

RESOLUTION NO. 4306-2020

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING AND
AUTHORIZING THE EXECUTION OF AN
AFFORDABLE HOUSING LOAN AGREEMENT WITH
FORT BRAGG SOUTH STREET LP FOR THE PLATEAU PROJECT
(441 South Street)**

WHEREAS, on August 12, 2019, the City Council adopted Resolution No. 4188-2019 approving the allocation of 40 Article 34 Low-Rent Housing Units to the Danco Group of Companies ("Danco") for its proposed affordable housing project called the Plateau, to be located at 441 South Street (the "Project"); and

WHEREAS, since that time, Danco has applied for and received additional financing commitments for the Project which will have three components including: (i) 20 units of permanent supportive housing, (ii) 23 units of senior housing, and (iii) 25 units of family/workforce housing; and

WHEREAS, Danco has applied for and received entitlements for the development of the Project; and

WHEREAS, on July 27, 2020, the City Council, by Resolution No. 4291-2020, and the Fort Bragg Redevelopment Successor Agency ("Successor Agency"), by Resolution No. RS 28-2020, approved the execution of a Pre-Development Loan Agreement with Danco pursuant to which the City and Successor Agency approved making a loan in the amount of \$250,000 from its Affordable Housing Fund to Danco to extend the date for the close of escrow for the purchase of property to be used for the Project; and

WHEREAS, the City has received a Homeless Emergency Aid Program ("HEAP") grant of Three Million Dollars (\$3,000,000) (the "HEAP Funds") from the County of Mendocino Health and Human Services Agency as the administrative entity for the Mendocino County Homeless Continuum of Care; and

WHEREAS, Fort Bragg South Street LP, a California limited partnership ("Developer"), was created to develop the Project, for which Danco Communities serves as a co-administrative general partner; and

WHEREAS, the City desires to loan the HEAP Funds to Developer to assist with the development of the Project;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Fort Bragg, as follows:

Section 1. The City Council hereby approves the Loan Agreement, in substantially the form attached hereto as Exhibit A and incorporated herein by reference, subject to any minor, technical and non-substantive changes approved by the City Manager and

Best Best & Krieger LLP, special counsel to the City on the Project, and hereby authorizes the City Manager to execute the Loan Agreement and any other documents necessary to effectuate the terms of the Loan Agreement.


The above and foregoing Resolution was introduced by Councilmember Norvell, seconded by Councilmember Peters, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 28th day of September, 2020, by the following vote:

AYES: Councilmembers Albin-Smith, Morsell-Haye, Norvell, Peters and Mayor Lee.
NOES: None.
ABSENT: None.
ABSTAIN: None.
RECUSED: None.



William V. Lee
Mayor

ATTEST:


June Lemos, CMC
City Clerk

AFFORDABLE HOUSING LOAN AGREEMENT
(441 SOUTH STREET)

This Affordable Housing Loan Agreement (“**Agreement**”) is entered into as of July 29, 2020 (Effective Date) by and between the CITY OF FORT BRAGG, a California municipal corporation (“**City**”) and FORT BRAGG SOUTH STREET LP, a California limited partnership (“**Borrower**”).

RECITALS

A. Borrower is in the process of acquiring certain real property located in Fort Bragg, California, as more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the “**Property**”) upon which it will develop a multifamily housing facility to be known as The Plateau Housing Project (the “**Project**”).

B. Borrower has requested that the City make a loan to Borrower in an amount not to exceed Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000.00) to assist with the acquisition of the Property and development of the Project, which amount includes the Pre-Development Loan previously made, as described in Recital E., below. Borrower is in the process of obtaining final development entitlements and the other financing necessary to develop the Project.

C. The Project is an affordable multifamily housing project with three components: (i) 20 units of permanent supportive housing, plus a manager’s unit; (ii) 23 single-story senior residential cottages; and (iii) 25 workforce/family residential units and associated amenities.

D. The City received a Homeless Emergency Aid Program (HEAP) grant of Three Million Dollars (\$3,000,000) (the “HEAP Grant”) from the County of Mendocino Health and Human Services Agency as the administrative entity for the Mendocino County Homeless Continuum of Care (MCHCOC). In addition, the City, in its capacity as the Housing Successor to the former Redevelopment Agency of the City of Fort Bragg has committed Two Hundred Fifty Thousand Dollars (\$250,000) from its Low- and Moderate-Income Housing Fund for the Project.

E. City and Danco Communities, a California corporation (“Danco”), previously entered into a Pre-Development Loan Agreement, dated July 28, 2020, pursuant to which the City loaned to Danco the sum of Two Hundred Fifty Thousand Dollars (\$250,000) (the “Pre-Development Loan”) to pay into escrow in order to extend the date for the close of escrow on Borrower’s purchase of the Property. Danco is the co-administrative general partner of Borrower and executed an unsecured Pre-Development Promissory Note for the Pre-Development Loan. The Pre-Development Loan Agreement contemplated that this Agreement would require the execution of a new promissory note which would supersede and replace the Pre-Development Promissory Note.

F. The City desires to enter into this Agreement to make a loan to Borrower, subject to the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, City and Borrower hereby agree as follows:

AGREEMENT

100. DEFINITIONS

101. Terms. The following terms, as used in this Agreement, shall have the meaning ascribed them in this Section:

a. **“Additional Borrower Financing”** has the meaning set forth in Section 401.

b. **“Affiliate”** means any other Person Controlling or Controlled by or under common Control with a specified Person.

c. **“Agreement”** means this Affordable Housing Loan Agreement.

d. **“Amended and Restated Promissory Note”** shall have the meaning set forth in Section 201.1 of this Agreement.

e. **“Annual Operating Expenses”** means for each calendar year, the costs reasonably and actually incurred for operation and maintenance of the Project, which shall generally include: (i) Property taxes and assessments imposed on the Project; (ii) debt service due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Project) on the Approved Financing; (iii) on-site service provider fees for supportive housing social services, provided the City has approved, in writing, the plan and budget for such services before such services begin; (iv) property management fees and reimbursements, on-site property management office expenses, and salaries of property management and maintenance personnel, not to exceed amounts that are standard in the industry and which are pursuant to a management contract approved by the City; (v) annual partnership/asset management fees of \$7,500, escalated by 3% annually, to the limited partner, and \$10,000, escalated by 3% annually, to the general partner; (viii) fees for accounting, audit, and legal services incurred by Borrower's general partner in the asset management of the Project, not to exceed amounts that are standard in the industry, to the extent such fees are not included in the approved partnership/asset fees; (ix) premiums for insurance required to satisfy the requirements of any lender of Approved Financing; (x) utility services not paid for directly by tenants, including water, sewer, and trash collection; (xi) maintenance and repair expenses and services; (xii) any annual license or certificate of occupancy fees required for operation of the Project; (xiii) security services; (xiv) advertising and marketing; (xv) cash deposited into the Replacement Reserve Account in the amount set forth in this Agreement; (xvi) cash deposited into the Operating Reserve Account to maintain the amount set forth in this Agreement (excluding amounts deposited to initially capitalize the account); (xvii) payment of any previously unpaid portion of any developer fee approved by the City (without interest); (xviii) extraordinary operating costs specifically approved in writing by the City; (xix) payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves, and other ordinary and reasonable operating expenses approved in writing by the City and not listed above; (xx) loans made by partners of the Borrower to the Borrower in accordance with Borrower's Partnership Agreement; (xxi) tax credit adjuster payments due to the Borrower's limited partner in accordance with Borrower's Partnership Agreement; and (xxii) other ordinary and reasonable

