or any successor in interest to Developer not requiring the approval by City shall be effective when made but shall not be deemed to relieve Developer or any successor party from the obligation to timely complete development of the Project unless and until the transferor and transferee execute and deliver to City an assignment and assumption agreement in a form and with content reasonably acceptable to City's legal counsel. Any transfer or assignment by Developer or any successor in interest to Developer requiring the approval by City pursuant to this Article 9 shall not be effective and shall not be deemed to relieve Developer or any successor party from the obligation to timely complete development of the Project unless and until the transferor and transferee execute and deliver to the City an assignment and assumption agreement in a form and with content reasonably acceptable to City's legal counsel.

This Article 9 shall not be applicable to the leasing of individual Units to Eligible Tenants in accordance with this Agreement, and no assignment and assumption agreement shall be required in connection therewith.

10.0 EVENTS OF DEFAULT BY DEVELOPER.

Subject to extensions of time pursuant to the terms of Section 22, the occurrence of one or more of any of the following events shall constitute an "**Event of Default**" by Developer hereunder if Developer shall have not cured, corrected, or remedied such failure within, unless a shorter or longer cure period is provided for specific defaults elsewhere in this Agreement, thirty (30) days following the service on Developer of a written notice from City specifying the failure complained of, or if it is not reasonably practicable to cure or remedy such failure within such thirty (30) day period (which impracticality shall not apply to monetary defaults), within such longer period as shall be reasonable under the circumstances provided that Developer has commenced to cure within the same thirty (30) day period and has diligently prosecuted such cure to completion:

10.1 Developer abandons or surrenders the Site for more than thirty (30) days; or

10.2 Developer is in default of any of the covenants, terms or provisions of this Agreement; or

10.3 Developer voluntarily files or has involuntarily filed against it any petition under any bankruptcy or insolvency act or law and the same has not been dismissed within one hundred twenty (120) days thereafter; or

10.4 Developer is adjudicated a bankrupt; or

10.5 Developer makes a general assignment for the benefit of creditors in violation of the terms of this Agreement, the Ground Lease, or the AH/DDA.

Notwithstanding anything herein to the contrary, whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer of the terms hereunder, the City shall at the same time deliver a copy of such notice or demand to the Qualified Tax Credit Investor. The Qualified Tax Credit Investor (insofar as the rights of the City are concerned) shall have the right, at its option, within thirty (30) days after the receipt of the notice (or such longer period of time as may be reasonably required provided the cure is commenced within such thirty (30) day period and thereafter diligently prosecuted to completion), to cure or remedy or commence to cure or remedy any such default. Such cure period shall run concurrently with the Developer's cure period described in this Article 10.0.

11.0 REMEDIES OF CITY.

In the event Developer defaults in the performance or observance of any covenant, agreement or obligation of Developer pursuant to this Agreement, and if such default remains uncured for a period of thirty (30) days after written notice thereof shall have been given by City (or such lesser period as may apply under Section 4.1), or, in the event said default cannot reasonably be cured within said time period, Developer has failed to commence to cure such default within the applicable time period and diligently prosecute said cure to completion, then City may declare an "Event of Default" to have occurred hereunder, and, at its option, may take one or more of the following steps:

11.1 With respect to (i) the physical condition of the Site, or (ii) Developer's Gross Mismanagement of the Project, enter the Site and correct or cause to be corrected said default and charge the costs thereof (including costs incurred by City in enforcing this provision) to the account of Developer, which charge shall be due and payable within thirty (30) days after presentation by City of a statement of all or part of said costs, and if such bill is not timely paid then pursue the remedies set forth in Section 4.2;

11.2 Correct or cause to be corrected said default and pay the costs thereof (including costs incurred by City in enforcing this provision) from the proceeds of any insurance;

11.3 Exercise its right to maintain any and all actions or proceedings at law or suits in equity to compel Developer to correct or cause to be corrected said default;

11.4 Terminate this Agreement by written notice to Developer;

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by another party.

12.0 NONDISCRIMINATION.

Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person, or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, nor shall Developer, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site, or any part thereof. The foregoing covenants shall run with the land.

Developer agrees for itself and any successor in interest that Developer shall refrain from restricting the rental, sale, or lease of any portion of the Site, or contracts relating to the Site, on the basis of race, color, creed, religion, sex, marital status, ancestry, or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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

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

establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased. The foregoing covenants shall run with the land."

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

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, its successors and assigns, the City and any successor in interest to the Site, together with any property acquired by the Developer pursuant to this Agreement, or any part thereof. The covenants against discrimination shall remain in effect in perpetuity.

13.0 COVENANTS TO RUN WITH THE LAND.

Developer hereby subjects the Site to the covenants, reservations, and restrictions set forth in this Agreement. City and Developer hereby declare their express intent that all such covenants, reservations, and restrictions shall be deemed covenants running with the land, and shall pass to and be binding upon the Developer's successors in interest to the Site; provided, however, that on the termination of this Agreement said covenants, reservations and restrictions shall automatically expire. All covenants established in this Agreement shall, without regard to technical classification or designation, be binding for the benefit of the City, and such covenants shall run in favor of the City for the entire term of this Agreement, without regard to whether the City is or remains an owner of any land or interest therein to which such covenants relate. Each and every contract, deed or other instrument hereafter executed covering or conveying the Site or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations, and restrictions, regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed or other instrument.

City and Developer hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that Developer's legal interest in the Site is rendered less valuable thereby. City and Developer further hereby declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by Eligible Tenants, the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes for which the City was formed.

Developer, in exchange for the City entering into the AH/DDA, and pursuant to the requirements of applicable laws governing the Project, including the Density Bonus Laws and use

of Bond Proceeds, hereby agrees to hold, sell, and convey Developer's interest in the Site subject to the terms of this Agreement. Developer also grants to the City the right and power to enforce the terms of this Agreement against the Developer and all persons having any right, title or interest in the Site or any part thereof, their heirs, successive owners and assigns.

The covenants set forth in this Agreement shall remain in effect until expiration of the Term or earlier termination pursuant to the following paragraph.

Notwithstanding anything to the contrary in this Agreement, this Agreement shall automatically terminate, and the Term shall automatically end, if before the end of the Term either of the following occurs, (i) that certain Ground Lease entered into between Developer and City on or about the same date hereof (the "**Ground Lease**"), a memorandum of which is being recorded substantially concurrently herewith in the Official Records of Orange County, expires, or (ii) City terminates the Ground Lease and a new ground lease is not entered into substantially concurrently with said termination. Notwithstanding such automatic termination of this Agreement in the foregoing circumstances, however, Developer agrees to execute and record a document formally terminating this Agreement if necessary to clear this Agreement from title.

14.0 INDEMNIFICATION.

Developer agrees for itself and its successors and assigns to indemnify, defend, and hold harmless the Released/Indemnified Parties, with defense counsel of their choosing or satisfactory to them, from and against any loss, liability, claim, or judgment relating in any manner to the Project excepting only any such loss, liability, claim, or judgment arising out of the intentional wrongdoing or active negligence of any of the Released/Indemnified Parties.

15.0 UTILITIES AND TAXES.

Developer shall remain fully obligated for the payment of (i) real and personal property taxes and assessments in connection with the Site (subject to any exemptions available to Developer in connection therewith), and (ii) all charges for all utilities serving the Site for which the tenants of the Units are not responsible.

16.0 ATTORNEYS' FEES.

In the event that a party to this Agreement brings an action against the other party hereto by reason of the breach of any condition, covenant, representation or warranty in this Agreement, or otherwise arising out of this Agreement, the prevailing party in such action shall be entitled to recover from the other party its reasonable attorney's fees and costs, including expert witness fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, including the conducting of discovery.

17.0 AMENDMENTS.

The Developer and the City agree to mutually consider reasonable requests for amendments to this Agreement which may be made by either of the parties hereto, or lending institutions, provided such requests are consistent with this Agreement and would not substantially

alter the basic business terms included herein. The City Manager shall have the authority to approve, on behalf of the City, amendments to this Agreement that would not substantially alter the basic business terms or substantially increase the risk or cost to the City. All other amendments shall require the action of the City Council. All amendments, including those authorized to be approved by the City Manager, shall be in writing and shall be signed by authorized representatives of City and Developer.

18.0 NOTICE.

Formal notices, demands, and communications between City and Developer shall be sufficiently given if (i) personally delivered, (ii) delivered by a reputable same-day or overnight courier services that provides a receipt showing date and time of delivery, or (iii) delivered by United States mail, registered or certified, postage prepaid, return receipt requested. Delivery shall be made to the following addresses:

If to City:
City of Costa Mesa
77 Fair Drive
Cosa Mesa, California 92626
Attn: City Manager

With a copy to:
Jones Mayer
3777 N. Harbor Blvd.
Fullerton, CA 92835
Attn: Kimberly Hall Barlow

If to Developer:
_____ LP
c/o Jamboree Housing Corporation
17701 Cowan Ave., Suite 200
Irvine, CA 92614
Attn: Asset Manager

With a copy to:
_____
_____
_____

and

Rutan & Tucker, LLP
18575 Jamboree Road, 9th Floor
Irvine, CA 92612
Attn: Patrick McCalla, Esq.

Notices that are personally delivered, delivered by messenger/courier shall be deemed effective upon receipt. Notices delivered by mail shall be deemed effective upon the earlier of actual receipt by the addressee thereof or the expiration of forty-eight (48) hours after depositing in the United States Postal System in the manner described in this Section. Such written notices, demands, and communications may be sent in the same manner to such other addresses as a party may from time to time designate by mail.

19.0 NONLIABILITY OF CITY OFFICIALS.

No officer, official, member, employee, agent, or representative of the City shall be personally liable to Developer, or any successor in interest to Developer, in the event of any default or breach by City or for any amount which may become due to Developer or successor or on any obligations under the terms of this Agreement or the AH/DDA.

20.0 TRANSACTIONS WITH AFFILIATES.

Developer shall have the right to enter into contracts with subsidiaries, affiliates and other related entities for the purpose of providing cleaning, maintenance and repair services, insurance policies and other purposes related to the operation of the Site, provided that all such costs and charges are competitive with the costs, charges, rent and other sums which would be paid by or to, as the case may be, an unrelated third party. City acknowledges and agrees that Developer may act as its own general contractor or may engage a third party licensed contractor for the construction of any improvements on the Site and that will be entitled in so doing to earn a commercially reasonable fee.

21.0 SEVERABILITY/WAIVER/INTEGRATION/INTERPRETATION; ENTIRE AGREEMENT.

21.1 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

21.2 Waiver. All waivers of the provisions of this Agreement, unless specified otherwise herein, must be in writing and signed by the appropriate authorities of City or Developer, as applicable. No delay or omission by either party hereto in exercising any right or power accruing upon the compliance or failure of performance by the other party hereto under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party hereto of a breach of any of the covenants, conditions or agreements hereof to be performed by the other party shall not invalidate this Agreement nor shall it be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

21.3 Integration. This Agreement contains the entire Agreement between the parties concerning the subject matter hereof and neither party relies on any warranty or representation not contained in this Agreement.

21.4 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

21.5 Entire Agreement. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors-in-interest with respect to all or any part of the subject matter hereof.

22.0 ENFORCED DELAY; EXTENSIONS OF TIME.

Performance by a party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; 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; or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. In the event of such a delay (herein "**Enforced Delay**"), the party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the Enforced Delay, and shall commence to run from the time of the commencement of the cause, provided notice by the party claiming such extension is sent to the other party within thirty (30) days after the sending party has knowledge, or should have obtained knowledge, of the commencement of the cause. The following shall not be considered as events or causes beyond the control of Developer, and shall not entitle Developer to an extension of time to perform: (i) Developer's failure to obtain financing for the Project (except as a result of an omission or breach by City), (ii) Developer's failure to negotiate agreements with prospective tenants or users for the Project, or (iii) interest rates or economic or market conditions. Times of performance under this Agreement may also be extended by mutual written agreement by City and Developer. The City Manager shall also have the authority on behalf of City to administratively approve extensions of time not to exceed a cumulative total of one (1) year.

23.0 GOVERNING LAW.

This Agreement shall be governed by the internal laws of the State of California without regard to conflict of law principles.

24.0 NO MERGER.

The covenants, terms, and provisions of this Agreement shall not merge with any grant deed or other instrument pertaining to the conveyance of any interest in real property.

25.0 COUNTERPARTS.

This Agreement may be executed in any number of counterparts, each of which shall constitute one original and all of which shall be one and the same instrument.

26.0 MORTGAGEE PROTECTION.

The default of any of the provisions of this Agreement shall not defeat or render invalid the lien of any duly recorded mortgage or deed of trust encumbering the Site Leasehold or any portion thereof. The City hereby agrees to cooperate, including by effecting suitable amendment to this Agreement, to add any provision which may reasonably be requested by any proposed mortgagee for the purpose of implementing the mortgagee protection provisions contained in this Agreement and allowing such mortgagee reasonable means to protect or preserve the lien and security interest of its mortgage as well as such other documents containing terms and provisions customarily required by mortgagees in connection with any such financing. Nothing herein contained shall require any mortgagee to cure any default of Developer hereunder prior to its

acquisition of Developer's leasehold interest in the Site pursuant to a foreclosure of its mortgage, trustee sale thereunder or deed in lieu foreclosure thereof. Upon acquisition of Developer's leasehold interest in the Site, such mortgagee or the purchaser or grantee, as applicable shall only be liable and responsible for defaults first arising after the date of such acquisition.

27.0 LIMITED GRANT OF SUBORDINATION.

Provided that the affordability covenants and related preservation thereof in Articles 1, 2 , 3 (other than Sections 3.12 and 3.13), 12 and 13 of this Agreement and the public's right to access, ingress, egress and use of parking spaces on the Site have priority over any deed of trust or other mortgage security instrument and shall remain binding and run with the Site for the "Term" of this Agreement in the event of foreclosure or deed in lieu of foreclosure or any other action taken pursuant to such deed of trust or other mortgage security instrument, City agrees to subordinate this Agreement to any deed of trust evidencing a loan which is used, in whole or in part, to refinance the Construction Loan, the Take-Out Loan or any subsequent loan used to refinance said refinancing loan (each a "**Refinancing Loan**") provided that the original principal amount of any such Refinancing Loan shall not be more than the greater of (a) the lesser of (i) eighty percent (80%) of the fair market value of the Project as determined by the lender of such Refinancing Loan; and (ii) the amount which results in a debt service coverage ratio for the Refinancing Loan that is equal to or greater than 1.15:1 as determined by the lender for such Refinancing Loan; and (b) the amount necessary to cause reconveyance of the loan being refinanced, including payment of (1) all costs [i.e., escrow, legal, title, etc.] of the refinance, (2) any deferred developer fee, (3) any completion operating deficit loans, (4) any proceeds that are required to be paid to another soft lender, provided the loan made by such soft lender is contemplated in the Project Budget, (3) amounts reserved for any repairs or capital improvements to the Project, (4) amounts required to be reserved by the refinancing lender and (5) amounts paid to acquire or redeem the interest of Borrower's limited partner; and provided further that nothing herein shall be deemed to subordinate or affect the affordability covenants of the AH/DDA or the City Regulatory Agreement. Any deed of trust securing any Refinancing Loan shall hereinafter be referred to as the "**Refinancing Deed of Trust**". Subject to the conditions of any subordination set forth in this Section 27.0 and the AH/DDA, the City hereby agrees to subordinate this Agreement to any authorized Refinancing Deed of Trust, and understands that in reliance upon and in consideration of this subordination, specific loans and advances are being and will be made, and, in connection therewith, specific monetary and other obligations are being and will be entered into, which would not have been made or entered into but for reliance upon this Section. The City will, at any time upon sixty (60) days written request from Developer, execute a further specific subordination agreement reasonably required by the lender of the Refinancing Loan subordinating this Agreement to any Refinancing Deed of Trust, provided that any such subordination agreement complies with the requirements in this Section by maintaining the priority of the affordability covenants and their running with the Site for the Term of this Agreement, and any such subordination agreement is in a form approved by the City, in its reasonable discretion, that clearly provides the subordination does not include the affordability covenants and preservation thereof for the Term of this Agreement. Any such specific subordination agreement shall be deemed reasonable and to comply with the requirements of this Section if it is substantially similar to the form of subordination agreement executed by City in connection with the Construction Loan or the Take-Out Loan.

28.0 FINANCIAL OBLIGATIONS PERSONAL TO DEVELOPER.

Notwithstanding any provisions of this Agreement to the contrary, but subject to Section 4.2 hereof, (i) all obligations of the Developer under this Agreement for the payment of money, (ii) all claims for damages against the Developer occasioned by breach or alleged breach by the Developer of its obligations under this Agreement, and (iii) all of Developer's indemnification obligations hereunder, shall not be a lien on the Project and no person shall have the right to enforce such obligations or claims other than directly against the Developer as provided in this Agreement.

Provided a transfer complies with Article 9 of this Agreement and as long as the prior "Developer" under this Agreement has delivered to the City an assignment and assumption or other agreement giving notice to City of a subsequent owner that has legal and binding ownership of the Project, no subsequent owner of the Project shall be liable or obligated for the breach or default of any obligations of the Developer under this Agreement on the part of any prior Developer, including, but not limited to, any payment or indemnification obligation, as such obligations are personal to the person who was the Developer at the time the default or breach was alleged to have occurred and such person shall remain liable for any and all damages occasioned thereby even after such person ceases to be the Developer. Each Developer shall comply with and be fully liable for all obligations of a "Developer" hereunder during its period of ownership.

29.0 LIMITED RECOURSE OBLIGATIONS.

The obligations of Developer under this Agreement are a limited obligation of the Developer and no member, officer, partner or employee of Developer shall have any personal liability for the obligations of Developer contained in this Agreement; the City's sole recourse for a default under this Agreement shall be the Site and the Project.

[end - signature page follows]

IN WITNESS WHEREOF, the City and Developer have executed this Regulatory Agreement and Declaration of Covenants and Restrictions by duly authorized representatives on the date first written hereinabove.

"**City**"

CITY OF COSTA MESA,
a California municipal corporation

Dated: _____, 2024

By: _____
Lori Ann Farrell Harrison, City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

JONES MAYER

_____
Counsel to the City of Costa Mesa

"**Developer**"

_____ LP, a
California limited partnership,

By: _____ LLC, a
California limited liability company,
Managing General Partner

Dated: _____, 2024

By: Jamboree Housing Corporation, a
California nonprofit public benefit
corporation, Manager

By:_____
Name:_____
Title:_____

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

State of California)
County of Orange)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

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

State of California)
County of Orange)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF SITE

[To be inserted]

EXHIBIT "B"

INCOME COMPUTATION AND CERTIFICATION FORM

[See following pages]

CITY OF COSTA MESA
77 Fair Drive, Cosa Mesa, California 92626

INCOME COMPUTATION AND CERTIFICATION FORM
(Affordable Housing Eligibility for Renter Occupied Unit

PART I. PROPERTY FINANCED WITH GOVERNMENT ASSISTANCE

Property Address: _____

PART II. TENANT HOUSEHOLD INFORMATION

		Date of Birth	Soc. Sec. #	Relationship

TOTAL NUMBER OF PERSONS IN HOUSEHOLD: _____ (Please list information on other household members below)

Mailing Address: _____ Telephone Numbers: Work (____) _____
_____ Home (____) _____

PART III. GROSS HOUSEHOLD INCOME Complete the following, attach copies of required verification as specified below. Attach a note explaining any significant changes in household income between the previous year and the current year. INFORMATION IS REQUIRED FOR ALL MEMBERS OF THE HOUSEHOLD AGE 18 OR OLDER REGARDLESS OF WHETHER THEY CONTRIBUTE TO THE COSTS OF THE HOUSEHOLD. If you are not required to file a tax return, please indicate this in Part V by your signature.

	ANN INCOME	**ANN INCOME**	
INCOME SOURCES	**for owner**	**others in hshld**	**VERIFICATIONS** (needed for file)
A. Employment earnings			Last tax return & last 3 pay stubs, employer verification
B. Self-employment earnings			Last 2 tax returns & current financial stmt
C. Social Security (OASDI)			Annual award letter
D. Supplemental Security Income (SSI)			Annual award letter
E. Public assistance (AFDC, general			Current benefit statement
assistance, unemployment, etc.)			
F. Pension (s)			Annual award letter, yearend stmt, W-2
G. Interest income			Last 2 statements for all accounts
H. Investment income (stocks, bonds, real estate, etc.)			Last 2 statements for all accounts
I. Room rental			Rental agreement, copies of checks, etc.
J. Other income (list type/source)			
K. **TOTAL INCOME** (sum of A thru J)			/ 12 months = _____ mo. income

PART IV. PROPERTY STATUS

Will this property be your primary residence? _____

Will someone other than the individuals listed above be occupying this property? _____

If yes - Name of occupants: _____

Telephone Number: _____ Mailing Address: _____
_____

My/our housing expenses are as follows:

1. Monthly tenant rent _____
2. Average monthly utilities _____

PART V. TENANT CERTIFICATION

I/We understand that after the initial eligibility determination, completion of monitoring forms is required on an annual basis. I/We certify that I/we have disclosed all information pertaining to my/our application and that the information presented in the foregoing Sections I through IV is true and accurate to the best of my (our) knowledge.

_____ _____
Tenant Date Tenant Date

For more information regarding this application, please contact management staff at (760) _____.

FOR OFFICE USE ONLY

_____ Information verified
_____ Income category
_____ Maximum allowable annual income (_____% of median)
_____ Applicant's annual income _____ gross monthly _____ max housing costs

Comments: _____
_____
_____
_____
_____

_____
Management Staff Date

EXHIBIT "C"

INCOME RECERTIFICATION FORM

[See following document]

CITY OF COSTA MESA
77 Fair Drive, Cosa Mesa, California 92626

INCOME RECERTIFICATION FORM
(Renter Occupied Unit)

PART I. GENERAL INFORMATION

1. Property Owner Name _____, L.P.

2. Renter Name_____

3. Property Address _____
Costa Mesa, CA 92626 (Please include P.O. Box No. if applicable)

4. Has there been a change in ownership of this property during the preceding 12 month period?
Yes ( ) No ( )

(If yes, please explain) _____

PART II. UNIT INFORMATION

5. Number of Bedrooms _____
6. Number of Occupants _____
Names:

_____ _____

_____ _____

PART III. AFFIDAVIT OF RENTER

I, _____, and I, _____, as renters of units assisted pursuant to the Affordable Housing Program of the City of Costa Mesa (the "**Program**"), do hereby represent and warrant that the following computation includes all income (I/we) **anticipate receiving for the 12-month period commencing on January 1, 20___** (including the renter(s) and all family members of the renters):

(a) amount of wages, salaries, overtime pay, commissions, fees, tips and bonuses, and payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (before payroll deduction) _____

(b) net income from business or profession or rental of property (without deduction for repayment of debts or expansion of business) ____

(c) interest and dividends _____

(d) periodic receipts such as social security, annuities, pensions, retirement funds, insurance policies, disability or death benefits, alimony, child support, regular contributions or gifts from persons not occupying unit _____

(e) public assistance allowance or grant plus excess of maximum allowable for shelter or utilities over the actual allowance for such purposes _____

(f) regular and special pay and allowances of a member of armed services (whether or not living in the dwelling)

who is head of the family or spouse _____

Subtotal (a) through (f) _____

LESS: Portion of above items which are income of a family member who is less than 18 years old or a full-time student (_____)

TOTAL ELIGIBLE INCOME _____

NOTE: The following items are not considered income: casual or sporadic gifts; amounts specifically for or in reimbursement of medical expenses; lump sum payment such as inheritances, insurance payments, capital gains and settlement for personal or property losses; educational scholarships paid directly to the student or educational institution; government benefits to a veteran for education; special pay to a serviceman head of family away from home and under hostile fire; foster child care payments; value of coupon allotments for purpose of food under Food Stamp Act of 1964 which is in excess of amount actually charged the eligible household; relocation payments under Title II of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; payments received pursuant to participation in the following programs: VISTA, Service Learning Programs, and Special Volunteer Programs, SCORE, ACE, Retired Senior Volunteer Program, Foster Grandparent Program, Older American Community Services Program, and National Volunteer Program to Assist Small Business Experience.

2. This affidavit is made with the knowledge that it will be relied upon by the Landlord and the City to determine maximum income for eligibility and (I/we) warrant that all information set forth in this Part III is true, correct and complete and based upon information (I/we) deem reliable and that the estimate contained in paragraph 1 is reasonable and based upon such investigation as the undersigned deemed necessary.

3. (I/We) will assist the Landlord and the City in obtaining any information or documents required to verify the statements made in this Part III and have **attached hereto a copy of our federal income tax return for the last year (20___)**.

4. (I/We) acknowledge that (I/we) have been advised that the making of any misrepresentation or misstatement in this affidavit will constitute a material breach of (my/our) agreement with the Landlord to rent the unit and will additionally enable the City to initiate and pursue all applicable legal and equitable remedies with respect to the unit and to me/us.

B. (My/Our) monthly housing expenses are limited to the following:

1. Base rent _____
2. Average Monthly Utilities _____
3. Other (explain) _____

(I/We) understand that completion of monitoring forms is required on an annual basis and agree to notify the City of Costa Mesa in writing of any change in ownership or rental of the unit. (I/We) do hereby swear under penalty of perjury that the foregoing statements are true and correct.

_____

Date _____ _____

Renter(s)

EXHIBIT “D”

LEASE RIDER

[See following page]

JHC _____ PROJECT

Lease Rider

RESIDENT: _____
(if there is more than one adult occupant, each person must sign the rider)

LEASE DATE: _____

UNIT NO.: _____

The undersigned tenant(s) hereby certify and agree as follows:

1. Income Certification. The attached income certification is true, correct and complete. I/we agree to provide a similar certification annually upon request during the term of my occupancy.

2. Employer Verification. The landlord or property manager has my permission to verify my/our income from any sources of income I/we receive.

3. False Statements. If the income certification and/or lease application submitted by me/us is false, or if I/we fail to provide annual certifications, the landlord or property manager will have the right to terminate my/our lease and recover possession of my/our unit. I/we understand that the landlord and property manager are relying on this income certification in accepting me/us as a tenant, and the landlord or property manager will be seriously harmed if my/our income does not qualify the unit for the affordable housing program.

4. This rider shall be considered as part of my/our lease.

Date: _____ _____
Tenant

_____
Tenant

_____
Tenant

_____
Tenant

EXHIBIT "E"

CERTIFICATION OF CONTINUING PROGRAM COMPLIANCE

[See following page]

CERTIFICATION OF CONTINUING PROGRAM COMPLIANCE

The undersigned, being duly authorized to execute this certificate on behalf of JHC _____, L.P., a California limited partnership ("**Developer**"), owner of the JHC-_____ Housing Project, hereby represents and warrants that:

1. He/she has read and is thoroughly familiar with the provisions of the Affordable Housing / Disposition and Development Agreement between the City of Costa Mesa and Developer, as assigned to said owner of the Project.

2. As of June 30, 20__, the following number of residential units in the _____ ("**Rental Apartment Complex**") (i) are currently occupied by tenants qualifying as Eligible Tenants at Affordable Rents; or (ii) are currently vacant and being held available for occupancy by Eligible Tenants and have been so held continuously since the date Eligible Tenants vacated such unit, as indicated:

i. Units occupied by Eligible Tenants

a. ____ units occupied by 30% Low Income Households
c. ____ units occupied by Low Income Households

ii. ____ vacant units

3. The unit number, unit size, the tenant paid rental amount charged and collected, the number of occupants and the income of the occupants for each restricted unit in the Rental Apartment Complex is set forth on the attached list. All restricted units in the Rental Apartment Complex are rented at Affordable Rent.

OWNER NAME

_____LP, a
California limited partnership,

By: _____ LLC, a
California limited liability company,
Managing General Partner

By: Jamboree Housing Corporation, a
California nonprofit public benefit
corporation, Manager

Dated: _____

By:_____
Name:_____
Title:_____

EXHIBIT "F"

SOCIAL SERVICES

[To be inserted]

ATTACHMENT NO. 6

RELEASE OF CONSTRUCTION COVENANTS

[SEE FOLLOWING DOCUMENT]

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Costa Mesa
77 Fair Drive
Cosa Mesa, California 92626
Attn: City Manager

(Space Above Line for Recorder's Use Only)
(Exempt from Recording Fee per Gov. Code 27383)

[NOTE: RECORD
AS PARTIAL RELEASE
OF AGREEMENT]

RELEASE OF CONSTRUCTION COVENANTS

WHEREAS, JHC _____, L.P., a California limited partnership, ("**Developer**"), is the owner of a leasehold interest in that certain real property located at 695 W. 19th Street , in the City of Costa Mesa, County of Orange, State of California, as more particularly described in the legal description in Exhibit A attached hereto and incorporated herein by this reference (collectively, the "**Site**").

WHEREAS, by an Affordable Housing / Disposition and Development Agreement (hereinafter referred to as the "**AH/DDA**") dated _____, 2024, by and between Developer and the City of Costa Mesa, a California municipal corporation ("**City**"), has redeveloped the Site in accordance with the AH/DDA; and

WHEREAS, pursuant to Section 3.13 of the AH/DDA, promptly after Developer's completion of the "Project" (as that term is defined in the AH/DDA) upon the Site, and upon request by Developer, City shall furnish Developer with a Release of Construction Covenants in such form as to permit it to be recorded in the Official Records of the County of Orange; and

WHEREAS, the issuance by City of the Release of Construction Covenants shall be conclusive evidence that Developer has complied with the terms of the AH/DDA pertaining to the development of the Site; and

WHEREAS, Developer has requested that City furnish Developer with the Release of Construction Covenants; and

WHEREAS, City has conclusively determined that the development of the Site has been satisfactorily completed as required by the AH/DDA;

NOW, THEREFORE:

1. As provided in the AH/DDA, City does hereby certify that development of the Site has been fully and satisfactorily performed and completed, and that such development is in full compliance with said AH/DDA.

2. This Release of Construction Covenants shall not constitute evidence of Developer's compliance with the following agreements, the provisions of which shall continue to run with the land until termination thereof in accordance with the terms thereof:

(i) Regulatory Agreement and Declaration of Covenants and Restrictions by and between Developer and City, and recorded on _____, as Instrument No. _____ in the Office of the Orange County Recorder.

3. This Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance construction work on the Site, or any part thereof.

4. This Release of Construction Covenants is not a Notice of Completion as referred to in California Civil Code Section 3093.

5. Except as stated herein, nothing contained in this instrument shall modify in any way any other provisions of the AH/DDA or any other provisions of any agreements or documents referenced therein.

IN WITNESS WHEREOF, City has executed this Release of Construction Covenants as of this ____ day of _____, _____.

CITY OF COSTA MESA,
a California municipal corporation

By: _____
Lori Ann Farrell Harrison, City Manager

CONSENT TO RECORDATION

JHC-_____, L.P., a California limited partnership ("**Owner**"), owner of the fee interest in the real property legally described in Attachment No. 1 hereto, hereby consents to the recordation of the foregoing Release of Construction Covenants against said real property.

_____LP, a
California limited partnership,

By: _____LLC, a
California limited liability company,
Managing General Partner

By: Jamboree Housing Corporation, a
California nonprofit public benefit
corporation, Manager

By:_____
Name:_____
Title:_____

Dated: _____

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

State of California)
County of Orange)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

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

State of California)
County of Orange)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF SITE

[To be inserted]

ATTACHMENT NO. 7

PROJECT BUDGET

[SEE FOLLOWING PAGE]

ATTACHMENT NO. 8

NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY

[SEE FOLLOWING DOCUMENT]RECORDING REQUESTED BYAND WHEN RECORDED MAIL TO: City of Costa Mesa 77 Fair Drive Cosa Mesa, California 92626 Attn: City Manager	

Exempt From Recording Fee Pursuant to Government Code § 27383

NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY

Important notice to owners, purchasers, tenants, lenders, brokers, escrow and title companies, and other persons, regarding affordable housing restrictions on the real property described in this Notice: Affordable housing restrictions have been recorded with respect to the property described below (referred to in this Notice as the "**Site**") which require that the Site be developed as an affordable rental development and that all of the units except one manager's unit be rented to and occupied by persons and households of limited income at affordable rents.

Title of Document Containing Affordable Housing Restrictions: Regulatory Agreement and Declaration of Covenants and Restrictions ("**Regulatory Agreement**").

Parties to Regulatory Agreement: City of Costa Mesa, a California municipal corporation ("**City**"), and _____LP, a California limited partnership ("**Owner**").

The Regulatory Agreement is recorded concurrently with this Notice, in the official records of Orange County.

Legal Description of Site: See Exhibit "A" attached hereto and incorporated herein by this reference.

Location of Site: 695 W. 19th Street, in the City of Costa Mesa, County of Orange, State of California.

Assessor's Parcel Number of Site: See Exhibit "A" attached hereto and incorporated herein by this reference.

Summary of Regulatory Agreement:

- The Regulatory Agreement requires the Owner to develop a rental housing development on the Site containing 70 units.

- The Regulatory Agreement restricts the rental of (i) ____ units to households whose annual income does not exceed the limits for a "very low income household," as defined in Health and Safety Code Section 50105, adjusted for household size; and (ii) ____ units to households whose annual income does not exceed the limits for "lower income households," as defined in Health and Safety Code Section 50093(b), adjusted for household size.

- The Regulatory Agreement restricts the rents that may be charged to such households to the maximum amount of rent, including a reasonable utility allowance, that does not exceed the rent permitted to be charged to the applicable household, as the case may be, determined pursuant to Health and Safety Code Section 50053(b).

- The term of the Regulatory Agreement is 99 years.

This Notice does not contain a full description of the details of all of the terms and conditions of the Regulatory Agreement. You will need to obtain and read the Regulatory Agreement to fully understand the restrictions and requirements which apply to the Site.

This Notice is being recorded and filed in compliance with Health and Safety Code Section 33334.3(f)(3) and (4), and shall be indexed against the City and the Owner of the Site.

[signature on next page]

"**City**"

CITY OF COSTA MESA, a California municipal corporation

Date: _____, _____

By:_____

Lori Ann Farrell Harrison City Manager

ATTEST:

_____City Clerk

APPROVED AS TO FORM:
JONES MAYER

_____Counsel to the City

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

State of California)
County of Orange)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF SITE

[To be inserted]

CONSENT TO RECORDATION

_____ L.P., a California limited partnership ("**Owner**"), owner of a leasehold interest in the real property legally described in Exhibit "A" hereto, hereby consents to the recordation of the foregoing Notice of Affordability Restrictions on Transfer of Property against said real property.

Dated: _____ By:_____

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

State of California)
County of Orange)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

ATTACHMENT NO. 9

FORM OF GROUND LEASE

[SEE FOLLOWING DOCUMENT]

GROUND LEASE

BETWEEN

CITY OF COSTA MESA
AS "LANDLORD"

AND

_____ LP
AS "TENANT"

CONCERNING CERTAIN REAL PROPERTY LOCATED

IN THE

CITY OF COSTA MESA, CA

GROUND LEASE

THIS GROUND LEASE (the **"Lease"** or **"Ground Lease"**) dated, for reference purposes only, as of _____, is entered into by and between the City of Costa Mesa, a California municipal corporation (**"City" or "Landlord"**) and _____LP, a California limited partnership (**"Tenant**").