operating expenses approved in writing by the City and not listed above. Annual Operating Expenses do not include the following: depreciation, amortization, depletion or other non-cash expenses, initial deposits to capitalize a reserve account, any amount expended from a reserve account, and any capital cost associated with the Project

f. “Approved Financing” means the Loan and the Additional Borrower Financing approved by the City and any Refinanced Indebtedness, as defined in Section 608.

g. “Automobile Liability Insurance” means insurance coverage against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, hired and non-owned vehicles used by Borrower regarding the Project, with minimum limits for bodily injury and property damage of One Million Dollars (\$1,000,000). Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by City, which approval shall not be unreasonably withheld.

h. “Borrower” has the meaning set forth in the introduction to this Agreement.

i. “Borrower’s Partnership Agreement” means that certain Amended and Restated Agreement of Limited Partnership of Borrower dated as of September 1, 2020.

j. “Builder’s Risk Insurance” means builder’s risk or course of construction insurance covering all risks of loss, less policy exclusions, on a completed value (non-reporting) basis, in an amount sufficient to prevent coinsurance, but in any event not less than one hundred percent (100%) of the completed value of the construction of the Project, including cost of debris removal (subject to a policy sublimit), but excluding foundation and excavations. Such insurance shall also: (a) grant permission to occupy; and (b) cover, for replacement cost, all materials on or about any offsite storage location intended for use in, or in connection with, the Property (subject to a policy sublimit).

k. “City” means the City of Fort Bragg.

l. “Claim” means any claim, loss, cost, damage, expense, liability, Lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind.

m. “Commencement of Construction” means the commencement by Borrower of any alteration, construction, demolition, development, expansion, reconstruction, repair, restoration, or other work affecting the Property.

n. “Conditions Precedent to Disbursement” has the meaning set forth in Section 204.1.

o. “Control” means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person and contractually bind such Person, whether by ownership of Equity Interests, by contract, or otherwise.

p. **“Construction”** means any alteration, construction, excavation, demolition, grading, development, expansion, reconstruction, redevelopment, repair, restoration, or other work affecting the Property.

q. **“Construction Contract”** means the contract to be entered into by Borrower and a licensed general contractor for the performance of the construction of the Project on the Property.

r. **“Deed of Trust”** means that certain Deed of Trust executed by Borrower in substantially the form attached hereto as Attachment No. 3 that will encumber the Property to secure repayment of the Loan.

s. **“Effective Date”** means the date first set forth in this Agreement above.

t. **“Environmental Claim”** means any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements and expenses, including reasonable attorney’s fees and costs and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or Hazardous Substance Discharge.

u. **“Environmental Document”** means any exemption determination, any Negative Declaration (mitigated or otherwise) or any Environmental Impact Report (including any addendum or amendment to, or subsequent or supplemental Environmental Impact Report) required or permitted pursuant to the National Environmental Policy Act (codified as 42 U.S.C. §§ 4321 *et seq.*) or the California Environmental Quality Act (codified as Public Resources Code Sections 21000 *et seq.*), as applicable, to issue any discretionary Approval required to approve this Agreement.

v. **“Environmental Law”** means any Federal or California law regarding any of the following at, in, under, above, or upon the Property: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, remediation, control, disposal, generation, storage, release, discharge, transportation, use of, or liability or standards of conduct concerning, Hazardous Substances, as now or may, at any later time, be in effect

w. **“GAAP”** means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), or in such other statements by such other entity as may be in general use by significant segments of the United States accounting profession, which are applicable to the circumstances as of the date of determination.

x. **“Governmental Requirements”** means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees, of the United States, the state, the county, City, or any other political subdivision in which the Property is located, and of any other political

subdivision, agency or instrumentality exercising jurisdiction over City, Borrower or the Property.

y. **“Gross Revenue”** means for each calendar year, all revenue, income, receipts, and other consideration actually received from the operation and leasing of the Project. Gross Revenue includes, but is not limited to: (i) all rents, fees and charges paid by tenants; (ii) Section 8 payments or other rental subsidy payments received for the dwelling units; (iii) deposits forfeited by tenants; (iv) all cancellation fees; (v) price index adjustments and any other rental adjustments to leases or rental agreements; (vi) net proceeds from vending and laundry room machines; (vii) the proceeds of business interruption or similar insurance not paid to senior lenders; (viii) the proceeds of casualty insurance not used to rebuild the Project and not paid to senior lenders; and (ix) condemnation awards for a taking of part or all of the Project for a temporary period. Gross Revenue does not include tenants' security deposits, loan proceeds, capital contributions or similar advances.

z. **“Hazardous Substance”** means any flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum, petroleum products and any “hazardous” or “toxic” material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a “hazardous substance” under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (b) substances designated as “hazardous substances” pursuant to 33 U.S.C. § 1321; (c) defined as a “hazardous waste” under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, *et seq.*, as amended; (d) defined as a “hazardous substance” or “hazardous waste” under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601, *et seq.*, or any so-called ‘superfund’ or ‘superlien’ law; (e) defined as a “pollutant” or “contaminant” under 42 U.S.C. § 9601(33); (f) defined as “hazardous waste” under 40 C.F.R. Part 260; (g) defined as a “hazardous chemical” under 29 C.F.R. Part 1910; (h) any matter within the definition of “hazardous substance” set forth in 15 U.S.C. § 1262; (i) any matter, waste or substance regulated under the Toxic Substances Control Act (“TSCA”) [15 U.S.C. Sections 2601, *et seq.*]; (j) any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, *et seq.*; (k) those substances listed in the United States Department of Transportation (DOT) Table [49 C.F.R. 172.101]; (l) any matter, waste or substances designated by the EPA, or any successor authority, as a hazardous substance [40 C.F.R. Part 302]; (m) any matter, waste or substances defined as “hazardous waste” in Section 25117 of the California Health and Safety Code; (n) any substance defined as a “hazardous substance” in Section 25316 of the California Health and Safety Code; (o) any matter, waste, or substance that is subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (p) other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under Law or in the regulations adopted pursuant to said Law, including manure, asbestos, polychlorinated biphenyl, flammable explosives and radioactive material. Notwithstanding the foregoing, “Hazardous Substances”

shall not include such products in quantities as are customarily used in the construction, maintenance, development or management of residential developments or associated buildings and grounds, or typically used in residential activities in a manner generally used in other comparable residential developments, or substances commonly ingested by a significant population living within the Project, including, without limitation, alcohol, aspirin, tobacco and saccharine.