RECITALS

A. City owns in fee that certain real property located at 695 W. 19th Street in the City of Costa Mesa, County of Orange, State of California, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Premises**").

B. The Premises is improved with a parking lot that serves the adjacent Costa Mesa Senior Center.

C. On or about _____, 2024, City and JHC-Acquisitions LLC, a California limited liability company ("**JHC-Acquisitions**"), entered into that certain Affordable Housing / Disposition and Development Agreement (the "**AH/DDA**"), pursuant to which, among other things, City agreed to ground lease the Premises to JHC-Acquisitions or a permitted assignee thereof for the development and operation on the Premises of a senior affordable rental housing project.

D. On or about the same date hereof, JHC-Acquisitions assigned all of its rights and obligations under the AH/DDA to Tenant.

E. City now desires to lease the Premises to Tenant for a period of ninety-nine (99) years following the Commencement Date pursuant to the terms of this Ground Lease.

NOW, THEREFORE, for and in consideration of the foregoing Recitals, which are incorporated herein by this reference, the covenants, representations, warranties and agreements set forth herein, and other good and valuable consideration, the sufficiency of which are hereby acknowledged, City and Tenant hereby agree to the following:

ARTICLE 1
PREMISES

1.1 **Lease of Premises**. For and in consideration of the covenants, conditions and restrictions set forth herein, City hereby leases to Tenant and Tenant hereby leases from City the Premises on the terms and conditions set forth herein. This Lease is effective and binds the parties as of the last date this Lease is signed by authorized representatives of all parties below ("**Effective Date**"), notwithstanding that the Term Commencement Date will occur on the date described in Section 2.1.

1.2 **Premises Definitions**.

1.2.1 Premises. "**Premises**" means that certain real property located at 695 W. 19th Street in the City of Costa Mesa, County of Orange, State of California, more particularly described in Exhibit A attached hereto and incorporated herein by this reference, together with all singular rights, easements, licenses, privileges and appurtenances thereunto attaching or in any way belonging thereto, which are or will be subject to a public access and use easement for the driveways, surface parking and a portion of the under-building parking on the Premises.

1.2.2 Project Improvements. "**Project Improvements**" means the senior affordable rental housing community to be developed on the Premises, including, without limitation, the following: all buildings, structures, parking lots, on site utility installations, landscaping, amenities, fences and other related ancillary facilities, together with any and all replacements or substitutions therefor or modifications thereto.

1.3 **Further Encumbrances**. City shall not encumber City's fee estate in the real property comprising the Premises without the prior written consent of each "Leasehold Lender" (as defined in Section 16.1), which consent shall be granted or withheld in such Leasehold Lender's sole and absolute discretion. City further irrevocably and unconditionally agrees that any mortgage, deed of trust or other security instrument now or hereafter encumbering all or any part of City's fee estate in the real property comprising the Premises shall automatically be subject and subordinate in all respects to the lien of this Lease (and all amendments, modifications, extensions and renewals hereof) and all existing and future "Leasehold Mortgages" (as defined in Section 16.1) (and all amendments, modifications, extensions and renewals thereof). City shall, at the request of any Leasehold Lender, cause the holder of each such mortgage, deed of trust and other security instrument to execute and deliver to the requesting Leasehold Lender a written and recordable subordination agreement in form and substance as required by such Leasehold Lender in its reasonable discretion.

ARTICLE 2
TERM OF LEASE

2.1 **Term.** The term of this Lease (the "**Term**") commences on the date on which a Memorandum of Ground Lease is recorded in accordance with Section 17.6 below (the "**Term Commencement Date**") and expires on the last day of the month in which the ninety-ninth (99th) anniversary of the Term Commencement Date occurs, and is subject to earlier termination as provided elsewhere in this Lease. The expiration or sooner termination of the Term shall be referred to as "**Lease Termination**."

2.2 **Limited Right to Reopen at 55 Year Mark.** This Lease may be reopened for negotiations up to six months prior to the 55th anniversary of the Effective Date through the 365th day after the 55th anniversary of the Effective Date for changes, deletions, or amendments for the purposes of negotiating Additional Rent payable by Tenant, social services to be provided to residents and the required parking access and management plan. Either party may request reopening for negotiations in writing and include a summary of the proposed changes.

2.3 **Lease Termination**. At Lease Termination, Tenant shall execute, acknowledge and deliver to City within thirty (30) days, a valid and recordable quitclaim deed covering all of the Premises, including the Project Improvements, free and clear of all liens, encumbrances, and deeds of trust, except those existing and created pursuant to the terms of this Lease or those remaining on title with the consent or at the request of the City (the "**Quitclaim Deed**"). Any and all encumbrances on the Premises or the Project Improvements at the time of Lease Termination which are the result or consequence of Tenant entering into this Lease, constructing the Project Improvements, operating the senior affordable rental community on the Premises, or any other actions or inactions of Tenant shall be cleared from title at Tenant's sole cost, liability and expense. If Tenant fails to clear such encumbrances at Lease Termination, Tenant shall continue to be liable and responsible for all such costs, liabilities and expenses associated with, related to or caused by such encumbrances that were not removed by Tenant, and City may take any and all action to enforce its rights under this Lease and to have such encumbrances removed, and all costs and expenses associated with such actions shall be paid solely by Tenant upon City demand for such payment.

ARTICLE 3
RENT

3.1 **Rent Definitions**.

3.1.1 Annual Base Rent. "**Annual Base Rent**" for any Lease Year (as defined in Section 3.1.4 hereof) means the amounts set out below:

Lease Years	Annual Base Rent
Term Commencement Date through the end of the Term	$1.00

3.1.2 Additional Rent. "**Additional Rent**" means all sums, Impositions (as defined in Section 4.1 hereof), costs, expenses, and other payments for which Tenant is responsible pursuant to this Lease and any amendment hereto.

3.1.3 Rent. The Annual Base Rent and the Additional Rent are collectively referred to as "**Rent**."

3.1.4 Lease Year. "**Lease Year**" means twelve (12) month periods, with the first Lease Year commencing on the Term Commencement Date, provided if the Term Commencement Date is other than the first day of a month, the first Lease Year shall also include the partial month during which the Term Commencement Date falls, and each subsequent Lease Year shall begin on the first day of the same month that is the first full month of the first Lease Year.

3.2 **Rent.** Tenant's obligation to pay Rent under this Lease shall consist of the obligation to pay (i) Annual Base Rent and (ii) Additional Rent.

3.2.1 Accrual of Annual Base Rent. Tenant's obligation to pay Annual Base Rent shall begin to accrue on the Term Commencement Date and shall continue to accrue throughout

the Term. The parties agree and acknowledge that the cumulative Annual Base Rent for the Term of Ninety-Nine Dollars ($99) shall be paid to City no later than the Term Commencement Date.

3.2.2 Additional Rent. Tenant's obligation to pay Additional Rent shall begin to accrue on the Term Commencement Date and shall continue to accrue throughout the Term. Additional Rent shall be payable by Tenant to the appropriate party on or before the date required by this Lease.

3.2.3 Additional Consideration. In addition to the Rent and Additional Rent provided for herein, consideration for this Lease shall also be and is Tenant's full and complete compliance with all terms, conditions, warranties and covenants contained in this Lease relating to the construction, operation and management of the Project Improvements.

3.2.4 Use of Residential Units. If at any time any residential unit in the Premises is used for any purpose other than as an affordable housing unit or a manager's unit as required under this Lease, notwithstanding Section 16.2.1, but at all times subject to the notice and cure period set forth in Section 15.1.12 and subject further to the rights of Leasehold Lenders set forth in Section 16.3.1, City shall have the right to exercise all remedies provided for herein, including, without limitation, the right to terminate this Lease as set forth in Section 15.5.1.2.

3.3 **Method of Payment.** Tenant shall pay all Rent to City in lawful money of the United States of America at City of Costa Mesa, 77 Fair Drive, Costa Mesa CA 92626, Attention: City Manager, unless City instructs Tenant in writing to deliver payment to another address, or unless this Lease specifically provides another place for payment.

3.4 **No Cost to City: No Counterclaim, No Abatement.** Except as otherwise expressly provided in this Lease, the Rent payable under this Lease shall be absolutely net to City, so that this Lease shall yield to City the full amount of the Annual Base Rent and the Additional Rent throughout the Term. Except as otherwise expressly provided in this Lease, Tenant shall pay Rent without assertion of any counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction.

ARTICLE 4
TAXES, ASSESSMENTS AND OTHER CHARGES

4.1 **Impositions.** Tenant agrees to pay, or cause to be paid, prior to delinquency but subject to the right to contest, to the proper authority, any and all valid taxes, assessments, impositions, fees and similar charges on the Premises which become effective after the Effective Date of this Ground Lease, including all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Premises (collectively, "**Impositions**"). Tenant shall not permit any Impositions to become a defaulted lien on the Premises or the Project Improvements thereon; provided, however, that in the event any Imposition is payable in installments, Tenant may make, or cause to be made, payment in installments; and, provided further, that Tenant may contest the legal validity or the amount of any tax, assessment, imposition, fee or similar charge, through such proceedings as Tenant considers necessary or appropriate, and Tenant may defer the payment thereof so long as the validity or amount thereof shall be contested by Tenant in good faith and without expense to the City. In the event of any such contest, Tenant

shall protect, defend and indemnify the City against all loss, cost, expense or damage resulting there from, and should Tenant be unsuccessful in any such contest, Tenant shall forthwith pay, discharge, or cause to be paid or discharged, such tax, assessment, imposition, fee or other similar charge. City hereby consents to and shall reasonably cooperate and assist with Tenant applying for and obtaining any applicable exemptions from taxes or assessments levied on the Premises, the Project Improvements or on Tenant's interest therein. Tenant shall have no obligation to pay Impositions pursuant to this Section that are due and payable prior to the Effective Date, including but not limited to any taxes, assessments, impositions, fees or other charges levied against the Premises which are incurred prior to the Effective Date.

4.2 **Possessory Interest Tax**. In accordance with the requirements of California Revenue and Taxation Code Section 107.6, Tenant is hereby informed that this Ground Lease will create a possessory interest in Tenant in the Premises, that the possessory interest of Tenant may be subject to property taxation and that Tenant may be subject to the payment of property taxes levied on Tenant's possessory interest in the Premises. Any possessory interest tax shall be included in the definition of "Imposition."

4.3 **Services.** Tenant shall pay before delinquency all charges for gas, water, electricity, light, heat or power, telephone or other communication service, sewer, trash removal, cable and all other services or utilities used during the Term in, upon or about the Premises by Tenant or any of its contractors, subcontractors, employees, subtenants, licensees, invitees, subtenant or assignees. Tenant shall also obtain, or cause to be obtained, without cost to City, any and all necessary permits, licenses or other authorizations required for the lawful and proper installation and maintenance upon the Premises of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any service to and upon the Premises.

ARTICLE 5
CONSTRUCTION OF THE PROJECT IMPROVEMENTS

5.1 **Construction**. Tenant shall cause the Project Improvements to be constructed in compliance with the construction plans and specifications for the Project Improvements that have been previously approved by City, as amended from time to time with the approval of the City and "Senior Lender" (as defined in Section 12.1). Any and all Project Improvements constructed by or on behalf of Tenant shall be constructed at Tenant's sole expense and in a good and workman-like manner, in compliance with all "Applicable Laws" (as defined in Section 6.3).

5.2 **No Liens**. Tenant shall not have any right, authority or power to bind City or City's fee estate in the real property comprising the Premises, for any claim for labor or material or for any other charge or expense, lien or security interest incurred in connection with the development, construction or operation of the Project Improvements or any change, alteration or addition thereto.

Tenant shall promptly pay and discharge all claims for work or labor done, supplies furnished or services rendered at the request of Tenant and shall keep the Premises free and clear of all mechanics' and materialmen's liens in connection therewith. If any claim of lien is filed against the Premises or a stop notice is served on City or other third party in connection with the development, construction or operation of the Project Improvements or any change, alteration or addition thereto, then Tenant shall, within thirty (30) days after such filing or service, either pay

and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to City a surety bond in sufficient form and amount, or provide City with other assurance reasonably satisfactory to City that the claim of lien or stop notice will be paid or discharged, provided that City provides written notice of such claim of lien or stop notice to Tenant promptly upon receipt by City.

If Tenant fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, then in addition to any other right or remedy, City may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at Tenant's expense and, Tenant shall pay to City as Additional Rent any such amounts expended by City within thirty (30) days after written notice is received from City of the amount expended. Alternately, City may require Tenant to immediately deposit with City the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. City may use such deposit to satisfy any claim or lien that is adversely determined against Tenant.

Tenant shall file a valid notice of cessation or notice of completion upon cessation of construction on the Project Improvements for a continuous period of thirty (30) days or more, except in the event such cessation of construction is caused by adverse weather conditions, and shall take all other reasonable steps to forestall the assertion of claims of lien against the Premises. City shall have the right to post or keep posted on the Premises, or in the immediate vicinity thereof any notices of non-responsibility for any construction, alteration or repair of the Premises by Tenant. Tenant authorizes City, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that City deems necessary or desirable to protect its interest in the Premises.

5.3 **Permits, Licenses and Easements**. Tenant shall be responsible for obtaining any and all permits, licenses, easements and other authorizations required by any governmental entity with jurisdiction over the Premises and/or Project Improvements with respect to any construction or other work to be performed on the Premises and to grant or cause to be granted all permits, licenses, easements and other governmental authorizations that are necessary for electric, telephone, gas, cable television, communication, water, storm , sewer, sewer treatment, drainage, access and such other public or private utilities, facilities or infrastructure as may be reasonably necessary or desirable in connection with the construction or operation of the Project Improvements. Tenant shall be entitled to tap into any existing lines, facilities and systems of applicable electric, gas, cable, water, sewer, sewer treatment and other utilities serving the Premises or adjacent real property, provided that Tenant remains responsible for payment of such fees therefor as are required by the City or any applicable private or public utility.

5.4 **Benefits of Project Improvements During Term**. Notwithstanding the leasehold interest herein conveyed and anything herein to the contrary, at all times during the Term, beneficial title to the Premises shall be vested in Tenant and Tenant alone shall be entitled to all of the tax attributes of ownership. City acknowledges and agrees that any and all depreciation, amortization, profits, losses, income and tax credits for federal or state tax purposes relating to the Project Improvements located on the Premises and any and all additions thereto, substitutions therefor, fixtures therein and other property relating thereto shall be deducted or credited exclusively to Tenant during the Term and for the tax years during which the Term begins and ends.

ARTICLE 6
USE OF PREMISES

6.1 **Permitted Uses.** Tenant shall use the Premises for the sole and exclusive purpose of constructing, developing, operating and maintaining a senior affordable rental housing community and public parking as approved by the City (the "**Permitted Use**"), and for no other purpose without the prior written consent of City, which consent City may withhold in its sole and absolute discretion. Tenant acknowledges that City has entered into this Lease and has agreed to the Rent structure contained herein in material reliance on Tenant's agreement to permit only those uses described herein. In the event Tenant requests a change in any use described herein, Tenant agrees that City, in its sole and absolute discretion, may withhold consent to such a request or that City properly may condition consent to any change in use on a renegotiation of the Rent structure or amounts. Further, Tenant acknowledges that City has determined that this use is beneficial to City's overall governmental purposes and Tenant understands that City has no obligation to consent to any other use of all or any part of the Premises. No other buildings, structures, fences, barriers or other infrastructure shall be built on the Premises without express written consent of City.

6.2 **Continuous Use.** City has agreed to accept a fixed Annual Base Rent and has entered into this Lease in reliance on Tenant's continued operation of the Project for the Permitted Use. Tenant's failure to operate the Project as required for more than thirty (30) continuous days, or for more than sixty (60) days in any twelve-month period shall be an Event of Default; provided that Tenant shall be excused from operating the Project during any Unavoidable Delay (as defined in Section 17.6).

6.3 **Compliance by Tenant with Laws and Governmental Regulations.** Tenant, at its sole cost and expense, promptly shall comply with all present and future laws, statutes, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governmental entities, including the City ("**Applicable Law(s)**") which are applicable to the Premises or to the use or manner of use of the Project Improvements by the owners, tenants or occupants thereof, whether or not such law, statute, ordinance, order, rule, regulation or requirement shall necessitate structural changes or improvements, or the removal of any encroachments or projections, ornamental, structural or otherwise, onto or over the streets adjacent to the Premises, or onto or over other property contiguous or adjacent thereto.

6.4 **Tenant Right to Contest**. Tenant, at its sole cost and expense, shall have the right to contest, by appropriate proceedings diligently conducted in good faith in the name of Tenant, the validity or application of any Impositions or Applicable Law.

6.5 **Compliance with Recorded Documents.** Tenant shall comply with all recorded documents that constitute valid encumbrances on the Premises including any reciprocal easement agreements or covenants, conditions and restrictions relating to the on-site drainage system and any common driveways, including a public access and use easement for the surface parking and a portion of the under-building parking on the Premises.

6.6 **Nuisance.** Tenant shall not use the Premises or the Project Improvements for any unlawful purpose and shall not perform, permit or suffer any act of omission or commission upon

or about the Premises or the Project Improvements which would result in a nuisance or a violation of Applicable Law.

ARTICLE 7
SURRENDER AND RIGHT TO REMOVE

7.1 **Ownership During Term**.