aa. “Hazardous Substance Discharge” means any deposit, discharge, generation, release, or spill of a Hazardous Substance that occurs at on, under, into or from the Property, or during transportation of any Hazardous Substance to or from the Property, or that arises at any time from the Construction, use or operation of the Project or any activities conducted at on, under or from the Property, whether or not caused by a Party.

bb. “Land Use Laws” has the meaning set forth in Section 502.

cc. “Liability Insurance” means commercial general liability insurance provided by an insurance carrier having a rating of Best A-7 or better against claims for bodily injury, personal injury, death, or property damage occurring upon, in, or about the Property, the Project or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Two Million Dollars (\$2,000,000) for any one occurrence and which may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Project or the general aggregate limit shall be twice the required minimum liability limit for any one occurrence.

dd. “Loan” has the meaning set forth in Section 200.

ee. “Loan Documents” means the documents, instruments and agreements evidencing and securing the Loan including, but not limited to, this Agreement, the Amended and Restated Promissory Note, the Deed of Trust and the Regulatory Agreement, and any amendments thereto as mutually agreed upon by the Parties.

ff. “Maturity Date” has the meaning set forth in Section 202.1.

gg. “Official Records” means the Official Records of the County of Mendocino, State of California.

hh. “Operating Reserve Account” means an account established and maintained by Borrower that is available to fund operating deficits (which is the amount by which Annual Operating Expenses exceed Gross Revenue for any period). Borrower shall capitalize the Operating Reserve Account in the amount required by the California Tax Credit Allocation Committee (“TCAC”), but not less than three months of Annual Operating Expenses; provided, however that if Borrower’s partnership agreement or the documents evidencing the one or more senior loans for the Project require the Operating Reserve Account to be capitalized and replenished in an amount greater than the TCAC requirement, Borrower shall capitalize and replenish the Operating Reserve Account as required by the partnership agreement or the

documents evidencing the such loan, as applicable, for as long as the partnership agreement or such loan, as applicable, is outstanding.

ii. “**Permitted Transfers**” shall have the meaning set forth in Recital E. above.

jj. “**Person**” means any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

kk. “**Pre-Development Loan**” shall have the meaning set forth in Recital E, above.

ll. “**Pre-Development Promissory Note**” means that certain promissory note executed by Danco for the Pre-Development Loan, as set forth in Recital E., above.

mm. “**Prevailing Wage Action**” means any of the following: (a) any determination by the California Department of Industrial Relations that prevailing wage rates should have been paid, but were not; (b) any determination by the California Department of Industrial Relations that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with the Federal Davis-Bacon Act (codified as 40 U.S.C. §§ 3141 *et seq.*) or California Labor Code Sections 1720 through 1781, as amended from time to time, regarding prevailing wages, including maintaining certified payroll records; or (d) any administrative or legal action or proceeding to recover wage amounts at law or in equity.

nn. “**Project**” shall have the meaning set forth in Recital C, above.

oo. “**Project Documents**” means all construction and design contracts, plans and drawings, including all architectural documents, related to the Project.

pp. “**Property**” means the property located at 441 South Street, Fort Bragg, California, as described in the Legal Description of Property, attached hereto and incorporated herein as Attachment No. 1.

qq. “**Property Insurance**” means insurance providing coverage for the Property and all improvements on or to the Property against loss, damage, or destruction by fire and other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County of Mendocino, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements comprising the Project (excluding excavations and foundations) and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with “ordinance or law” coverage. To the extent customary for like properties in the County of Mendocino at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located on the Property; an “increased cost of construction” endorsement; and an endorsement covering demolition and cost of debris removal, all subject to policy sublimits.

rr. “Regulatory Agreement” means the Regulatory Agreement and Declaration of Restrictive Covenants (441 South Street) executed by Borrower and City pursuant to this Agreement and to be recorded in the Official Records, in substantially the form attached hereto as Attachment No. 4, for the purpose of ensuring that the Project shall be operated as an affordable multi-family residential development as provided herein and in the Regulatory Agreement, for the full term of the Loan in accordance with the terms of this Agreement. The Regulatory Agreement shall be recorded.

ss. “Replacement Reserve Account” means an account established and maintained by Borrower that is available for capital expenditures for repairs and replacement necessary to maintain the Project in the condition required by the Loan Documents. Borrower shall make annual deposits to the Replacement Reserve Account and replenish the Replacement Reserve Account in the amounts required in a future partnership agreement and/or the documents evidencing one or more component of the Additional Borrower Financing, whichever is greater. In no event shall the annual amount deposited in the Replacement Reserve Account exceed _____Dollars (\$_____) per unit, or such greater amount required in connection with such partnership agreement or any Additional Borrower Financing, and approved by the City.

tt. “TCAC” means the California Tax Credit Allocation Committee.

uu. “Third Person” means any Person that is not a Party, an Affiliate of a Party, or an elected official, officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

vv. Workers Compensation Insurance. Workers compensation insurance complying with the provisions of California law and an employer’s liability insurance policy or endorsement to a liability insurance policy, with a minimum liability limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease, covering all employees of Borrower.

200. LOAN AGREEMENT

201. Loan. City hereby agrees to make a loan (the “**Loan**”) to Borrower in a total amount not to exceed THREE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$3,250,000.00), which amount includes the Pre-Development Loan previously made, as described in Recital E., above, and subject to the terms and conditions of the Loan Documents.

201.1 Evidence of Loan. The Loan shall be evidenced by, and repayable in accordance with, the Amended and Restated Promissory Note (the “Amended and Restated Promissory Note”), in a principal amount of Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000.00), which amounts may be used to pay for the acquisition of the Property and construction of the Project, provided that the disbursement of the Loan shall be subject to satisfaction of certain conditions precedent as more specifically set forth in Section 204.1 of this Agreement. The Amended and Restated Promissory Note shall be secured by the Deed of Trust. City and Borrower shall execute the Amended and Restated Promissory Note, the Deed of Trust and Regulatory Agreement concurrently with the execution of this Agreement by City, and the Deed of Trust and Regulatory Agreement shall thereafter be immediately recorded in the Official Records.

202. Repayment of Loan.

202.1 Maturity Date. The Amended and Restated Promissory Note, including principal and accrued interest, shall be due and payable in full fifty-seven (57) years after the date of execution of the Amended and Restated Promissory Note (the “**Maturity Date**”).

202.2 Interest Rate. The Loan Funds shall be repaid pursuant to the terms of the Amended and Restated Promissory Note, and shall bear simple interest at the rate of three percent (3%) per annum commencing on the date of the Amended and Restated Promissory Note.

203. Use of Funds. The Loan Funds may be used only to pay costs of acquisition of the Property and construction of the Project.

204. Disbursement of Loan Funds.

204.1 Conditions Precedent to Disbursement. The Loan shall be disbursed (the “**Loan Disbursement**”) through the escrow established for closing of the Additional Borrower Financing for the acquisition of the Property by Borrower and the construction of the Project. City’s obligation to make the Loan Disbursement is conditioned upon the satisfaction or waiver by City of each and all of the conditions precedent described below (“**Conditions Precedent to Disbursement**”), which are solely for the benefit of the City, and which shall be fulfilled or waived by the time periods provided for herein. The Conditions Precedent to Disbursement include:

a. Subject to expiration of any applicable cure period, Borrower shall not be in default of any of its obligations under the terms of this Agreement.

b. Execution and delivery of the Amended and Restated Promissory Note, the Regulatory Agreement and the Deed of Trust.

c. Delivery of a binding commitment by a title insurance company acceptable to the City to issue a 1970 or 1987 ALTA LP-10 lender’s policy of Title Insurance with any endorsements the City may reasonably require, including but not limited to endorsement nos. 100, 116 and 12.5/102.7, insuring the City in the principal amount set forth in the Amended and Restated Promissory Note, of the validity and priority of the Deed of Trust and Regulatory Agreement upon the Property, and liens and matters of record approved by the City in writing, and showing fee simple title to the Property in the name of the Borrower.

d. Borrower shall have provided the City with a copy of the resolution of the Borrower approving and authorizing execution of this Agreement and all documents contemplated hereby on behalf of Borrower and with such other documentation required by the City regarding Borrower’s creation, status and authority to enter into this transaction.

e. Borrower shall have provided City with a certificate showing it to be in good standing under the laws of the State of California.

f. Deposit of all funds and properly executed documents into the escrow account established for this transaction as necessary to effect the conveyance of the Property to Borrower and closing of the Approved Borrower Financing for the Project.

g. Borrower shall have satisfied all of the applicable terms and conditions set forth in this Agreement, including without limitation providing evidence that it possesses the insurance required by Section 405 of this Agreement.

h. All of the representations and warranties made by the Borrower in this Agreement and in the Amended and Restated Promissory Note, the Deed of Trust and the Regulatory Agreement shall be true and correct in all material respects as of the date of the Disbursement.

205. City Not Liable. In no event shall City be liable to Borrower or any other party, including but not limited to any lender, contractor or subcontractor, for any damage whatsoever which may result in whole or in part from any action or inaction of City hereunder, including without limitation, failure or delay in making any disbursement of Loan funds, except to the extent of City's gross negligence or willful misconduct.

300. REPRESENTATIONS AND WARRANTIES

301. City Representations. City represents and warrants to Borrower as follows:

301.1 Authority. City has full power and authority to execute and deliver this Agreement, to execute and deliver all applicable Loan Documents and to perform and observe the terms and provisions of all of the above.

301.2 No Conflict. To the best of City's knowledge, City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound.

301.3 No Bankruptcy. City is not the subject of a bankruptcy proceeding.

301.4 No Condemnation. No condemnation proceeding or moratorium is pending or threatened against the Property or any portion thereof that would impair the use, occupancy or full operation of the Property in any manner whatsoever.

302. Borrower's Representations. To induce City to enter into the Loan and provide the Loan funds pursuant hereto, Borrower hereby makes the following representations and warranties to City. The Borrower shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section not to be true, immediately provide written notice of such fact or condition to City.

302.1 Organization. Borrower is a limited partnership in good standing under the laws of the State of California.

302.2 Authority to Borrow. Borrower has full power and authority to execute and deliver this Agreement, to make and accept the Loan contemplated hereunder, to execute and

deliver all applicable Loan Documents and to perform and observe the terms and provisions of all of the above.

302.3 Authority of Persons Executing Documents. The applicable Loan Documents have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Borrower, and all actions required under the Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of the Loan Documents have been duly taken.

302.4 No Conflict. The execution, delivery and performance by Borrower of the Loan Documents to which it is a party will not (i) violate any provision of any law, statute, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any court, governmental agency or arbitrator presently in effect having applicability to Borrower or the Property; or (ii) result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which Borrower is a party or by which any of its properties may be bound or, except as specifically contemplated herein, result in the creation of any lien on any asset of Borrower.

302.5 Compliance with Laws; Consent and Approvals. The construction of the Project shall comply with all Governmental Requirements, including all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency as applicable.

302.6 Valid Binding Agreement. The Loan Documents executed by Borrower constitute, or if not yet executed, will constitute when so executed, legal, valid and binding obligations of Borrower enforceable by and against it in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting the rights of creditors generally and general principals of equity.

302.7 Pending Proceedings. Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Borrower, materially and adversely affect Borrower's ability to repay the Loan or construct the Project.

302.8 Financial Statements. All financial statements and information delivered to City by or on behalf of Borrower, including information relating to the financial condition of Borrower and the Property, fairly and accurately represent the financial condition of the subject thereof and have been prepared in accordance with GAAP, consistently applied, or another sound accounting practice consistently applied as previously submitted by Borrower to City and approved by City. Borrower acknowledges and agrees that City may request and obtain additional information from third parties.

302.9 No Material Adverse Event. There has been no material adverse change in the value or physical condition of the Property or in the financial condition of Borrower since the dates of the latest financial statements of Borrower furnished to City, and except as otherwise

disclosed to City in a specified writing, Borrower has not entered into any material transaction that is not disclosed in such financial statements.

302.10 Accuracy. All reports, documents, instruments, information and forms of evidence delivered to City concerning the Loan or security for the Loan or required by the Loan Documents are accurate, correct and sufficiently complete to give City true and accurate knowledge of their subject matter and do not contain any misrepresentation or omission.

302.11 Disclosure of Information. All material information concerning the Property known to Borrower, or that should have been known to Borrower in the exercise of reasonable care, has been disclosed to City. There are no facts or information known to Borrower, or that should have been known to Borrower in the exercise of reasonable care, that would make any of the information furnished to City by Borrower inaccurate, incomplete, or misleading in any material respect.

302.12 No Condemnation. No condemnation proceeding or moratorium is pending or threatened against the Property or any portion thereof that would impair the use, occupancy or full operation of the Property in any manner whatsoever.

302.13 FIRPTA. Borrower is not a “Foreign Person” within the meaning of the Foreign Investment in Real Property Tax Act (FIRPTA), or is exempt from the provisions of FIRPTA, and Borrower has complied and will comply with all of the requirements under FIRPTA.

400. COVENANTS OF BORROWER

401. Additional Borrower’s Financing. In addition to the Loan provided for herein, the Borrower has obtained financing commitments to finance the construction of the Project (the “**Additional Borrower Financing**”) including an Infill Infrastructure Grant from the California Department of Housing and Community Development in the amount of Three Million Eight-Nine Thousand Dollars (\$3,089,000.00); and a reservation of low-income housing tax credits as follows: (annual federal tax credits for each of 10 years in the amount of One Million Seventeen Thousand Nine Hundred Nine Dollars (\$1,017,909.00); and (ii) total state tax credits of Six Million Eight Hundred Twenty-One Thousand Four Hundred Eighty-Six Dollars (\$6,821,486.00) to be taken over four (4) years. The City agrees to reasonably consider requests to subordinate this Loan Agreement, the Deed of Trust and Regulatory Agreement to Additional Borrower Financing.