7.1.1 Project Improvements. All Project Improvements shall be and remain the property of Tenant during the Term. City acknowledges and agrees that any and all depreciation and amortization for federal or state tax purposes relating to the Project Improvements, fixtures therein and other property relating thereto will be deducted or credited exclusively to Tenant during the Term and for the tax years during which the Term begins and ends.

7.1.2 Personal Property. Tenant shall provide all personal property reasonably required for normal operation of the Premises to the standard required in this Lease, the Regulatory Agreement and Declaration of Covenants and Restrictions **("Regulatory Agreement")** and the AH/DDA. All personal property, furnishings, fixtures and equipment in, on or around the Project, whether installed by Tenant or installed prior to the Commencement Date, which are attached to the Project and can be removed without substantial damage to the Project Improvements or the Premises shall be the personal property of Tenant (the "**Personal Property**"). At any time during the Term, Tenant shall have the right to remove the Personal Property, provided Tenant shall repair any damage caused by the removal of Personal Property and shall replace the removed Personal Property with property of equal or better quality as and to the extent required for the continued operation of the Project to the standard required in this Lease. Personal Property shall exclude any portion or part of major building components or fixtures necessary for the operation of the basic building systems for the Project (such as floor covering, window coverings, elevators, escalators, chillers, boilers, plumbing, electrical systems, lighting, sanitary fixtures and HVAC systems), which items shall be deemed part of the Project Improvements.

7.2 **Ownership at Lease Termination**.

7.2.1 Project Improvements. Upon Lease Termination, the Project Improvements shall unconditionally be and become the property solely of City, without compensation to Tenant and this Lease shall operate as a conveyance and assignment thereof. Upon Lease Termination, Tenant shall surrender to City the Premises and the Project Improvements in reasonably good condition and repair, reasonable wear and tear excepted, free and clear of all liens, claims, and encumbrances other than liens, claims and encumbrances existing or established as of the Effective Date or other matters consented to by City in writing. The foregoing, however, will be subject to the rights of the residents who are authorized by Tenant to occupy the Premises (such residents, the "Project Subtenants") or others in possession pursuant to a sublease with Tenant, provided that such Project Subtenants are not in default thereunder and attorn to City as their lessor. Tenant shall deliver the Quitclaim Deed as provided in Section 2.3. "**Reasonable wear and tear**", when used in this Lease, shall mean wear and tear caused by aging, use and other conditions which occurs notwithstanding the application of standards for maintenance, repair and replacement typical of other similar affordable housing projects in the Project area of comparable age. Reasonable wear and tear is not intended, nor shall it be construed, to include items of neglected

or deferred maintenance which would have or should have been attended to during the Term had the required standards for maintenance, repair and replacement had been applied.

7.2.2 Personal Property. Any Personal Property of Tenant which remains on the Premises for thirty (30) days after the Lease Termination shall unconditionally be and become the property solely of City without compensation to Tenant and this Lease shall operate as a conveyance and assignment thereof.

7.3 **Condition of Project Improvements**.

7.3.1 Condition of Project at Lease Termination. City has entered this Lease in reliance on the fact that, at Lease Termination, City will receive from Tenant the Project Improvements in the condition required by Section 7.2. In addition to City's right to inspect pursuant to applicable law and set forth in Section 10.1 and 15.2, at any time during the last twenty-four (24) months of the Term, City may inspect the Project Improvements to confirm that the Project Improvements are being properly maintained as required herein. Following its inspection, City may deliver to Tenant written notification of any portions of the Project Improvements which City has determined are not being properly maintained and Tenant shall promptly comply with the provisions of this Lease regarding such items; provided, the failure of City to inspect or to notify Tenant of any default hereunder shall not be a waiver of City's right to enforce Tenant's maintenance and repair obligations hereunder.

7.3.2 Environmental Report. Prior to the expiration of the Term, City shall have the right, at its sole cost, to have an environmental report of the Premises prepared that assesses the existence on the Premises of any "Hazardous Materials" (as defined in Article 18).

7.4 **Survival.** The provisions of this Article 7 shall survive Lease Termination.

ARTICLE 8
INSURANCE

8.1 **Tenant's Insurance**. During the Term, Tenant shall keep and maintain in force, at no cost or expense to City, the following insurance, all of which shall be provided by companies and/or agencies approved to do business in the State of California:

8.1.1 Premises Insurance. "All risk" insurance covering all risks of physical loss or damage to any of the Improvements, with liability limits of not less than one hundred percent (100%) of the "full replacement value" thereof, which insurance shall be provided by Tenant on the Commencement Date. Such policies shall be broad form and shall include, but shall not be limited to, coverage for fire, extended coverage, vandalism, malicious mischief and storm. Perils customarily excluded from all risk insurance, e.g., terrorism, earthquake and flood, may be excluded.

8.1.2 General Liability Insurance. Commercial general liability and automobile liability insurance, covering loss or damage resulting from accidents or occurrences on or about or in connection with the Improvements or any work, matters or things under, or in connection with, or related to this Lease, with personal injury, death and property damage combined single limit liability of not less than Two Million Dollars ($2,000,000) for general liability and One Million

Dollars ($1,000,000) for automobile liability for each accident or occurrence. Tenant shall include City as an additional insured on Tenant's commercial general liability insurance policy and shall provide City a certificate of insurance detailing the coverage limits outlined in this Section 8.1.2 within thirty (30) days after the Commencement Date of this Lease. City shall have the right, upon thirty (30) days' notice to Tenant, to increase the required amount of General Liablity and Auto Liability coverage as commercially reasonable during the term of this Lease.

8.1.3 Workers' Compensation Insurance. Tenant shall carry or cause to be carried Workers' Compensation insurance with limits as required by the State of California.

8.1.4 Builders' Risk Insurance. As of the Commencement Date and until completion of construction of the Project Improvements, Tenant shall provide builders' risk insurance for not less than the value of the construction contract, combined single limit for bodily injury or property damage insuring the interests of City, Tenant and any contractors and subcontractors.

8.2 General Requirements. All policies described in Article 8 shall include City and Tenant, together with any Leasehold Lenders, as named insureds, as their respective interests may appear. All policies described in Section 8.1 shall contain (a) the agreement of the insurer to give City and each Leasehold Lender, as applicable, at least thirty (30) days' notice prior to cancellation (ten (10) days for non-payment of premium); (b) an agreement that such policies are primary and non-contributing with any insurance that may be carried by City; (c) a provision that no act or omission of Tenant shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; (d) a waiver by the insurer of all rights of subrogation against City and its authorized parties in connection with any loss or damage thereby insured against; and (e) terms providing that any loss covered by such insurance may be adjusted with City, Tenant and the holder of a Leasehold Mortgage, but shall be payable to the holder of any Leasehold Mortgage, who shall agree to receive and disburse all proceeds of such insurance.

8.3 Evidence of Insurance. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements demonstrating the coverage required by this Lease at any time.

8.4 Failure to Maintain. If Tenant fails to maintain such insurance, City, at its election, may procure such insurance as may be necessary to comply with the above requirements (but shall not be obligated to procure same), and Tenant agrees to repay to City as Additional Rent the cost of such insurance.

8.5 Acceptability of Insurers. Insurance is to be placed with insurers with a current AM Best's rating of no less than A: VII.

8.6 Loss Payable Endorsements. Tenant agrees that the names of the Leasehold Lenders may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant hereunder.

ARTICLE 9
INDEMNIFICATION BY TENANT

9.1 **Indemnification by Tenant.** Excluding loss, injury or damage to the extent caused by the sole active negligence or willful misconduct of City or any of the "Indemnitees" (as defined below), Tenant shall indemnify, defend and hold harmless City, its officers, agents, employees, contractors or volunteers (collectively, the "**Indemnitees**") from and against any and all claims, liability, loss, injury or damage by or on behalf of any person, firm or corporation arising during the Term to the extent arising from any conduct by any party on, management of or any work or thing whatsoever done in or on the Premises or Project Improvements. Further, Tenant shall indemnify and save the Indemnitees harmless against and from any and all claims, liability, loss, injury or damage by or on behalf of any person, firm, or corporation to the extent arising during the Term from (i) any condition of any building, structure or improvement on the Premises, or of any passageways or spaces therein or appurtenant thereto; (ii) Tenant's breach or default in the performance of any of its covenants or agreements under this Lease; (iii) any negligence of Tenant, or any of its agents, contractors, subcontractors, or employees; (iv) any accident, injury or damage whatsoever caused to any person, firm or corporation occurring during the Term in or on the Premises or the Project Improvements or any passageways or spaces therein or appurtenant thereto; or (v) from the furnishing of labor or materials by Tenant or any of its agents, contractors, subcontractors or employees. Tenant's indemnification obligation shall include all costs, attorney's fees, expenses and liabilities incurred in defending City against any such claim, action or proceeding, which defense Tenant shall provide with counsel satisfactory to City. City shall have the right to approve legal counsel providing Landlord's defense. If an insurer under insurance required to be maintained by Tenant hereunder shall undertake to defend the City under a reservation of rights with respect to ultimate coverage and City shall deem it necessary to retain independent counsel with respect to such matter, Tenant shall pay the reasonable fees of such counsel. Tenant shall reimburse City for all costs, reasonable attorneys' fees, expenses and liabilities incurred with respect to any litigation in which Tenant contests its obligation to indemnify, defend and hold harmless City under this Lease and does not prevail in that contest. It is the intent of the parties to this Lease to provide the broadest possible coverage for the City. Tenant's obligations under this Section shall survive the termination or expiration of this Lease.

ARTICLE 10
REPAIRS, CHANGES, ALTERATIONS AND NEW CONSTRUCTION

10.1 **Repairs and Maintenance.** Subject to the other provisions of this Lease, Tenant shall keep the Premises at all times in a habitable condition, and in good and habitable operating order, reasonable wear and tear excepted. The standard for maintenance and repair of the Premises shall be the same as for other similar housing projects in Orange County of similar size, and of comparable age and in accordance with all applicable local, state and federal laws. Tenant shall make all necessary repairs and perform all maintenance, interior and exterior, structural and nonstructural, ordinary as well as extraordinary, whether contemplated or not contemplated at the time of signing of this Lease, to keep the Premises to the standard described above in a well maintained and habitable condition. The term "**repairs**" shall include replacements or renewals when reasonably necessary to satisfy the above standard, and all repairs made by Tenant shall be at least equal in quality and class to the original work. Tenant waives any rights created under any law now or hereafter in force to make repairs to the Premises at City's expense. From time to time

during the Term, City may enter the interior Premises during regular business hours upon not less than 72 hours prior written notice from City to determine if Tenant is in compliance with the requirements of this Article. No such notice is required to inspect any portion of the exterior of the premises. If, following any such inspection by City, City delivers notice of any deficiency to Tenant, Tenant shall promptly prepare and deliver to City Tenant's proposed plan for remedying the indicated deficiencies. City's failure to deliver, following any City's inspection, any notice of deficiency to Tenant, shall not be deemed to be City's approval of the then condition of the Premises, nor City's waiver of any default by Tenant under this Article 10.

10.2 **Changes and Alterations.** Except as permitted by Section 10.3, Tenant shall not make any changes, alterations, replacements or additions in, to or of the Project Improvements ("**Alterations**") without the prior written consent of City, which City shall not unreasonably withhold or delay so long as all the following are complied with by Tenant:

(a) Tenant shall pay all costs and expenses related to the Alterations;

(b) The Alteration shall not result in a decrease in the value of the structural improvement to which it is being made;

(c) The Alteration shall be for a use which is permitted hereunder and shall not be materially and adversely inconsistent with the Site Plan, and may not obstruct or prevent access to or use of the parking spaces reserved for public use;

(d) Tenant shall obtain and pay for, all required permits and authorizations of any federal, state or municipal government or departments of any of them, having jurisdiction. City shall join in the application for permits or authorizations whenever necessary. City shall incur no liability or expense in connection with its cooperation and Tenant shall reimburse City for City's out-of-pocket, reasonable attorneys' fees;

(e) Any Alteration shall be made in a good and workmanlike manner and in accordance with all applicable permits and authorizations and building and zoning laws and with all other Applicable Laws;

(f) During the period of construction of any Alterations, Tenant shall maintain or cause to be maintained applicable insurance described in Article 8 which policy or policies by endorsement thereto, if not then covered, shall also insure any change, alteration or addition or new construction, including all materials and equipment incorporated in, on or about the Premises (including excavations, foundations and footings) under a broad form (or equivalent) builders' risk form.

10.3 **Exceptions to Consent Requirement.** The foregoing notwithstanding, Tenant shall not be required to obtain City's prior written consent to any Alterations so long as (i) the Alteration is non-structural, and (ii) the Alteration has a cost of less than $250,000, provided, however, that nothing contained herein shall relieve Tennant from the obligation to first obtain any and all required permits and inspections from City and any other governmental entity, pursuant to Applicable Law.

10.4 **No Right to Demolish.** Notwithstanding any other provisions of this Article 10 and except as otherwise permitted in this Lease, Tenant shall have no right to demolish any Project Improvement, once built, unless Tenant shall have received the prior written consent of City, which City may withhold in its sole and absolute discretion, it being agreed that City has entered into this Lease in material reliance on Tenant's covenants to operate and maintain the Project Improvements in accordance with the provisions of this Lease.

ARTICLE 11
RECORD KEEPING

11.1 **Record Keeping**. Tenant shall keep and maintain full and complete books of account and other records reflecting the results of operations of the Project in accordance with accounting practices and principles reasonably acceptable to City and consistently applied.

ARTICLE 12
DAMAGE AND DESTRUCTION

12.1 **Damage or Destruction.** If the Project Improvements are damaged or destroyed, then except as otherwise provided in this Article 12, Tenant shall restore and rebuild the Project Improvements as nearly as practicable to their condition immediately prior to such damage or destruction or with such changes or alterations as may be in conformity with the provisions of this Lease relating to the changes or alterations. To the extent sufficient insurance proceeds are available therefor, as reasonably determined by Tenant, and subject to the terms of any Leasehold Mortgage, upon a damage or destruction, all insurance proceeds paid in respect of the damage or destruction shall be applied to the payment of the costs of the restoration required to be performed by Tenant pursuant to this Lease. Any insurance proceeds made available to Tenant shall be held in trust by a financial institution agreed upon by City and Tenant or, if required by a Leasehold Lender, by any Leasehold Lender at the election of the Leasehold Lender with the most senior Leasehold Mortgage (the "**Senior Lender**") (as applicable, the "**Insurance Trustee**"), with the costs of such trust to be a first charge against the insurance proceeds. After completion of the restoration of the Project Improvements, and expiration of all lien periods without any lien being filed, any remaining insurance proceeds shall be paid to the Senior Lender to be applied as provided in the Leasehold Mortgage, and once such lien is satisfied, thereafter to the holder of the Leasehold Mortgage next in lien priority until each encumbrance is satisfied, and, upon payment in full of the Leasehold Mortgages, the balance shall be payable to Tenant.

Notwithstanding the foregoing, in the event there is any damage or destruction to any portion of the Project Improvements such that: (a) there are not sufficient proceeds to pay for the costs to restore the Project Improvements, as determined by Tenant, (b) in the reasonable opinion of Tenant, the undamaged portion of the Project Improvements cannot be completed or operated on an economically feasible basis, and (c) no feasible source of third party financing for restoration reasonably acceptable to Tenant is available; then Tenant may, with the prior written consent of all Leasehold Lenders, terminate this Lease as of a date that is not less than ninety (90) days after the date of such notice. In the event this Lease is terminated in accordance with the preceding sentence, Tenant shall, at Tenant's sole cost, either raze the damaged portion of the Project Improvements and remove any debris relating thereto, or repair the Project Improvements in a manner sufficient to cause the Project Improvements to be in a safe condition in compliance

with applicable laws and other applicable governmental requirements, and following the completion thereof, Tenant shall surrender possession of the Premises to City immediately and the remaining insurance proceeds not used to raze or repair the Project Improvements shall be paid to the Senior Lender to be applied as provided in the Leasehold Mortgage, and once such lien is satisfied, thereafter to the holder of the Leasehold Mortgage next in lien priority until each encumbrance is satisfied, and, upon payment in full of the Leasehold Mortgages, the balance shall be assigned to City.

12.2 **Damage or Destruction Near End of Term**. If, during the last seven (7) years of the Term, the Project Improvements shall be damaged or destroyed, then, subject to the prior written consent of each Leasehold Lender, Tenant shall have the option, to be exercised within one hundred twenty (120) days after such damage or destruction:

(a) to repair or restore the Project Improvements as provided in this Article 12; or

(b) subject to the rights of Leasehold Lenders, to terminate this Lease by notice to City, which termination shall be deemed to be effective as of the date of the damage or destruction. If Tenant terminates this Lease pursuant to this Section 12.2, Tenant shall surrender possession of the Premises to City immediately and assign to City (or, if same has already been received by Tenant, pay to City) all of its right, title and interest in and to the proceeds from Tenant's insurance upon the Premises, subject to the prior rights of any Leasehold Lender therein.

12.3 **Restoration.** Tenant shall carry out the restoration to full completion as soon as practicable. Tenant shall commence work on the restoration of any damage or destruction no later than the latest of: (a) one hundred twenty (120) days following the damage or destruction, (b) the date Tenant receives insurance proceeds, and (c) the date on which all applicable approvals have been obtained to commence the restoration work, provided, however, that Tenant shall seek all applicable approvals within one hundred twenty (120) days following the damage or destruction.

12.3.1 Disbursement of Funds. The Insurance Trustee shall disburse funds only on a periodic basis approved by City and Tenant and only upon receipt of invoices and other documentation, certified as correct by Tenant's architect, evidencing satisfactory completion of the work for which payment is requested ("**Payment Request**"). Further, the Insurance Trustee shall not disburse any funds unless the payment request is accompanied by (i) signed conditional waiver and release on progress payment in form complying with California law relating to all labor and materials described in the Payment Request and (ii) signed unconditional waiver and release upon progress payment in form complying with California law releasing all claims for labor and materials described in the immediately preceding Payment Request.

12.4 **Notice Required.** In the event of material damage to or destruction of the Project Improvements, Tenant shall promptly give City notice of such occurrence and take all actions reasonably required to protect against hazards caused by such damage or destruction. For purposes of this Article 12, damage or destruction shall be deemed to be material if the estimated cost to repair equals or exceeds $100,000.

12.5 **Right to Participate in Settlement.** City, Tenant, and each Leasehold Lender shall have the right to participate in the negotiation, settlement or compromise of any insurance claims made against Tenant's insurance policies.

12.6 **Survival.** City's and Tenant's rights and obligations under this Article 12, including their rights to receive proceeds, shall survive any termination of this Lease.

ARTICLE 13
EMINENT DOMAIN

13.1 **Eminent Domain**.

13.1.1 Definitions. The following definitions shall apply in construing the provisions of this Article 13:

13.1.1.1 Award. "**Award**" means all compensation, damages or interest, or any combination thereof, paid or awarded for the Taking, whether pursuant to judgment, by agreement, or otherwise.

13.1.1.2 Notice of Intended Taking. "**Notice of Intended Taking**" means any notice or notification on which a reasonably prudent person would rely and would interpret as expressing an existing intention of Taking as distinguished from a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a written notice of intent to take.

13.1.1.3 Partial Taking. "**Partial Taking**" means any Taking that is neither a Total Taking nor a Substantial Taking.

13.1.1.4 Substantial Taking. "**Substantial Taking**" means the Taking of so much of the Premises that the remaining portion thereof would not be economically and feasibly usable by Tenant, as reasonably determined by Tenant for the then existing uses and purposes of the Premises, but shall exclude a Temporary Taking.

13.1.1.5 Taking. "**Taking**" means any taking of or damage to, including severance damage, all or any part of the Premises or any interest therein by the exercise of the power of eminent domain, or by inverse condemnation, or a voluntary sale, transfer or conveyance under threat of condemnation in avoidance of the exercise of the power of eminent domain or while condemnation proceedings are pending.

13.1.1.6 Temporary Taking. "**Temporary Taking**" means the Taking of any interest in the Premises for a term certain which term is specified at the time of Taking. Temporary Taking does not include a Taking which is to last for an indefinite period or a Taking which will terminate only upon the happening of a specified event unless it can be determined at the time of the Taking substantially when such event will occur. If a Taking for an indefinite term should take place, it shall be treated as a Total, Substantial or Partial Taking in accordance with the definitions set forth herein.

13.1.1.7 Total Taking. "**Total Taking**" means the Taking of the fee title to all, or substantially all, of the Premises.

13.1.2 Notice. The party receiving any notice of the kind specified below shall promptly give the other party written notice and a copy of any:

(a) Notice of Intended Taking;

(b) Service of any legal process relating to condemnation of all or any portion of the Premises;

(c) Notice in connection with any proceedings or negotiations with respect to such a condemnation; or

(d) Notice of intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of condemnation.

City and Tenant, and any of their respective secured lenders, each shall have the right to represent its respective interest in each proceeding or negotiation with respect to a Taking or intended Taking and to make full proof of their respective claims. No agreement, settlement, sale or transfer to or with the condemning authority shall be made without the mutual agreement of City and Tenant and their secured lenders. City and Tenant each agree to sign, acknowledge and deliver to the other any instruments that may be reasonably required to effectuate or facilitate the provisions of this Lease relating to condemnation.

13.1.3 Total or Substantial Taking. In the event of a Total Taking or Substantial Taking, this Lease shall terminate, and Tenant's interest in this Lease and all obligations of Tenant subsequently accruing hereunder shall cease, as of the first to occur of (i) the date of the vesting of title in the condemning authority or (ii) the date actual physical possession of all or part of the Premises is taken by the condemning authority prior to the date of vesting of title. Tenant's obligations to pay Annual Base Rent and Additional Rent shall terminate as of such date.

13.1.4 Partial Taking. In the event of a Partial Taking, this Lease shall remain in full force and effect, covering the remainder of the Premises, except that this Lease shall be deemed amended such that the definition of the "Premises" shall include only that portion of the land described in Exhibit A attached that is not taken. There shall be no adjustment to Annual Base Rent or the Term.

In the event of a Partial Taking, Tenant, at its sole cost and expense subject to (and only to the extent of) receipt of an award by Tenant from the Taking agency specifically earmarked for severance damages, and Tenant's offset against such specific award of all costs incurred in procuring such award, shall restore the Project Improvements to a complete architectural unit, consistent with the requirements of this Lease, to the maximum extent feasible.

13.2 **Participation in Settlement Negotiations.** City, Tenant, and each Leasehold Lender shall have the right to participate in the negotiation, settlement or compromise of all awards, except for Temporary Taking awards.

13.3 **Survival**. City's and Tenant's rights and obligations under this Article 13, including their rights to receive proceeds, shall survive any termination of this Lease.

13.4 **Award**. Subject to the rights of Leasehold Lenders (as defined in Article 16 below), if there is a Taking, whether a Temporary Taking, Substantial Taking, Total Taking or Partial Taking, City and Tenant shall be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings, or as may be otherwise agreed, taking into consideration the fact that City's interest in the Premises is limited to the fee interest in the Premises and the public's easement for access, ingress, egress and use of the parking spaces on the Premises (exclusive of the Project Improvements), as encumbered by this Lease, and, upon the expiration of the Term, a reversionary interest in the Premises and the Project Improvements. If the Premises shall be restored as is contemplated in Section 13.1.4, Tenant shall be entitled to recover the costs and expenses incurred in such restoration out of any Award. Thereafter, if the condemning authority does not make separate Awards, City and Tenant agree that any Award will be allocated on a proportionate basis, but with City to receive any and all award for loss of any of the surface parking spaces which are not under the Project's building. If City and Tenant are unable to agree as to amounts that are to be allocated to the respective interests of each party, then each party shall select an independent M.A.I. real estate appraiser (an "**Appraiser**"). Each Appraiser shall separately determine the amount of the balance of the Award that is to be allocated to the interests of each party. If the percentage of the balance of the Award each Appraiser allocates to City (a) are within ten percent (10%) of each other, the two (2) allocations shall be averaged, and such average shall be the final allocation of the Award, or (b) are not within ten percent (10%) of each other, the two (2) Appraisers shall then select a third Appraiser, who shall independently allocate the Award between City and Tenant, and the middle of such three allocations shall be the final allocation of the Award. Notwithstanding the foregoing, if required by a Leasehold Lender, Tenant's proportionate share of the Award shall be distributed to the Senior Lender to be disbursed in accordance with its Leasehold Mortgage, and once such lien is satisfied, thereafter to the holder of the Leasehold Mortgage next in lien priority until each encumbrance is satisfied, and, upon payment in full of the Leasehold Mortgages, the balance shall be payable to Tenant. Notwithstanding the foregoing, in no event shall the Award paid to the Senior Lender be less than the total Award, minus the value of the land that was taken, as encumbered by this Lease and any regulatory agreement recorded against Tenant's leasehold interest in the Premises.

13.5 **Inapplicability to City.** The provisions of this Article shall not apply to an exercise of Eminent Domain or a Taking by the City.

ARTICLE 14
ASSIGNMENT, TRANSFER, SUBLETTING

14.1 **Restrictions on Transfer by Tenant.** Tenant acknowledges that the qualifications and identity of Tenant are of particular concern to City (i) in view of the importance of the development of the Premises to City and the general welfare of the community; (ii) because of City's desire that the Premises be operated by a tenant with demonstrated successful experience and success in constructing, managing and operating affordable housing in Orange County; (iii) because of the City's desire for the Project Improvements to be a high quality affordable housing project; and (iv) in light of City's desire for the operation on the Premises to be compatible

with planned adjacent residential uses and City's affordable housing goals and objectives. Tenant further recognizes that it is because of Tenant's (and/or Tenant's partners') qualifications, reputation, experience and identity that City has entered into this Lease with Tenant. Tenant acknowledges that the restrictions on Transfer contained in this Article 14 are reasonable. For reference purposes, Tenant's right to grant security interests for the benefit of Leasehold Lenders securing loans for the Project is set forth in Article 16.

14.2 **Definition of Transfer.** "**Transfer**" means any of the events described below, whether the same occur voluntarily, involuntarily, by operation of law, or otherwise:

14.2.1 Transfer of Interest in the Premises or Project. Tenant's assignment, sublease, transfer, or conveyance of all, or any portion, of its interest in the Premises, the Project Improvements or this Lease.

14.2.2 Transfer of Shareholder's Interest in Tenant. If Tenant is a corporation, the assignment, conveyance or transfer by a controlling shareholder of a controlling interest in Tenant.

14.2.3 Transfer of Interest in Tenant's Partners/Members. If Tenant is a partnership or a limited liability company, the transfer of any controlling interest in any general partner (but not any limited partner) manager, or managing member (but not any other member) of Tenant.

14.3 **No Transfer Without Consent; Notices.** Except as otherwise provided in Section 14.4.3 or Article 15, Tenant shall not make or permit any Transfer except with City's prior written consent, which consent shall be given in City's sole and absolute discretion.

14.4 **Procedure**.

14.4.1 Transfer Request. With respect to each Transfer as to which City's approval is required hereby, Tenant shall send to City written request for City's approval of the Transfer (a "**Transfer Request**") specifying the name and address of the proposed transferee and its legal composition (if applicable). Each Transfer Request shall be accompanied by all of the following:

(a) An audited financial statement (or if no audited financial statement is available, a reviewed financial statement) of the proposed transferee (or its sponsors) for the three most recent calendar or fiscal years prepared in accordance with generally accepted accounting procedures by a nationally or regionally recognized certified public accounting firm, certified as true and correct by the proposed transferee (or its sponsors), sufficiently current and detailed to permit evaluation of the proposed transferee's (or its sponsors') assets, liabilities and net worth;

(b) A description of the nature of the interest proposed to be transferred, the portion or portions of the Premises affected by the Transfer, and the proposed effective date of such Transfer;

(c) If required, a true and complete copy of the proposed Assumption Agreement described in Section 14.8;

(d) A complete history of the proposed transferee (or its sponsor) describing its background, its current business operations and the background of the principals or personnel to be involved in the day to day operation of the Premises and stating whether the proposed transferee ever filed for bankruptcy or had projects that were foreclosed;

(e) A description of any substantial litigation in which the transferee (or its sponsor) has been involved within the preceding sixty (60) months;

(f) A description of all consideration to be given on account of the Transfer; and

(g) Any such other information as reasonably requested by City within ten (10) business days following the receipt of the above information, in order for City to make an informed decision whether or not to approve or disapprove the Transfer.

14.4.2 Approval of City. Within thirty (30) days following receipt of all the information referred to in Section 14.4.1, City shall approve or disapprove, in its sole discretion, a Transfer Request, and if City disapproves the Transfer Request, it shall provide a written statement of the reasons for the disapproval. If City fails to give Tenant written notice of its approval or disapproval within the thirty (30) day period, City will be deemed to have approved the Transfer Request. Tenant shall pay the reasonable fees and charges of any accountants, attorneys and other consultants hired by City (but not any overhead of City staff) to review and assess any proposed transferee.

14.4.3 Exceptions to Consent Requirement. Notwithstanding anything to the contrary in this Lease, Tenant shall not be required to obtain City's prior consent (a) to enter into leases, subleases or occupancy agreements with occupants of residential units in the Project Improvements, provided the same otherwise comply with this Lease; (b) to a Transfer to an entity which is a wholly owned subsidiary of Tenant or a manager of Tenant's general partner, or to a limited partnership or limited liability company formed for the tax credit syndication of the Project Improvements, where Tenant or its affiliated nonprofit public benefit corporation is the sole general partner or sole manager of that entity, and following the Transfer, the assignee will comply with all requirements of this Lease; (c) a transfer of Tenant's limited partner or non-managing member interests to an affiliate pursuant to Tenant's partnership or operating agreement; (d) removal of a general partner or manager of the Tenant for cause under the terms of the Tenant's partnership or operating agreement and replacement thereof by Tenant's special limited partner on a temporary basis or, another entity reasonably acceptable to City, so long as the general partner is replaced within 180 days with an organization that meets the requirements of Revenue and Taxation Code Section 214 for purposes of the welfare exemption; (e) transfers of the general partnership or manager's interest in Tenant to Jamboree Housing Corporation, a California nonprofit public benefit corporation ("**JHC**") or to another nonprofit public benefit corporation approved in advance by City; or (f) execution and delivery of a purchase option and right of first refusal to acquire Tenant's interest in the Premises in favor of JHC or another nonprofit affiliate thereof in connection with the tax credit syndication of the Project where such agreement has been previously approved by City, in City's reasonable discretion, in writing. In order for any Transfer described in this Section to be exempt from the requirement for City's consent, at least thirty (30) days before the effective Transfer date: (i) Tenant shall notify City of the pending Transfer;

(ii) Tenant shall provide City with all information City reasonably requests regarding the transferee; (iii) Tenant shall deliver to City a copy of the proposed transfer documents in substantially final form; and (iv) Tenant shall deliver to City for reasonable approval the proposed Assumption Agreement described in Section 14.8. Within five (5) business days after the Transfer date, Tenant shall deliver to City fully executed copies of all transfer documents and the Assumption Agreement.

14.5 **Limitations**.

14.5.1 No Relief from Liability. If City consents to a Transfer, Tenant shall not be released from its liability for the performance of any of Tenant's obligations under this Lease occurring prior to the Transfer. If Tenant makes a Transfer for which City's consent is not required, Tenant shall not be released from its liability for the performance of any of Tenant's obligations under this Lease occurring prior to the Transfer.

14.5.2 No Consent If Bankruptcy. In no event shall City be required to consent, or be deemed to consent, to a Transfer to a party then subject to any proceedings under any insolvency, bankruptcy or similar laws.

14.5.3 Consent Not a Waiver. City's consent to any one Transfer shall not constitute a waiver of the provisions of this Article 14 with regard to any subsequent Transfer.

14.5.4 Threshold Criteria for Transfer. Although City may withhold its consent to a proposed Transfer for which City consent is required on any reasonable basis, City shall be deemed to be reasonable in withholding its consent to a proposed Transfer for which City consent is required if any of the following are not satisfied:

(a) In the case of any proposed Transfer (i) involving Tenant's assignment, transfer or conveyance of all or any portion of its interest in the Premises, the Project or this Lease, or (ii) involving the replacement of the Tenant's general partner, manager, or managing member, as the case may be, Tenant delivers to City an audited financial statement (or if no audited financial statement is available, a reviewed financial statement) of the proposed transferee (or its sponsors) for the three most recent calendar or fiscal years prepared in accordance with generally accepted accounting principles by a nationally or regionally recognized certified accounting firm demonstrating that the proposed transferee (or its sponsors) have sufficient financial ability to own, operate and manage the Project;

(b) In the case of any proposed Transfer involving Tenant's assignment, transfer or conveyance of all or any portion of its interest in the Premises, the Project or this Lease, the proposed transferee (or its sponsors) shall have a reputation and experience comparable to the transferor's reputation and experience constructing, operating and managing affordable housing projects in the Orange County area;

(c) The use of the Premises after the Transfer shall remain unchanged.

14.6 **Indemnity.** Tenant hereby agrees to indemnify and defend with the attorneys of City's choosing City against, and hold it harmless from, any loss (including penalties, fines, reasonable counsel fees and disbursements) in connection with a claim or action by a transferee or

other party which arises out of Tenant's actions or failure to act with respect to a Transfer including Tenant's breach or default under any agreement relating to the Transfer. Tenant also hereby agrees to indemnify and defend with the attorneys of City's choosing City against, and hold it harmless from, any loss (including penalties, fines, reasonable counsel fees and disbursements) arising out of a claim or action by a subtenant or otherwise arising in connection with subletting. These indemnities shall not apply to any loss to the extent caused by City's default under this Lease or City's active negligence or willful misconduct.

14.7 **Involuntary and Other Transfers.** Without limiting any other restrictions on Transfer contained in this Lease, no interest of Tenant in this Lease, the Premises or the Project Improvements shall be assignable in the following manner:

(a) Under an order of relief filed, or a plan of reorganization confirmed, for or concerning Tenant by a bankruptcy court of competent jurisdiction under the federal bankruptcy act or under the laws of the State of California, whereby any interest in this Lease, the Premises or the Project Improvements is assigned to any party which does not qualify as an approved transferee pursuant to this Lease unless such order is filed or such plan is confirmed in connection with an involuntary proceeding brought against Tenant and Tenant reacquires such transferred interest within ninety (90) days after the date such order is filed or such plan is confirmed;

(b) If Tenant assigns substantially all of its assets for the benefit of its creditors;

(c) If an order of attachment is issued by a court of competent jurisdiction, whereby any interest in this Lease, the Premises or the Project Improvements or substantially all of Tenant's assets are attached by its creditors and such order of attachment is not stayed within ninety (90) days after the date it is issued; or

(d) If a lien against any interest of Tenant in this Lease, the Premises or the Project Improvements, is foreclosed so that such interest is vested in a party other than Tenant, except under a Leasehold Mortgage.