402. Construction of Project. Once Borrower has secured the Additional Borrower Financing and satisfied all Governmental Requirements necessary to commence construction, Borrower shall complete the Project in accordance with the provisions of this Agreement and in a good and worker-like manner in accordance with sound building practices as well as all Governmental Requirements. Borrower shall comply with all existing and future Governmental Requirements and other laws, regulations, orders, building codes, restrictions and requirements of, and all agreements with and commitments to, all governmental, judicial or legal authorities having jurisdiction over the Property, including those pertaining to the construction of the Project, and with all recorded covenants and restrictions affecting the Property. In the event of any material deviations from the terms of this Agreement, unworker-like performance, the use of

defective materials, or the filing of any unapproved liens, City may order that the construction cease immediately, and Borrower agrees immediately to correct and remedy the same at its sole expense.

403. Permits, Licenses and Approvals. Borrower shall properly obtain, comply with and keep in effect all permits, licenses and approvals which are required to be obtained in order to construct the Project.

404. Notices to City. Borrower shall promptly notify City in writing of:

a. Any litigation affecting Borrower, where the amount claimed is One Hundred Thousand Dollars (\$100,000.00) or more;

b. Any communication, whether written or oral, that Borrower may receive from any governmental, judicial or legal authority, giving notice of any claim or assertion that any portion of the Property or the Project fail in any respect to comply with any Governmental Requirement;

c. Any material default by any contractor, design professional, subcontractor, material supplier or surety in the performance of its or their obligations with respect to the construction, or any material adverse change in the financial condition or operations of any of them;

d. Any material adverse change in the physical condition of the Property (including any damage suffered as a result of earthquakes or floods), or in Borrower's business condition (financial or otherwise), operations, properties or prospects, or Borrower's ability to repay the Loan; or

e. The institution of any litigation, arbitration or governmental proceeding, or the rendering of a judgment or decision in such litigation or proceeding, which may cause a material adverse effect to Borrower, the Property or the completion of the construction.

405. Insurance.

405.1 Required Insurance. Borrower shall maintain, to protect City against all insurable Claims resulting from the actions of Borrower in connection with this Agreement, the Property and the Project, at the sole cost and expense of Borrower, the following insurance (or its then reasonably available equivalent): (a) Liability Insurance; (b) Automobile Liability Insurance; (c) Property Insurance; (d) Builder's Risk Insurance; and (e) Workers Compensation Insurance.

405.2 Nature of Insurance. All Liability Insurance, Property Insurance, Workers Compensation Insurance and Automobile Liability Insurance policies required by this Agreement shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A-" and a minimum financial size category of "XI" (exception may be made for the California Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business

in California. A Party may provide any insurance under a “blanket” or “umbrella” insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Property and the Project, which amount(s) shall equal or exceed the amount(s) required by this Agreement; and (ii) such policy otherwise complies with this Agreement.

405.3 Policy Requirements and Endorsements. All insurance policies required by this Agreement shall contain (by endorsement or otherwise) the following provisions:

a. *Insured.* Liability Insurance and Automobile Liability Insurance policies shall name City or its successor in interest, as applicable, as “additional insured.” Property Insurance and Builder’s Risk Insurance policies shall name City as a “loss payee.” To the extent that Borrower has a tenant or tenants on the Property that are required to secure Liability insurance under the terms of their lease with Borrower, such tenants shall similarly name City or its successor in interest as “additional insured”, and shall list City as a “loss payee” on Property Insurance and Builder’s Risk Insurance policies as required under terms of their lease. The coverage afforded to City shall be at least as broad as that afforded to Borrower (or Borrower’s tenant, as applicable) regarding the Property and the Project and may not contain any terms, conditions, exclusions, or limitations applicable to City that do not apply to Borrower.

b. *Primary Coverage.* Any insurance or self-insurance maintained by City or its successor in interest shall be in excess of all insurance required under this Agreement and shall not contribute to any insurance required under this Agreement.

c. *Contractual Liability.* Liability Insurance policies shall contain contractual liability coverage, for Borrower’s indemnity obligations under this Agreement. Borrower’s obtaining or failure to obtain such contractual liability coverage shall not relieve Borrower from nor satisfy any indemnity obligation of Borrower under this Agreement.

d. *Deliveries to City.* Borrower shall deliver to City evidence of all insurance policies required by this Agreement as set forth in Section 505.1 and original endorsements for additional insured effecting coverage under this Agreement. Builder’s Risk Insurance shall commence prior to commencement of Construction of the Project. No later than three (3) days before any insurance required by this Agreement expires, is cancelled or its liability limits are reduced or exhausted, Borrower shall deliver to City evidence of that Party’s maintenance of all insurance this Agreement requires. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) calendar days” advance written notice of such action has been given to City by certified mail, return receipt requested; provided, however, that thirty (30) days advance written notice shall be required for any such action arising from non-payment of the premium for the insurance. Phrases such as “endeavor to” and “but failure to mail such Notice shall impose no obligation or liability of any kind upon the company” shall not be included in the cancellation wording of any certificates or policies of insurance applicable to City pursuant to this Agreement.

e. *Waiver of Certain Claims.* Borrower shall cause each insurance carrier providing any Liability Insurance, Builder’s Risk Insurance, Worker’s Compensation Insurance, Automobile Liability Insurance or Property Insurance coverage under this Agreement to endorse

their applicable policy(ies) with a Waiver of Subrogation with respect to City, if not already in the policy. To the extent that Borrower obtains insurance with a Waiver of Subrogation, the Parties release each other, and their respective authorized representatives, from any Claims for damage to any Person or property to the extent such Claims are paid by such insurance policies obtained pursuant to and in satisfaction of the provisions of this Agreement.

f. *No Claims Made Coverage.* None of the insurance coverage required under this Agreement may be written on a claims-made basis.

g. *Fully Paid and Non-Assessable.* All insurance obtained and maintained by Borrower pursuant to this Section 505 shall be fully paid for and non-assessable. However, such insurance policies may be subject to insurer audits.

h. *City Option to Obtain Coverage.* During the continuance of a Default arising from the failure of Borrower to carry any insurance required by this Agreement, City may, at its sole option, purchase any such required insurance coverage and City shall be entitled to immediate payment from the defaulting Party of any premiums and associated reasonable costs paid by City for such insurance coverage. Any amount becoming due and payable to City under this Section 505 that is not paid within fifteen (15) calendar days after written demand from City for payment of such amount, within an explanation of the amounts demanded, will bear interest from the date of the demand at the rate of eight percent (8%) per annum or the maximum interest rate allowed by applicable law, whichever is less. Any election by City to purchase or not to purchase insurance otherwise required by the terms of this Agreement to be carried by any Party shall not relieve that Party of its obligation to obtain and maintain any insurance coverage required by this Agreement.