14.8 **Assumption Agreement.** No Transfer involving Tenant's assignment, transfer or conveyance of all or any portion of its interest in this Lease, whether an Approved Transfer or one to which City has consented, shall be effective until City shall have received (where appropriate) an assignment and assumption agreement, executed by the transferor and the proposed transferee, in form reasonably acceptable to City ("**Assumption Agreement**").

ARTICLE 15
BREACHES, REMEDIES AND TERMINATION

15.1 **Event of Default.** Tenant shall be in default under this Lease on the occurrence of any of the following (each, an "**Event of Default**"):

15.1.1 Monetary Obligation. Tenant fails to pay any amount owing under this Lease when due, and such failure shall continue for thirty (30) days after Tenant receives Notice of Breach (as defined in Section 15.4.1); or

15.1.2 Bankruptcy. Tenant files a voluntary petition in bankruptcy or files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof, or makes any general assignment for the benefit of creditors, or Tenant admits in writing its inability to pay its debts generally as they become due; or

15.1.3 Reorganization. A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Tenant seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, unless the order, judgment or decree is vacated within one hundred twenty (120) days after the first date of entry thereof, or any trustee receiver or liquidator of Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof shall be appointed without the consent or acquiescence of Tenant (except under a Leasehold Mortgage), unless such appointment is vacated within one hundred twenty (120) days after the first date of entry thereof, (which one hundred twenty (120) day period shall be extended in all cases during any period Tenant is diligently pursuing a bona fide appeal); or

15.1.4 Attachment. A writ of execution or attachment or any similar process shall be issued or levied against all or any part of the interest of Tenant in the Premises, unless the execution, attachment or similar process is released, bonded, satisfied, or vacated or stayed within one hundred twenty (120) days after the earlier of (a) Tenant's receipt of a Notice of Breach, and (b) Tenant's actual knowledge of its entry or levy, (which one hundred twenty (120) day period shall be extended during any period in which Tenant is diligently pursuing a bona fide appeal); or

15.1.5 Continuous Operation. Tenant fails to continuously maintain sufficient inventory and personnel on the Premises to operate the facility in accordance with Section 6.1, and other additional permitted uses in accordance with Section 6.2, and such failure is not cured within sixty (60) days after the earlier of (a) Tenant's receipt of a Notice of Breach, and (b) Tenant's actual knowledge of such failure.

15.1.6 Failure to Carry Insurance. Tenant fails to continuously maintain insurance coverage in accordance with Article 8 or fails to deliver a copy of a policy of insurance complying with the requirements of Article 8, and Tenant fails to remedy the default within fifteen (15) days after Tenant receives Notice of Breach;

15.1.7 Transfer. Tenant Transfers all or any portion of Tenant's interest in the Premises, the Project Improvements or in this Lease in violation of the provisions of Article 14.

15.1.8 Liens; Encumbrances. Tenant fails to pay real estate taxes or assessments on the Premises prior to delinquency, or places thereon any encumbrance or lien unauthorized by this Lease, including without limitation any Leasehold Mortgage and fails to discharge the same within thirty (30) days.

15.1.9 Non-Monetary Obligations. Subject to Unavoidable Delays, Tenant is in default of any other terms, provisions and covenants contained herein, and Tenant shall have failed to cure such default within sixty (60) days after Tenant receives Notice of Breach; provided, however, that if such a default with due diligence cannot be cured within sixty (60) days, then it shall not be an Event of Default unless Tenant fails to commence within sixty (60) days after it receives the Notice of Breach to cure the same or, thereafter, having begun to cure fails to prosecute the curing of such default continuously, with due diligence.

15.2 **Entry and Inspection**. City reserves and shall have the right upon not less than 72 hours' prior written notice, or at any time in the case of emergency, to enter the interior of the Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interest in the Premises, or to inspect the operations and management conducted thereon. No such notice is required to enter any exterior area of the Premises. The rights reserved in this Section shall not create any obligation of any kind upon City.

15.3 **Notice and Opportunity to Cure**.

15.3.1 Notice of Breach. If required by another provision of this Lease, a party shall deliver to the non-performing party a written request to perform or remedy (the "**Notice of Breach**"), stating clearly the nature of the obligation which such non-performing party has failed to perform. If Tenant is afforded a cure period for such failure, the Notice of Breach shall state the applicable cure period, if any, provided hereunder.

15.3.2 Failure to Give Notice of Breach. The failure of a party to give, or delay in giving, Notice of Breach shall not constitute a waiver of any obligation, requirement or covenant required to be performed hereunder. Except as otherwise expressly provided in this Lease, any failures or delays by either party in asserting any rights and remedies as to any breach shall not operate as a waiver of any breach or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive such party of the right to institute and maintain any actions or proceedings which it may deem appropriate to protect, assert or enforce its rights or remedies.

15.4 **Remedies Upon Default**.

15.4.1 City's Remedies. If an Event of Default occurs, City shall have the following remedies, in addition to all other rights and remedies provided by law or otherwise provided in this Lease to which City may resort cumulatively or in the alternative:

15.4.1.1 City Right to Continue Lease. City may elect to keep this Lease in effect and enforce by an action at law or in equity all of its rights and remedies under this Lease, including (i) the right to recover Rent as it comes due by appropriate legal action, and (ii) the right to make payments required of Tenant or perform Tenant's obligations and be reimbursed by Tenant for the cost thereof with interest as provided in Section 15.9. For so long as this Lease continues in effect, City may enforce all of City's rights and remedies under this Lease, including the right to recover all Rent as it becomes due hereunder.

15.4.1.2 Terminate. Subject to the rights of the Leasehold Lenders, City may terminate this Lease by giving Tenant written notice of termination, in which event this Lease

shall terminate on the date set forth for termination in such notice. Any termination under this Article 15 shall not relieve Tenant from its obligation to pay sums then due City or from any claim against Tenant for damage or rent previously accrued or then accruing. Upon Lease Termination hereunder, in accordance with applicable law City may re-enter the Premises and take possession thereof, and, except as otherwise provided herein, remove all persons and property therefrom, and store such property at Tenant's risk and for Tenant's account, and Tenant shall have no further claim thereon or hereunder. In no event shall this Lease be treated as an asset of Tenant after any final adjudication in bankruptcy except at City's option so to treat the same but no trustee, receiver, or liquidator of Tenant shall have any right to disaffirm this Lease.

15.4.1.3 No Deemed Termination. This Lease shall not terminate unless City, at City's option but subject to the rights of the Leasehold Lenders, elects to terminate Tenant's right to possession or, at City's further option, by the giving of any written notice (including any notice preliminary or prerequisite to the bringing of legal proceedings in unlawful detainer) to terminate Tenant's right to possession. For the purposes of this Lease, the following shall not constitute termination of Tenant's right to possession: (i) acts of maintenance or preservation or efforts to relet the Premises; or (ii) the appointment of a receiver upon initiative of City to protect City's interest under this Lease; or (iii) any other action by City intended to mitigate the adverse effects of any breach of this Lease by Tenant.

15.4.1.4 City Right to Perform. Upon the occurrence and continuance of an Event of Default, and without waiving or releasing Tenant from any obligation of Tenant hereunder, City may (but shall not be required to) make such payment or perform such act on Tenant's part to be made or performed under this Lease, or pay for and maintain such insurance coverage required under Article 8, and City may enter the Premises for such purpose and take all such action thereon as may be reasonably necessary therefor. All sums paid by City and all costs and expenses incurred by City in connection with the performance of any such act (together with interest thereon at the Default Rate (as defined below) from the respective dates of City's making §within thirty (30) days after receipt of City's demand therefor and documentation of costs incurred.

15.4.2 Damages Upon Termination. If City terminates this Lease, City may recover from Tenant damages in an amount as set forth in California Civil Code Section 1951.2 (**"CC § 1951.2"**) as in effect on the Term Commencement Date. For purposes of computing damages pursuant to CC §1951.2, the term "rent" means the Annual Base Rent and Additional Rent. City's CC §1951.2 damages shall include:

(a) The worth at the time of award of the unpaid rent which is due, owing and unpaid by Tenant to City at the time of termination;

(b) The worth at the time of award of the amount by which the unpaid rent which would have come due after termination until the time of award exceeds the amount of rental loss that Tenant proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of rental loss which Tenant proves could be reasonably avoided; and

(d) All other amounts necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things are likely to result therefrom, including (i) expenses for cleaning, repairing and restoring the Premises for re-letting; (ii) and all costs (including attorneys' fees) of repossession; and (iii) all costs of removing persons or property from the Premises.

All computations of the worth at the time of award of amounts recoverable by City under subparagraphs (a), (b), and (d) above shall be computed by allowing interest at the Default Rate. For purposes of this Lease, the "**Default Rate**" shall equal the rate of interest most recently announced by Bank of America, N.T. & S.A., (or any successor bank) at its principal office in San Francisco as its "reference rate" serving as the basis upon which effective rates of interest are calculated for those transactions making reference thereto, but in no event in excess of the maximum rate of interest permitted under applicable law.

15.4.3 Injunction. Upon the occurrence of an Event of Default, City shall have the right to petition a court of competent jurisdiction for injunctive relief, in addition to all other remedies available to City under Applicable Law. Tenant's failure for any reason to comply with an injunction ordered by a court shall constitute an Event of Default under this Lease.

15.4.4 Right to Specific Performance. Upon the occurrence of an Event of Default, City shall have the right to commence an action against Tenant for specific performance. Tenant's failure, for any reason, to comply with specific performance ordered by a court shall constitute an Event of Default under this Lease.

15.4.5 Right to Receiver. Following the occurrence of an Event of Default, if Tenant fails after receipt of a Notice of Breach to cure the default within any cure period set forth in the Notice of Breach, City, at its option but subject to the rights of Leasehold Lenders, may have a receiver appointed to take possession of Tenant's interest in the Premises, the Project Improvements and the Project with power in the receiver (i) to administer Tenant's interest in the Premises, the Project Improvements and the Project; (ii) to collect all funds available in connection with the operation of the Premises, the Project Improvements and the Project; (iii) to perform all other acts consistent with Tenant's obligations under this Lease, as the court deems proper; (iv) to apply the rents and any other sums received (less costs and expenses of operation and collection) to Rents due hereunder (and City shall not be responsible to any person for the collection or non collection of any such rents or income); (v) to take possession of the Tenant's leasehold estate and the Project Improvements, manage and operate the Project Improvements and Tenant's business thereon, and take possession of and use a Tenant's books of accounts and financial records and its property managers or representatives related to the Project Improvements; and (vi) otherwise take any and all actions with respect to the Project Improvements as may be permitted under applicable law or this Lease. Such rights to appoint a receiver shall be subject to and subordinate to the right of a Leasehold Lender to appoint a receiver.

15.5 **No Election of Remedies.** The rights given in this Article 15 to receive, collect or sue for any rent or rents, moneys or payments, or to enforce the terms, provisions and conditions of this Lease, or to prevent the breach or non-observance thereof, or the exercise of any such right or of any other right or remedy hereunder, shall not in any way affect or impair or toll the right or

power of City upon the conditions and subject to the provisions in this Lease to terminate Tenant's right of possession because of any Event of Default.

15.6 **Survival of Obligations.** All rights of indemnification in this Lease shall survive Lease Termination. All obligations that accrue prior to Lease Termination likewise shall survive Lease Termination.

15.7 **No Cure After Termination.** No receipt of money by City from Tenant after the commencement of any suit or after final judgment for possession of the Project, shall renew, reinstate, continue or extend the right of Tenant to remain in possession of the Premises.

15.8 **Interest on Past Due Obligations; Late Charge.** Any amount due from Tenant to City hereunder which is not paid within thirty (30) days after receipt of a Notice of Breach shall bear interest at the Default Rate unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by Tenant under this Lease. In addition, Tenant acknowledges that late payment by Tenant to City of Annual Base Rent or any other amount due City from Tenant will cause City to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to fix. Such costs include, without limitation, processing and accounting charges. Further, Tenant acknowledges that City intends to make commitments to third parties based on the timely payment by Tenant of sums due hereunder. Therefore, if any payment due from Tenant is not received by City within thirty (30) days after receipt of a Notice of Breach, Tenant shall pay to City an additional sum of five percent (5%) of the overdue payment as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that City will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, nor prevent City from exercising any of the other rights and remedies available to City.

15.9 **Violation of Applicable Law.** Notwithstanding any other provisions of this Article 15, where an Event of Default is or includes a violation of Applicable Law, City may elect to proceed pursuant to Applicable Law.

15.10 **City's Default.** If City fails to timely and properly perform any of its obligations under this Lease, and such failure continues for thirty (30) days after City receives a Notice of Breach, City shall be in default under this Lease ("**City Default**"). If a default with due diligence cannot be cured within thirty (30) days, then there shall be a City Default only if City fails to commence within thirty (30) days after it receives the Notice of Breach to cure the same or, thereafter, having begun to cure fails to prosecute the curing of such default continuously, with due diligence. In the event of a City Default, Tenant shall be entitled to seek monetary damages against City.

ARTICLE 16
LEASEHOLD MORTGAGES, LEASEHOLD MORTGAGEE AND INVESTOR RIGHTS

16.1 **Consents to Leasehold Mortgages**. Tenant shall have the right during the Term to procure loans in connection with the Project (each, a "**Loan**") from a leasehold lender (each, a "**Leasehold Lender**") and to encumber Tenant's right, title and interest in the Premises and in the

Project Improvements with one or more deeds of trust as a leasehold mortgage lien and any related regulatory agreements (each deed of trust and related regulatory agreement, collectively, a "**Leasehold Mortgage**"); provided, however, that any such Loans and Leasehold Mortgages shall not encumber City's fee interest in the Premises and such Leasehold Mortgages shall be subject to all the rights and obligations of Tenant contained in this Lease except as otherwise provided herein. Any loan (and the related Leasehold Mortgage) obtained by the tenant then hereunder after foreclosure under the Senior Lender's Leasehold Mortgage or deed in lieu thereof, provided the loan is made by a commercial, governmental or institutional lender with prior written notice to City, shall also constitute a "Loan" for all purposes hereunder.

16.2 **Preservation of Leasehold Benefits**. City agrees as follows:

16.2.1 Voluntary Leasehold Termination. City will not voluntarily terminate, cancel or surrender this Lease or agree to the Tenant's termination, cancellation or surrender of this Lease, or amend or modify this Lease without the prior written consent of the Leasehold Lenders;

16.2.2 Effect of Tenant Waiver. City will not enforce against any Leasehold Lender any waiver or election made by Tenant under this Lease (whether through action or inaction) without the prior written consent of the Leasehold Lenders;

16.2.3 Notice to Leasehold Lenders. City will send to each Leasehold Lender a copy of any notice given by City to Tenant under this Lease at such address or addresses that have been provided to City in writing in accordance with Section 17.3; and

16.2.4 Recognition of New Tenant. Following foreclosure of a Leasehold Mortgage, or assignment in lieu thereof, City will recognize the purchaser or assignee of this Lease as the Tenant under this Lease at the rent, and upon the terms, provisions, covenants and agreements as herein contained and subject to the rights, if any, of any parties then in possession of any part of the Premises, subject to the following:

16.2.4.1 Obligations of New Tenant. That, following any foreclosure or assignment described in Section 16.10, the new Tenant shall be personally obligated only for performance of obligations under this Lease for the period commencing as of the date of such foreclosure or assignment and ending as of the date of any assignment of this Lease to a successor Tenant; and

16.2.4.2 Assignment by New Tenant. That, following any foreclosure or assignment described in Section 16.10. or the execution of a new lease pursuant to Section 16.9, the new Tenant and any successor Tenant shall have the right to assign this Lease (or the new lease) subject to the written consent of City, which consent shall not be unreasonably withheld or delayed.

16.3 **Right of Leasehold Lender to Cure**.

16.3.1 Notwithstanding anything to the contrary under this Lease and except for a violation of Applicable Law, City shall have no right to terminate this Lease or exercise any other remedy under this Lease unless (a) an Event of Default has occurred, (b) City shall have given

each Leasehold Lender written notice of such Event of Default, at such address or addresses that have been provided to City in writing in accordance with Section 17.3, and (c) such Leasehold Lenders shall have failed to remedy such default, acquire Tenant's leasehold estate created by this Lease, or commence foreclosure or commence other appropriate proceedings, in each case as set forth in, and within the time specified by, this Section.

16.3.2 All payments so made by a Leasehold Lender and all things so done by a Leasehold Lender shall be as effective to prevent a termination of this Lease as the same would have been if made and performed by Tenant.

16.3.3 A Leasehold Lender shall have the right, but not the obligation, at any time to pay any or all of the rent due pursuant to the terms of this Lease, and do any other act or thing required of Tenant by the terms of this Lease, which are necessary to prevent termination of this Lease after notice of an Event of Default. A Leasehold Lender shall have a right to enter the Premises upon prior written notice reasonably delivered to the City for purposes of accomplishing the foregoing, so long as such Leasehold Lender indemnifies and holds City harmless from any and all liability arising from such entry upon the Premises (except to the extent of liability arising from City's active negligence or willful misconduct). Each Leasehold Lender shall have ninety (90) days after receipt of written notice from City describing such Event of Default to cure such Event of Default; provided, however, that if it is not reasonably possible for any such Leasehold Lender to effect a cure within ninety (90) days, no Event of Default shall occur under this Lease so long as the Leasehold Lender shall give notice to the City thereof, commence such cure within the ninety (90) day period and thereafter diligently prosecute cure to completion and further provided, if it is necessary for the Leasehold Lender to obtain possession of the Premises in order to effect a cure, the period within which the Leasehold Lender is permitted to effect a cure shall be extended by the time that is required for Leasehold Lender to obtain such possession, provided the Leasehold Lender (1) diligently prosecutes its rights to obtain possession, (2) cures monetary Events of Defaults that do not require possession, subject to Section 16.8 and the cure rights contained therein, and (3) after gaining title to the Premises or entering into a new lease pursuant to Section 16.9, the Leasehold Lender or its transferee cures all non-monetary Events of Default of Tenant hereunder reasonably capable of being cured by such Leasehold Lender.

16.3.4 If a Leasehold Lender is prohibited, stayed or enjoined by any bankruptcy, insolvency or other judicial proceedings from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified for commencing or prosecuting such foreclosure, or other proceedings shall be extended for the period of such prohibition; provided that any Leasehold Lender shall have fully cured any Event of Default in the payment of any monetary obligations of Tenant under this Lease and shall continue to pay currently such monetary obligations when the same fall due; provided, further, that such Leasehold Lender shall not interfere with City's efforts to seek compliance by the Tenant with any non-monetary obligation under this Lease.

16.4 **Limitation on Liability of Leasehold Lender after Foreclosure**. No assumption of obligations by a Leasehold Lender shall be inferred from or result from foreclosure or as the result of any other action or remedy for Events of Default provided for by such Leasehold Mortgage or other instrument. No Leasehold Lender or its designee or transferee shall be or become liable to City under such circumstances unless it assumes liability under another written instrument executed by City and Leasehold Lender or its designee or transferee. However, no

Leasehold Lender may demolish or destroy the Premises or use the Premises for any use except as expressly agreed upon by City.

16.5 **Notice to City of Leasehold Mortgages**. Tenant shall provide written notice to City of the name and address of each Leasehold Lender and written notice of any changes in such parties and their addresses within ten (10) days of Tenant's receipt thereof in accordance with Section 17.3.

16.6 **No Modifications**. City and Tenant shall not amend or modify this Lease nor shall Tenant exercise any option or make any election by the Tenant without the prior written consent of the Leasehold Lenders.

16.7 **Loss Payee Endorsement**. City agrees that Tenant may add the names of each Leasehold Lender to the "Loss Payable Endorsement" of any insurance policies required to be carried by Tenant under this Lease on condition that the insurance proceeds are applied in the manner specified in the applicable Leasehold Mortgage.

16.8 **Cures**. No Leasehold Lender shall be required (a) to perform any act which is not reasonably susceptible to performance by such Leasehold Lender, such as to cure a filing or condition of bankruptcy or insolvency, (b) to cure or commence the cure of any default which arises from Tenant's failure to pay any lien, charge or encumbrance which is junior in priority to the Leasehold Lender's encumbrance, or (c) to pay any amount owed by Tenant, based on an event which occurred before the Leasehold Lender or its designee or transferee took title to the leasehold in the Premises, accepted an assignment of this Lease or entered into a new lease for the Premises.

16.9 **New Lease After Tenant Default**.

16.9.1 City agrees that in the event of termination of this Lease by reason of any Event of Default by Tenant, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for Tenant or its property, or by any other reason, City will enter into a new lease with the Senior Lender or its designee requesting a new lease for the remainder of the Lease Term, effective as of the date of such termination, at the rent, and upon the terms, provisions, covenants and agreements as herein contained and subject to the rights, if any, of any parties then in possession of any part of the Premises, and such new lease shall enjoy the same priority in time and in right as this Lease over any lien, encumbrance or other interest created by City before or after the date of such new lease and shall vest in the Senior Lender or designee all right, title and interest of Tenant hereunder in and to the Premises, including, without limitation, the assignment of Tenant's interest in and to all then existing subleases and sublease rentals, provided:

16.9.1.1 The Senior Lender shall make written request upon City for the new lease at any time prior to the date that is ninety (90) days following the delivery by City to Senior Lender of written notice of termination of this Lease;

16.9.1.2 Subject to Section 16.8, the Senior Lender shall perform and observe all covenants herein contained on Tenant's part that accrue, become due, or are to be performed from and after the effective date of the new lease;

16.9.1.3 The new lease shall provide, with respect to each and every permitted sublease which immediately prior to the termination of this Lease was superior to the lien of the Senior Lender's Leasehold Mortgage, that Senior Lender or its designee shall be deemed to have recognized the subtenant under the sublease as though the sublease had never terminated but continued in full force and effect after the termination of the Lease, and to have assumed all of the obligations of the sublessor under the sublease accruing from and after the termination of this Lease, except that the obligation of the new Tenant, as sublessor, under any covenant of quiet enjoyment, express or implied, contained in such sublease shall be limited to the acts of such new Tenant and those claiming by, under or through such new Tenant; and

16.9.1.4 The rights granted any Leasehold Lender to a new lease shall survive any termination of this Lease for a period of ninety (90) days following receipt by the Senior Lender of the notice described in Section 16.9.1.1.

16.9.2 The tenant under the new lease shall have the same obligations, right, title and interest in and to all Project Improvements, fixtures, and personal property as Tenant had under the terminated Lease immediately prior to its termination. City shall by grant deed or by the terms of the new lease convey to the Leasehold Lender or its designee, title to the improvements, if any, which become vested in City as a result of the termination of the Lease; and

16.9.3 Nothing herein contained shall require any Leasehold Lender to enter into a new lease pursuant to this Section 16.9.

16.10 **Recognition of Transferee**. Notwithstanding anything to the contrary contained herein, foreclosure of any Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the leasehold estate hereunder from Tenant to any Leasehold Lender or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of City or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance City shall recognize the purchaser or other transferee in connection therewith as the Tenant hereunder so long as such purchaser or other transferee shall assume in writing all outstanding obligations of Tenant under this Lease; provided, however, such purchaser or other transferee shall be entitled to a reasonable cure period for continuous operation of the Project for the Permitted Use, so long as the purchaser or other transferee is making good faith progress in diligently pursuing continued operation of the Permitted Use.

16.11 **No Cancellation**. Unless and until City has received notice from all Leasehold Lenders that the Leasehold Lenders elect not to demand a new lease as provided in Section 16.9, or until the ninety (90) day period therefore has expired, City shall not cancel or agree to the termination or surrender of any existing subleases.

16.12 **Insurance Proceeds**. The proceeds from any insurance policies available to Tenant or arising from a condemnation if such condemnation proceeds would be payable to Tenant shall be paid to and held by the Senior Lender and distributed pursuant to the provisions of Article 12 and Article 13 of this Lease.

16.13 **Notices of Proceedings**. Tenant shall give all Leasehold Lenders and City notice of any arbitration, litigation, or condemnation proceedings, or of any pending adjustment of insurance claims as each may relate to the Premises, and any Leasehold Lender shall have the right to intervene therein and shall be made a party to such proceedings. If any Leasehold Lender shall not elect to intervene or become a party to the proceedings, Tenant shall provide such Leasehold Lender with notice of such proceeding and a copy of any award or decision made in connection with such proceeding.

16.14 **Liens of Fee Interest**. City represents and warrants that City has not executed any monetary lien on the fee interest in the Premises. Prior to mortgaging its fee estate, City shall: (1) provide Leasehold Lenders with sixty (60) days prior written notice of such mortgage, and (2) expressly subordinate such mortgage to (a) the interests of Tenant and any Leasehold Lender, (b) any permitted subleases, and (c) any new lease given to Leasehold Lender (or its successor) after termination of the Lease.

16.15 **Termination Under Bankruptcy**. In the event of bankruptcy for either City or Tenant, neither party shall take the benefit of any provisions in the United States Bankruptcy Code that would cause the termination of this Lease or otherwise render this Lease unenforceable in accordance with its terms, without the prior written consent of all Leasehold Lenders. In this regard, in the event of the filing of a petition in bankruptcy by Tenant, and Tenant rejects this Lease under the then applicable provisions of the United States Bankruptcy Code, City shall, upon the request of a Leasehold Lender, affirm this Ground Lease, and City will enter into a new lease on the same terms and conditions as set forth in Section 16.9. In this regard, in the event of the filing of a petition in bankruptcy by or against Tenant, and Tenant rejects this Lease under the then applicable provisions of the bankruptcy code, City shall, upon the request of a Leasehold Lender, affirm this Lease, and City will enter into a new lease on the same terms and conditions set forth herein with such holder or its designee immediately upon Tenant's rejection of this Ground Lease, for the remainder of the Term of this Lease. In the event of the filing of a petition in bankruptcy by City, and City rejects this Lease and Tenant does not affirm it, a Leasehold Lender will have the authority to affirm this Lease on behalf of Tenant and to keep this Lease in full force and effect.

16.16 **Rights of Investor**. _____ (the "**Investor**") shall have the same notice and cure rights (but not rights to a new lease) as any Leasehold Lender for so long as it is a limited partner of Tenant and without regard to the existence of any Leasehold Mortgage. The address for any notices to same, as of the date hereof, is provided in Section 17.3 below.

ARTICLE 17
GENERAL PROVISIONS

17.1 **Governing Law, Exclusive Jurisdiction**. This Lease, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Lease or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Lease shall be brought in Orange County, California.

17.2 **Exercise of Police Power Exempted.** The provisions of this Lease shall not apply to, constrain or otherwise govern any action by City in exercising its police powers, including but not limited to enforcing Applicable Laws. No provision of this Lease shall be interpreted to relieve Tenant or any other person from compliance with Applicable Law.

17.3 **Estoppel Certificates**.

17.3.1 Tenant Estoppel Certificate. At any time and from time to time, within thirty (30) days after receipt of a written request by City, Tenant shall deliver to City a statement in writing certifying (i) that this Lease is unmodified and in full force and effect (or if there shall have been modifications that the same is in full force and effect as modified and stating the modifications); (ii) the Term Commencement Date; (iii) the dates to which the Rent and any other deposits or charges have been paid; (iv) stating whether or not, to the current actual knowledge of Tenant, City is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Tenant may have knowledge; and (v) such other information as may be reasonably requested by the Leasehold Lender. The estoppel certificate may be relied upon by the receiving party, and any prospective lender, lessee, transferee, or any assignee of any Leasehold Lender.

17.3.2 City Estoppel Certificate. At any time and from time to time, within thirty (30) days after receipt of a written request by Tenant, Investor, or any Leasehold Lender, City shall deliver to Tenant, Investor or such Leasehold Lender, if applicable, a statement in writing certifying (i) that this Lease is unmodified and in full force and effect (or if there shall have been modifications that the same is in full force and effect as modified and stating the modifications); (ii) the Term Commencement Date; (iii) the dates to which the Rent and any other deposits or charges have been paid, (iv) stating whether or not, to the current actual knowledge of City, Tenant is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which City may have knowledge, and (v) such other information as may be reasonably requested by Tenant, Investor, or such Leasehold Lender (as applicable). The estoppel certificate may be relied upon by the receiving party, and any prospective lender, lessee, transferee, or any assignee of any Leasehold Lender.

17.4 **Notices.** All notices, demands, or other communications with respect to this Lease shall be in writing and shall be (a) delivered in person, in which event the notice shall be deemed received when delivery is actually received by the recipient, (b) sent by reputable overnight courier which provides a receipt with the time and date of delivery for next business day delivery, in which event the notice shall be deemed received when delivery is actually received by the recipient; or (c) sent by registered mail or certified mail, postage prepaid, return receipt requested, through the United States Postal Service, in which event the notice shall be deemed received when the delivery is actually received by the recipient. Notwithstanding the foregoing, the recipient's rejection or other refusal to accept delivery, or the inability to deliver because of a changed address of which proper notice was not given, shall be deemed to be receipt of the notice, demand or other communication. Each party may change its address by written notice in accordance with this Section. All such notices shall be sent to the following addresses:

If to City:

City of Costa Mesa
77 Fair Drive
Costa Mesa, California 92626
Attention: City Manager

with a copy to:

Jones Mayer
3777 N. Harbor Blvd.
Fullerton, CA 92835
Attn: Kimberly Hall Barlow

If to **Tenant**:

_____ LP
c/o Jamboree Housing Corporation
17701 Cowan Avenue, Suite 200
Irvine, CA 92614
Attention: Michael Massie

with a copy to:

Rutan & Tucker, LLP
18575 Jamboree Road 9th Floor
Irvine, CA 92612
Attention: Patrick D. McCalla

and a copy to:

and a copy to:

Any party may change its address set forth above by notice given in the manner set forth above.

17.5 **Quiet Enjoyment.** City covenants and agrees that Tenant, upon paying the Rent and all other charges under this Lease and observing and keeping all covenants, agreements and conditions of this Lease on its part to be observed and kept at all times during the Term, shall have quiet enjoyment of the Premises during the Term, subject, however, to the exceptions, reservations, conditions of this Lease or other rights of City contained herein or as otherwise allowed by applicable law.

17.6 **Unavoidable Delays**. "**Unavoidable Delays**" shall mean delays actually caused by force majeure events. Force majeure events shall include, without limitation: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; 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; delays of any contractor; subcontractor or supplier; or any other causes beyond the control or without the default of the party claiming an extension of time to perform.

Notwithstanding anything to the contrary in this Lease, an extension of time for delays actually caused by any such event shall be for the period of the Unavoidable Delay and shall commence to run from the time of the commencement of the actual delay, if notice by the party claiming such extension is sent to the other party within thirty (30) days after the commencement of the actual delay.

17.7 **Memorandum of Lease**. A Memorandum of Lease in the form attached hereto as Exhibit B ("**Memorandum of Lease**") shall be signed by City and Tenant at the same time as this Lease is signed. The Memorandum of Lease shall be recorded in the Official Records of the County of Orange, California, on the Term Commencement Date. Tenant will pay all costs of recording, including any County documentary transfer tax or City conveyance tax. Tenant shall pay the cost of any title insurance it may require.

17.8 **Captions**. The word titles contained herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as any part of this instrument.

17.9 **Successors and Assigns**. Subject to the provisions hereof, this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, and wherever a reference in this Lease is made to either of the parties hereto such reference shall be deemed to include, wherever applicable, also a reference to the successors and assigns of such party, as if in every case so expressed.

17.10 **Indemnity Includes Defense Costs**. In any case where one party is obligated under an express provision of this Lease to indemnify and to save the other party harmless from any damage or liability, the indemnity obligation shall be deemed to include defense of the indemnified party, such defense to be through legal counsel reasonably acceptable to the indemnified party.

17.11 **Business Days**. As used herein, the term "business day" shall mean any day other than a Saturday, Sunday or day on which the City is closed for business. If any of the dates specified in this Lease shall fall on a non-business day, then the date of such action shall be deemed to be extended to the next business day.

17.12 **Disclaimer of Partnership.** The relationship of the parties hereto is that of City and tenant, and it is expressly understood and agreed that City does not as a result of this Lease in any way nor for any purpose become a partner of Tenant or a joint venturer with Tenant in the conduct of Tenant's business or otherwise. This Lease is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or association as between City and Tenant.

17.13 **Notice and Cooperation in Legal Proceedings**. Tenant shall give prompt notice, in writing, to the City of the commencement of any action, lawsuit or other legal proceeding against City or against Tenant with respect to any aspect or part of the Premises or this Lease. Tenant shall cooperate with City, and shall cause all the Tenant Representatives to cooperate, in connection with the prosecution or defense of any such legal proceedings. For purposes of this

Lease, "**Tenant Representatives**" shall mean Tenant's agents, contractors, subcontractors, representatives, officers, employees, members, partners, shareholders, directors and managers.

17.14 **No Waiver**. No delay or failure to require performance of any provision of this Lease shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing and shall apply to the specific instance expressly stated.

17.15 **Third Party Beneficiaries**. Except as otherwise expressly stated herein, this Lease does not confer any rights or remedies upon any person or entity other than the parties. Except as otherwise expressly stated herein, there are no third-party beneficiaries to this Lease. Each Leasehold Lender is hereby made an express third party beneficiary of the express rights granted hereunder.

17.16 **Counterparts; Electronic Signatures**. This Lease may be executed in any number of counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original. The parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the parties.

17.17 **Entire Lease: Governing Language**. This Lease constitutes the entire agreement by and between the parties with respect to the subject matters hereof, and supersedes all prior understandings and agreements relating thereto. This Lease comprises the complete and final expression of the rights, obligations, duties, and undertakings of the parties and sets forth all consideration, covenants, understandings and inducements pertaining thereto.

17.18 **Changes or Amendments to Lease**. No modification or amendment shall be valid unless set forth in writing and signed by City and Tenant and approved by the Leasehold Lenders, in writing, on the terms and conditions required pursuant to this Lease. City shall cooperate in including within this Lease by suitable amendment from time to time any provision that may reasonably be requested by any Leasehold Lender or any proposed Leasehold Lender, for the purpose of allowing any such Leasehold Lender or proposed Leasehold Lender, reasonable means to protect or preserve its interest in the Tenant and/or the Premises, as applicable. City agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the Lease Term or rent under this Lease nor otherwise in any material respect adversely affect any rights of City under this Lease.

17.19 **Cumulative Remedies**. The rights and remedies of the parties to this Lease, whether pursuant to this Lease or in accordance with law, shall be construed as cumulative, and the exercise of any single right or remedy shall constitute neither a bar to the exercise of nor the waiver of any other available right or remedy.

17.20 **Time of the Essence**. Time is of the essence of this Lease. Failure to comply with any time requirement of this Lease shall constitute a material breach of this Lease.

17.21 **Incorporation of Exhibits**. All exhibits referred to in this Lease and any addenda, appendices, attachments, exhibits, and schedules which may, from time to time, be attached to in any duly executed amendment of this Lease are by such reference incorporated in this Lease and shall be deemed to be part of this Lease.

17.22 **Severability**. Should any part of this Lease be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity of the remainder of this Lease which shall continue in full force and effect, provided that such remainder can, absent the excised portion, be reasonably interpreted to give the effect to the intentions of the parties.