i. *Separation of Insured.* All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for Borrower and the City. Insurance policies obtained in satisfaction of or in accordance with the requirements of this Agreement may provide a cross-suits exclusion for suits between named insured persons, but shall not exclude suits between named insured persons and additional insured persons.

j. *Deductibles and Self-Insured Retentions.* Any deductibles or self-insured retentions under insurance policies required by this Agreement shall be declared to and approved by City. Borrower shall pay all such deductibles or self-insured retentions regarding City or, alternatively, the insurer under each such insurance policy shall eliminate such deductibles or self-insured retentions with respect to City.

k. *No Separate Insurance.* Borrower shall carry separate or additional insurance concurrent in form or contributing in the event of loss with that required under this Agreement, unless City is made an additional insured thereon, as required by this Agreement.

l. *Insurance Independent of Indemnification.* The insurance requirements of this Agreement are independent of the Parties' indemnification and other obligations under this Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit, or modify the Parties' indemnification or other obligations or to limit the Parties' liability under this Agreement, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall the provision of such

insurance preclude City from taking such other actions as are available to it under any other provision of this Agreement or otherwise at law or in equity.

406. Indemnity.

406.1 Borrower Indemnity Obligations. Subject to Section 23 of the Amended and Restated Promissory Note, Borrower shall indemnify City against any claim to the extent such claim arises from any wrongful intentional act or negligence of Borrower. Borrower shall also indemnify City against any and all of the following: (a) any application made by or at Borrower's request; (b) any agreements that Borrower (or anyone claiming by or through Borrower) makes with a Third Person regarding the Property or the Project; (c) any workers compensation claim or determination relating to any employee of Borrower or their contractors; (d) any Prevailing Wage Action relating to this Agreement or the Project; and (e) any Environmental Claim attributable to any action or failure to act by Borrower. Borrower assumes the risk of delays and damages that may result to Borrower from any Third Person legal actions related to City's approval of this Agreement or any associated approvals, even in the event that an error, omission or abuse of discretion by City is determined to have occurred. If a Third Person files a legal action regarding City's approval of this Agreement or any associated approval (exclusive of legal actions alleging violation of Government Code Section 1090 by elected officials of City), Borrower shall indemnify City against such Third Person legal action, including all legal costs, monetary awards, sanctions, attorney fee awards, expert witness and consulting fees, and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action. City shall reasonably cooperate in its defense in any legal action subject to this Section 506 subject to Borrower's indemnity obligations for such legal action. Nothing contained in this Section 506 is intended to be nor shall be deemed or construed to be an express or implied admission that City may be liable to Borrower or any other party for damages or other relief regarding any alleged or established failure of City to comply with any law. Any legal action that is subject to this Section 506 (including any appeal periods and the pendency of any appeals) shall constitute an Enforced Delay and the time periods for performance by any Party under this Agreement may be extended pursuant to the provisions of this Agreement in Section 803.

406.2 Independence of Insurance Obligations. The indemnification obligations made by Borrower under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying Borrower insurance or other obligations under this Agreement. Borrower's obligation to indemnify City under this Agreement is independent of Borrower's insurance and other obligations under this Agreement. Borrower's compliance with its insurance obligations and other obligations under this Agreement shall not in any way restrict, limit, or modify Borrower's indemnification obligations under this Agreement and are independent of Borrower's indemnification and other obligations under this Agreement.

406.3 Survival of Indemnification and Defense Obligations. The indemnity and defense obligations of the Parties under this Agreement shall survive the expiration or earlier termination of this Agreement, until any and all actual or prospective claims regarding any matter subject to an indemnity obligation under this Agreement are fully, finally, absolutely and completely barred by applicable statutes of limitations.

406.4 Indemnification Procedures. Wherever this Agreement requires any Party to indemnify the other Party:

a. *Prompt Notice.* The indemnifying Party shall promptly notify the other Party of any claim.

b. *Selection of Counsel.* The indemnifying Party shall select counsel reasonably acceptable to the other Party. Counsel to indemnifying Party's insurance carrier that is providing coverage for a claim shall be deemed reasonably satisfactory, except in the event of a potential or actual conflict of interest for such counsel regarding such representation or such counsel proves to be incompetent regarding such representation. Even though the indemnifying Party shall defend the claim, the other Party may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. The other Party's separate counsel may attend all proceedings and meetings. The indemnifying Party's counsel shall actively consult with the other Party's separate counsel. The indemnifying Party's counsel shall, however, control the defense, except to the extent that the other Party waives its rights to indemnity and defense of such Claim.

c. *Cooperation.* The other Party shall reasonably cooperate with the indemnifying Party's defense of the other Party.

d. *Settlement.* The indemnifying Party may only settle a claim without the consent of other Party, if the claim is within the policy limits of applicable insurance policies provided in satisfaction of the requirements of this Agreement and such settlement procures a release of other Party from the subject claims, does not require other Party to make any payment to the claimant and neither the indemnified Party nor indemnifying Party on behalf of the indemnified Party admits any liability.

e. *Insurance Proceeds.* The indemnifying Party's obligations shall be reduced by any net insurance proceeds actually received by the other Party for the matter giving rise to the indemnification obligation.

407. Financial Statements and Reports. Borrower shall furnish to City, on an annual basis on or before the anniversary of the execution of the Initial Promissory Note, the financial statements of Borrower, which may be internally prepared, on a consolidating and consolidated basis and in conformity with GAAP, consisting of at least statements of income, cash flow, changes in financial position and stockholders' equity, and a consolidated balance sheet, setting forth in each case in comparative form corresponding figures from the previous financial statements delivered to City pursuant to this Section.

408. Books and Records. Borrower shall maintain on a current basis complete records pertinent to expenditures incurred under this Agreement, including books of original entry, source documents supporting accounting transactions, service records, a general ledger, canceled checks, and related documents and records to assure proper accounting of funds and performance under this Agreement, for a period of three (3) years after the termination of all activities funded under this Agreement, or after the resolution of all Federal audit findings, whichever occurs later. Records for non-expendable property acquired with funds under this Agreement shall be retained for three (3) years after final disposition of such property. Records for any displaced person must

be kept for three (3) years after he/she has received final payment. Such records shall be kept in a form approved by City. Borrower shall furnish any and all information and reports which may be required by City and the U.S. Department of Housing and Urban Development (HUD). Borrower shall permit access to books, records and accounts by City or its representatives and employees and by HUD, for the purposes of investigation to ascertain compliance with all applicable rules, regulations and orders, and for the purpose of evaluating and monitoring Borrower's performance and compliance with the provisions of this Agreement.

409. Compliance. Borrower shall comply and shall cause the Property and Project to comply at all times in all material respects with all Governmental Requirements to which they may be subject.

500. DEVELOPMENT OF PROJECT

501. Project Entitlements. Borrower acknowledges and agrees that the Project shall be subject to the City's zoning, building and land use regulations (whether contained in ordinances, the municipal code of the City, conditions of approval or elsewhere) (collectively, "**Land Use Laws**"). No action by City with reference to this Agreement or any related documents shall be deemed to constitute a waiver of any Land Use Laws required for the construction of the Project as applicable to Borrower, any successor in interest of Borrower, or any successor in interest to the ownership, use or occupancy of the Property. Land Use Laws may only be changed or waived by modification or variance approved by the City.

502. Cost of Construction Work. All cost and expense in performing the construction of the Project, and for all materials and equipment related thereto, shall be borne solely by Borrower.

503. Licensed General Contractor. The Construction Work must be performed by a licensed general contractor approved by City in writing, which approval City shall not unreasonably withhold.

504. Construction Contract. The licensed contractor(s) selected by Borrower, and approved by City under Section 503, shall perform the Construction Work pursuant to a construction contract (the "**Construction Contract**") entered into by and between the applicable Borrower and contractor. The Construction Contract must be approved by City in writing, which approval shall not be unreasonably withheld, prior to the Commencement of Construction.

505. Permits and Approvals. Before Commencement of Construction, and except with respect to any contemplated or necessary demolition activities, Borrower shall secure or cause to be secured any and all land use and other entitlements, permits and approvals which may be required pursuant to any Governmental Requirements related to construction of the Project. City staff will work cooperatively with Borrower to assist in coordinating the expeditious processing and consideration of all necessary permits, entitlements and approvals.

506. Anti-Discrimination. Borrower, for itself and its successors and assigns, agrees that, in performing the construction of the Project, it shall not discriminate against any employee or applicant for employment because of race, color, sexual orientation and/or gender identity, creed, religion, ancestry, political affiliation or opinion, national origin, sex, physical condition,

medical condition, pregnancy or pregnancy-related condition, or condition of physical or mental disability or other handicap, age, marital status, or status with regard to public assistance. Borrower will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. Borrower agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

600. USE AND MAINTENANCE OF THE PROPERTY; NONDISCRIMINATION; RIGHTS OF SECURITY FINANCING HOLDERS

601. Restrictive Covenants. Borrower covenants and agrees for itself, its successors, assigns, and every successor in interest to devote the Property to an affordable housing project in accordance with the terms of the Regulatory Agreement and this Agreement for the period of time specified therein. The foregoing covenant shall run with the land.

602. Maintenance of the Property. For the period of time set forth in Section 606, Borrower shall keep the Property in good condition, order and repair and shall not commit waste or permit impairment, demolition or deterioration of the Property; shall comply with all applicable state and federal regulations addressing the physical condition of the Property and buildings located on the Property and all applicable standards of the City including but not limited to building standards, planning regulations, and utilities code; shall complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed and to pay when due all claims for labor performed and materials furnished; shall maintain the buildings in a habitable condition; and do all other acts which from the character or use of the Property may be reasonably necessary. City shall have the right to inspect the Property during normal business hours, provided Borrower and the occupant are given at least seventy-two (72) hours written notice prior to any such inspection.

603. Property Management Agreement/Plans. Borrower covenants that it shall maintain (i) a comprehensive management plan for the Project, including a fair housing component; and (ii) a reputable and experienced property manager who is experienced in managing affordable housing projects (“**Designated Property Manager**”) for management of the Project. The management plan, Designated Property Manager, and property management agreement must be approved by the City, in its reasonable discretion. The City hereby approves Danco Property Management as the initial Designated Property Manager. Any changes in the Designated Property Manager or modifications or amendment to the management plan or the property management agreement shall be subject to review and approval by the City. Borrower shall provide City with the name, title and necessary contact information for the Designated Property Manager who may be contacted at any time, and update such information whenever necessary. If in City’s commercially reasonable judgment, the Designated Property Manager is not performing in a manner consistent with the terms of this Covenant, then City may notify Borrower, and Borrower, City and the Designated Property Manager shall meet to discuss the

Designated Property Manager's performance and the actions needed so the terms of this Agreement are complied with.

604. Tenant Leases. Borrower shall submit its proposed form of lease for review by City and may use approved standard residential lease forms if the following conditions are met:

604.1 Borrower, acting in good faith and exercising due diligence, determines that each residential tenant qualifies an eligible household in the appropriate income category for the applicable unit, as shall be more specifically set forth in the Regulatory Agreement;

604.2 If the Project receives and allocation of low income housing tax credits, the lease meets the standards required by Section 42 of the Internal Revenue Code;

604.3 The lease meets the requirements of the City, the tax credit investor and any other lender on the Project; and

604.4 City receives a copy of the executed lease within 15 days of written request to Borrower.

605. Obligation to Refrain from Discrimination.

605.1 Borrower will not discriminate against any employee or applicant for employment because of race, color, sexual orientation and/or gender identity, creed, religion, ancestry, political affiliation or opinion, national origin, sex, physical condition, medical condition, pregnancy or pregnancy-related condition, or condition of physical or mental disability or other handicap, age, marital status, or status with regard to public assistance. Borrower will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. Borrower agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

605.2 Borrower agrees that there shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, sexual orientation and/or gender identity, creed, religion, ancestry, political affiliation or opinion, national origin, sex, physical condition, medical condition, pregnancy or pregnancy-related condition, or condition of physical or mental disability or other handicap, age, marital status, or status with regard to public assistance in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Borrower itself or any person claiming under or through Borrower, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property.

606. Rights of Access. For the purposes of assuring compliance with this Agreement, representatives of the City shall have the reasonable right of access to the Property without charges or fees for the purpose of inspection of the Property as to maintenance of the

improvements thereon. Such representatives of the City shall be those who are so identified in writing by the City Manager, or his/her designee.

607. Effect and Duration of Covenants. Commencing with the date the Regulatory Agreement is recorded on the Property, the covenants contained in Sections 601 and 602 of this Agreement shall remain in effect for fifty-five (55) years from the issuance of a certificate of occupancy for the twenty-three (23) senior residential cottages, twenty-five (35) workforce/family residential units and twenty (20) supportive housing units. The covenants against discrimination contained in Section 603 of this Agreement shall remain in effect in perpetuity. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on the part of the Borrower and any successors and assigns to the Property or any part thereof, and the tenants, lessees, sublessees and occupants of the Property, for the benefit of and in favor of the City and any successor in interest thereto.