17.23 **Ambiguities**. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this Lease. This Lease has been prepared after thorough negotiation and bargaining and represents a final, mutually agreeable document which all of the parties have participated in drafting. Should any ambiguities or conflicts between contract terms and conditions contained in this Lease and its exhibits exist, the terms and conditions in this Lease shall control over its exhibits.

17.24 **Other Representations, Warranties and Covenants**. Tenant represents, warrants and covenants that the following is true and correct and shall be true and correct at all times during the Term:

17.24.1 Tenant is in good standing under the laws of the State of California and is authorized to carry on and do business in the State of California as such business is now conducted and to perform its obligations under this Lease.

17.24.2 Tenant has the full right, power and lawful authority to enter into this Lease and its execution and delivery of this Lease by it or on its behalf has been fully authorized by all requisite actions.

17.24.3 Tenant has provided City with true and correct copies of documentation reasonably requested by City designating the parties authorized to execute this Lease on its behalf.

17.24.4 Tenant's execution, delivery and performance of its obligations under this Lease will not violate any applicable laws, regulations, or rules nor to its knowledge, constitute a breach or default under any contract, agreement, or instrument to which it is a party, or any judicial or regulatory decree or order to which it is a party or by which it is bound.

17.24.5 Tenant has not made an assignment for the benefit of creditors, filed a petition in bankruptcy, been adjudicated insolvent or bankrupt, petitioned a court for the appointment of any receiver of or trustee for it or any substantial part of its property, or commenced any proceeding relating it under any reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or later in effect. There has not been commenced nor is there pending against it any proceeding of the nature described in

the first sentence of this subsection. No order for relief has been entered with respect to it under the Federal Bankruptcy Code.

17.24.6 All documents, instruments, and other information delivered by Tenant to the City pursuant to this Lease are true, accurate, correct and complete to the actual knowledge of Tenant unless otherwise indicated in writing delivered concurrently with such delivery. City shall be entitled to rely upon the accuracy and completeness of the information, surveys, and reports provided by Tenant or any of Tenant's employees, agents, subcontractors or consultants.

17.24.7 This Lease, when executed by it and delivered, shall constitute its legal, valid and binding obligation. No consent, approval, or authorization of any third person to its execution, delivery, and performance of this Lease is required, other than consents, approvals, and authorizations which have already been unconditionally given.

17.24.8 Upon its receipt of actual knowledge that any fact or condition which would cause any warranty or representation made by it pursuant to this Section is not true in all material respects, promptly give written notice of such fact or conditions to the City.

17.25 **Further Assurances**. Tenant covenants and agrees that it will execute such other and further instruments and documents as are or may become reasonably necessary to effectuate and carry out this Lease.

17.26 **Representation by Counsel**. The parties to this Lease were represented by their respective counsel in the negotiation and execution of this Lease.

17.27 **No Merger.** There shall be no merger of this Lease or any interest in this Lease nor of the leasehold estate created by this Lease, with the fee estate in the Premises, by reason of the fact that this Lease or such interest in the Lease, or such leasehold estate may be directly or indirectly held by or for the account of any person who shall hold the fee estate in the Premises, or any interest in such fee estate, nor shall there be such a merger by reason of the fact that all or any part of the leasehold estate created by this Lease may be conveyed or mortgaged in a leasehold mortgage to a leasehold mortgagee who shall hold the fee estate in the Premises or any interest of the City under this Lease.

ARTICLE 18
REPRESENTATIONS, WARRANTIES AND COVENANTS

18.1 **Representations, Warranties and Covenants of City**. As an inducement to Tenant to enter into and to proceed under this Lease, City warrants, represents and covenants to Tenant as follows, which warranties, representations and covenants are true and correct as of the date of this Lease:

(a) City has the right, power and authority to enter into this Lease and the right, power and authority to comply with the terms, obligations, provisions and conditions contained in this Lease;

(b) City is a California municipal corporation. The execution, performance and delivery of this Lease by City have been fully authorized by all requisite actions on the part of City.

(c) City is not the subject of a bankruptcy proceeding.

(d) There are no known actions, suits, material claims, legal proceedings, or any proceedings affecting the Premises or any portion thereof, at law or in equity before any court of governmental agency, domestic of foreign.

(e) The entry by City into this Lease and the performance of all of the terms, provisions and conditions contained herein will not, or with the giving of notice or the passage of time, or both, would not, violate or cause a breach or default under any other agreements to which City is a party or by which it is bound.

(f) City is the owner of the fee simple title to the Premises free and clear of all unrecorded monetary liens, encumbrances, easements, leases, covenants, conditions, restrictions, and other exceptions to or defects in title, excepting only the following: (a) current taxes not yet delinquent; and (b) those additional title exceptions listed in the Proforma Owner's Policy of Title Insurance No. _____ issued by First American Title Company ("Title Report"), and such encumbrances approved by Tenant and recorded concurrently with the Memorandum of Lease.

(g) As of the Commencement Date, the Premises are not subject to any outstanding lease agreement, contract of sale, right of first refusal or purchase option, in favor of any person or entity, except Tenant. There are no (i) agreements or arrangements pursuant to which goods, services, water, equipment, labor, supplies, or any other items are being or will be furnished to the Premises, including without limitation, equipment leases, maintenance agreements, service contracts, warranties, and management contracts, except for utilities arrangements; (ii) agreements whereby any person or entity holds any right, license, or privilege or possess or use the Premises or any portion thereof; and (iii) licensing, franchise, or permits issued or required for the ownership and/or operation of the Premises. No agreements or understanding relating to or affecting the Premises exist, except for this Lease and the agreements shown as exceptions to the Premises' title,

(h) There are no tenants or other persons who have a lawful interest in the Premises, and no person or entity has the right to possess the Premises or portion of it.

(i) City has not received any notice from any governmental agency or authority alleging that the Premises is currently in violation of any law, ordinance, rule, regulation, or requirement applicable to its use and operation. If any such notice or notices are received by City following the Commencement Date, City shall, within ten (10) business days of receipt of such notice, notify Tenant in writing. Further, no violations exist of any statutes, ordinances, regulations, or administrative or judicial orders or holdings, whether or not appearing in public records, with respect to the Premises, and present use of the Premises complies with the existing City zoning laws and ordinances.

(j) City has disclosed to Tenant all information, records, and studies maintained by City for the Premises concerning "Hazardous Materials" (as defined below). City has not received written notice from any governmental authority that the Premises or the use or operation thereof are in violation of any "Hazardous Materials Laws" (as defined below), and to City's knowledge, no such written notice has been issued and, to City's knowledge, no violation of any Hazardous Materials Laws has occurred. To City's knowledge, no part of the Premises has ever been used by any person or entity to refine, produce, use, store, handle, transfer, process, transport or dispose of any Hazardous Materials.

As used in this Lease, the term "**Hazardous Materials**" means any oil or any fraction thereof or petroleum products or "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14) or Section 25281(h) or 25316 of the California Health and Safety Code at such time; any "hazardous waste," "infectious waste" or "hazardous material" as defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code at such time; any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901, et seq.), CERCLA Federal Water Pollution Control Act (33 U.S.C. Section 1251, et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f), et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601, et seq.), Clean Air Act (42 U.S.C. Section 7401, et seq.), California Health and Safety Code (Section 25100, et seq., Section 39000, et seq.), or California Water Code (Section 13000, et seq.) at such time; and any additional wastes, substances or material which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Premises, but excluding any substances or materials used in the construction, development, maintenance or operation of the Improvements, so long as the same are used in accordance with all applicable laws.

As used in this Lease, the term "**Hazardous Materials Laws**" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Premises or any portion thereof.

18.2 **Representations, Warranties and Covenants of Tenant**. As an inducement to City to enter into and to proceed under this Lease, Tenant warrants and represents to City as follows, which warranties, representations and covenants are true and correct as of the date of this Lease:

(a) Tenant has the right, power and authority to enter into this Lease and the right, power and authority to comply with the terms, obligations, provisions and conditions contained in this Lease;

(b) Tenant is a California limited partnership. The execution, performance and delivery of this Lease by Tenant have been fully authorized by all requisite actions on the part of the Tenant.

(c) Tenant is not the subject of a bankruptcy proceeding.

(d) The entry by Tenant into this Lease and the performance of all of the terms, provisions and conditions contained herein will not, or with the giving of notice or the passage of

time, or both, would not, violate or cause a breach or default under any other agreements to which Tenant is a party or by which it is bound.

18.3 **Hazardous Materials**.

18.3.1 Certain Covenants and Agreements. Tenant hereby covenants and agrees that:

(a) Tenant shall not knowingly permit the Premises or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Premises in violation of any applicable law;

(b) Tenant shall keep and maintain the Premises and each portion thereof in compliance with, and shall not cause or permit the Premises or any portion thereof to be in violation of, any Hazardous Materials Laws;

(c) Upon receiving actual knowledge of the same Tenant shall immediately advise City in writing of:

(i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Tenant or the Premises pursuant to any applicable Hazardous Materials Laws;

(ii) any and all claims made or threatened by any third party against Tenant or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (i) and this clause (ii) are hereinafter referred to as "**Hazardous Materials Claims**"); or

(iii) the presence of any Hazardous Materials in, on or under the Premises in such quantities which require reporting to a government agency.

If City reasonably determines that Tenant is not adequately responding to a Hazardous Material Claim or any condition in Section 18.3.1(c)(iii), City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any such Hazardous Materials Claims and to have its reasonable attorney's fees in connection therewith paid by Tenant.

(d) Without City's prior written consent, which shall not be unreasonably withheld or delayed, Tenant shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Premises (other than in emergency situations or as required by governmental agencies having jurisdiction), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claims.

(e) Tenant has conducted its own inspections, including a Phase I Environmental Assessment and Phase II Environmental Assessment (if necessary), to familiarize itself with the condition of the Premises, including the presence of any Hazardous Materials, and

has, subject to the representations and warranties made by City under this Lease and/or under the AH/DDA, unconditionally accepted the condition of the Premises based on its own due diligence.

18.3.2 Tenant Indemnity. Without limiting the generality of the indemnification set forth in Section 9.1 above, Tenant hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably approved by City) the Indemnitees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of:

(a) the failure of Tenant on or after the Commencement Date to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Premises; or

(b) any release or discharge of any Hazardous Materials into, on, under or from the Premises, first arising on or after the Commencement Date, or the presence in, on, or under the Premises of any Hazardous Materials that first occurs on the Premises after the Commencement Date.

(c) The provisions of this subsection shall survive expiration of the Term or other termination of this Lease, and shall remain in full force and effect. This indemnity obligation shall not extend to any claim to the extent arising from any Indemnitee's negligence or willful misconduct. Notwithstanding anything herein to the contrary Tenant's liability under this Section 9.3 shall not extend to cover the violation of any Hazardous Materials Laws that first arise, commence or occur after the actual dispossession from the entire Premises of Tenant and all entities which control, are controlled by, or are under common control with Jamboree.

18.3.3 No Limitation. Tenant hereby acknowledges and agrees that Tenant's duties, obligations and liabilities under this Lease, including, without limitation, under subsection 18.3.2 above, are in no way limited or otherwise affected by any information City may have concerning the Premises and/or the presence on the Premises of any Hazardous Materials, whether City obtained such information from Tenant or from its own investigations.

18.3.4 City Indemnity. City hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to Tenant) Tenant, its officers, board members, directors, agents, successors, assigns and employees (the "**Tenant Indemnitees**") from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of:

(a) the failure of City prior to the Commencement Date to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Premises; or

(b) any release or discharge of any Hazardous Materials into, on, under or from the Premises, first arising prior to the Commencement Date, or the presence in, on, or under the Premises of any Hazardous Materials that first occurred on the Premises prior to the Commencement Date.

The provisions of this subsection shall survive expiration of the Term or other termination of this Lease, and shall remain in full force and effect. This indemnity obligation shall not extend to any claim to the extent arising from any Tenant Indemnitee's gross negligence or willful misconduct.

18.4 **As-Is Conveyance; Release**.

18.4.1 As-Is Conveyance. Except as otherwise provided in this Lease and/or in the AH/DDA, this Lease is made "AS IS," with no warranties or representations by the City concerning the condition of the Premises. City hereby agrees and acknowledges that except in the event of any fraud by City, and except for the representations by City expressly set forth herein and/or in the AH/DDA: (i) neither City, nor anyone acting for or on behalf of City, has made any representation, statement, warranty or promise to Tenant concerning the development potential or condition of the Premises; (ii) in entering into this Lease, Tenant has not relied on any representation, statement or warranty of City, or anyone acting for or on behalf of City; (iii) all matters concerning the Premises have been or shall be independently verified by Tenant and Tenant shall lease the Premises on Tenant's own prior examination thereof; and (iv) Tenant is leasing the Premises in an "as is" physical condition and in an "as is" state of repair. If the condition of the Premises is not in all respects entirely suitable for the use or uses to which such Premises will be put, then except in the event of any fraud by City, and except for the representations by City expressly set forth herein, it is the sole responsibility and obligation of Tenant to place the Premises in all respects in a condition suitable for Tenant's development project, solely at Tenant's expense.

18.4.2 General Release. Except for City's fraud or the breach by City of a representation, warranty, or covenant in this Lease and/or in the AH/DDA, Tenant and its owners, employees, agents, assigns and successors agree that as of the Commencement Date, Tenant shall be deemed conclusively to have released and discharged City and its agents, employees, trustees, assigns and successors, from any and all damages, losses, demands, claims, debts, liabilities, obligations, causes of action and rights, whether known or unknown, by Tenant regarding the physical condition of the Premises as of the Commencement Date, including, but not limited to, the environmental condition of the Premises.

18.4.3 Waiver of Civil Code Section 1542. Tenant agrees that, with respect to the General Release contained in Section 18.4(b) above, the General Release extends to all matters regarding the Premises, whether or not claimed or suspected, to and including the date of execution hereof, and constitutes a waiver of each and all the provisions of the California Civil Code section 1542, which reads as follows:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE

TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

Tenant herein acknowledges that the effect and import of the provisions of Civil Code § 1542 have been explained to it by its own counsel. Tenant understands and acknowledges the significance and the consequence of such specific waiver of unknown claims and hereby assumes full responsibility for any injuries, damages, losses or liabilities that it may hereinafter incur from the waiver of these unknown claims.

//SIGNATURES FOLLOW ON NEXT PAGE//

IN WITNESS WHEREOF, City and Tenant have executed this Lease as of the Effective Date.

CITY:

The City of Costa Mesa,
a California municipal corporation

By: _____
Lori Ann Farrell Harrison, City Manager

Date: _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

JONES MAYER

_____
Counsel to the City of Costa Mesa

TENANT:

_____ LP,
a California limited partnership,

By: _____ LLC,
a California limited liability company,
Managing General Partner

By: Jamboree Housing Corporation,
a California nonprofit public benefit corporation,
Manager

By:_____
Michael Massie, Executive Vice President
and Chief Development Officer

APPROVED AS TO FORM:

RUTAN & TUCKER

_____
Counsel to the Tenant

EXHIBIT A

The Land referred to herein is situated in the State of California, County of Orange, City of Costa Mesa, and described as follows:

EXHIBIT B

FORM OF MEMORANDUM OF LEASE

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

_____, LP
c/o Jamboree Housing Corporation
17701 Cowan Avenue, Suite 200
Irvine, CA 92614
Attention: _____

APN: (SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY)
[To be recorded at no fee pursuant to Government Code §27383]

MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease ("**Memorandum**") is made as of _____, ____ by and between the City of Costa Mesa, a California municipal corporation ("**City**") and _____, LP, a California limited partnership ("**Tenant**").

1. For good and valuable consideration, receipt of which is hereby acknowledged, City hereby leases to Tenant and Tenant hires from City certain real property described on Exhibit A hereto ("**Premises**"). The terms and conditions of this lease are more particularly set forth in an unrecorded Ground Lease (the "**Lease**") between City and Tenant dated for reference purposes as of _____ which is hereby incorporated herein by this reference thereto. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Lease.

2. The term of the Lease ("**Lease Term**") commences on the Term Commencement Date (which is defined in the Lease as the date this Memorandum is recorded in the public records) and expires on the last day of the month in which the ninety-ninth (99^{th}) anniversary of the Term Commencement Date occurs.

3. The Lease requires that the Premises be used for the Term for affordable housing and related uses and public parking, as more particularly set forth in the Lease.

4. This Memorandum has been executed, acknowledged and recorded solely for the purpose of providing constructive notice of the Lease. This Memorandum may be executed in any number of counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original. If any inconsistency or conflict exists between the provisions of this Memorandum and the Lease, the terms, covenants and conditions of the Lease shall control.

[signatures on following pages]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the day and year first written above.

Tenant:

_____
LP, a California limited partnership,

By: _____ LLC, a California limited liability company, Managing General Partner

By: Jamboree Housing Corporation, a California nonprofit public benefit corporation, Manager

By:_____

Name: Michael Massie, Executive Vice President and Chief Development Officer

City:

City of Costa Mesa, a California municipal corporation

ATTEST:

_____

City Clerk

By: _____

Its: _____

APPROVED AS TO FORM:

JONES MAYER

_____

Counsel to the City of Costa Mesa

[SIGNATURES OF OTHER THAN COUNSEL MUST BE ACKNOWLEDGED]

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

EXHIBIT A TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION OF PREMISES

The Land referred to herein is situated in the State of California, County of Orange, City of Costa Mesa, and described as follows:

TABLE OF EXHIBITS

EXHIBIT A Legal Description of Premises

EXHIBIT B Form of Memorandum of Lease