608. Subordination. The City shall subordinate the obligations of this Agreement and the Note, Deed of Trust and Regulatory Agreement to construction or permanent financing obligations for the Project. Borrower and City shall cooperate in the execution of any such subordination agreement required to perfect such subordinations. Notwithstanding anything to the contrary contained in the Loan Documents, Borrower may refinance that certain senior lien construction and permanent financing provided to Borrower by the California Municipal Finance Authority, on or about the date of this Agreement (the “**Senior Indebtedness**”), without the prior written consent of City (the “**Refinanced Indebtedness**”), and City hereby agrees to subordinate the Loan and all documents securing or evidencing the Loan including, but not limited to, the Deed of Trust and the Regulatory Agreement to the Refinanced Indebtedness and the lien of any deed of trust or mortgage securing the Refinanced Indebtedness, provided that the principal balance of the Refinanced Indebtedness does not exceed the then-outstanding principal balance of the Senior Indebtedness plus the costs of refinancing the Senior Indebtedness.

700. DEFAULTS AND REMEDIES

701. Default. A party to this Agreement shall be in default if it fails to perform or satisfy any obligation or requirement set forth (A) herein after thirty (30) days of receiving written Notice from the non-defaulting party of such default, provided that in the case of a default that cannot with reasonable diligence be cured within thirty (30) days after the effective date of such Notice, such thirty (30) day period shall automatically be extended if and only for so long as Borrower does all of the following: (i) within thirty (30) days after Notice of such default, advise the City of the intention of Borrower to take all reasonable steps to cure such default; (ii) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (iii) complete such cure within a reasonable time under the circumstances; or (B) under any applicable Loan Document after any applicable cure period. The limited partner of Borrower shall have the right, but not the obligation, to effect a cure on behalf of Borrower within the cure periods afforded to Borrower as set forth herein, and City shall accept such cure as if it had been made by Borrower.

702. Remedies.

702.1 City. Upon default by Borrower subject to applicable notice and cure periods, City shall not be obligated to disburse any Loan proceeds pursuant to this Agreement

and Borrower shall immediately remit to City all cost and expense, interest and principal due City under the Amended and Restated Promissory Note. Further, in the event of a default prior to the close of escrow on the Additional Borrower Financing and failure to cure, Borrower shall deposit with the City and assign to the City for the City's use, all contracts, documents, reports, surveys, materials, architectural drawings and specifications, and any information related to the Project. City shall have the right to accept or reject any of the foregoing and shall not be liable under any of the foregoing contracts unless the City accepts the contracts in writing.

702.2 Borrower. Upon default by City, Borrower's sole remedy for such breach shall be to institute an action at law or equity to seek specific performance of the terms of this Agreement. Borrower shall not be entitled to recover damages for any default by City hereunder. Such legal actions must be instituted in the Superior Court of the County of Mendocino, State of California, or in the United States District Court for the District of California in which Mendocino County is located.

703. Rights and Remedies Cumulative. The rights and remedies of City hereunder are cumulative, and the exercise by City 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 caused by Borrower.

800. GENERAL PROVISIONS

801. Notices. Any notice required or authorized under this Agreement, or service of process, shall be effective if, and only if, in writing and if, and only if, personally served or mailed, postage prepaid, by registered or certified mail, to the party in question at the address shown below:

Borrower: Fort Bragg South Street LP

And a copy to: c/o Red Stone Equity Partners
1100 Superior Avenue, Suite 1640
Cleveland, OH 44114
Attn: General Counsel

Bocarsly Emden Cowan Esmail & Arndt LLP
633 W. 5th Street, 64th Floor
Los Angeles, CA 90017
Attn: Kyle Arndt, Esq.

City : City of Fort Bragg
416 North Franklin Street
Fort Bragg, CA 95437
Attn: Tabatha Miller, City Manager

With a copy to: Best Best & Krieger LLP
500 Capitol Mall, Suite 1700
Sacramento, CA 95814
Attn: Iris P. Yang

An address set forth in this Section may be changed by the respective party providing the other party with written notice indicating the new address for purposes of this Section.

802. Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

803. Enforced Delay; Extension of Times for Performance. In addition to specific provisions of this Agreement, performance by a 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; inability to secure necessary labor, materials or tools; acts or omissions of the other party; acts or failures to act of City or any other public or governmental agency or entity (other than the acts or failures to act of City which shall not excuse performance by City); or any other cause beyond the control or without the fault 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 of the commencement of the cause. Times of performance under this Agreement

may also be extended in writing by the mutual agreement of City and Borrower. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to complete the construction of the Project on the Property shall not constitute grounds of enforced delay pursuant to this Section.

804. Transfers of Interest in Property or Agreement.

804.1 Prohibition. The qualifications and identity of Borrower are of particular concern to City. It is because of those unique qualifications and identity that City has entered into this Agreement with Borrower. Borrower shall not transfer, assign, sell or grant any interest in this Agreement or any portion of the Property except as expressly set forth herein.

804.2 Permitted Transfers. City approval of a transfer of this Agreement or an interest in the Property, or any part thereof, shall not be required in connection with any of the following transfers (“**Permitted Transfers**”):

(a) The conveyance or dedication of any portion of the Property to City or other appropriate governmental agency, or the granting of easements or permits, to facilitate the construction of the Project;

(b) Any requested assignment for purposes of financing the construction of improvements upon the Property;

(c) Any mortgage, deed of trust, or other form of conveyance for all or any portion of the Approved Financing, but Borrower shall notify City in advance of any such mortgage, deed of trust or other form of conveyance for financing pertaining to the Property;

(d) Any mortgage, deed of trust or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (c) above;

(e) A sale or transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation;

(f) (A) Sale, transfer, conveyance or pledge of limited partnership interests in the Borrower, or (B) the removal of a general partner of Borrower by Borrower in accordance with Borrower’s Partnership Agreement and the appointment by the partners of the Borrower of an additional or substitute general partner in accordance with the partnership agreement of the Borrower; provided the Borrower delivers prior written notice thereof to the City, and such additional or substitute general partner shall be subject to the approval of the City, which approval shall not be unreasonably withheld, provided that such approval shall not be required if the substitute general partner is an Affiliate of the limited partner of the Borrower;

(g) The transfer (A) of an interest in and/or of a partner in the Borrower to another existing partner of the Borrower, or (B) of an interest in a general partner of

the Borrower to an Affiliate of any general partner, or (C) of an interest in a general partner of the Borrower so long as such transfer, together with any prior transfer of an interest or interests in such general partner, do not result in more than forty-nine percent (49%) of the interest in such general partner having been transferred since the date hereof;

(h) The lease of residential units at the Project to qualified tenants;

(i) Transfer of the Project, Property or partnership interests in the Borrower to a general partner of the Borrower or an Affiliate thereof at the end of the fifteen year tax credit initial compliance period;

(j) The transfer of the partnership interest of the limited partner of the Borrower to another party, or the redemption of the limited partner of the Borrower's interest in the Borrower provided that, prior to any such transfer, limited partner of the Borrower has paid in full its capital contribution to the Borrower as and to the extent required in the Borrower's partnership agreement; and

(k) The Transfer of the Project and/or Property to a limited partnership in which Borrower or its affiliate acts as a general partner;

In the event of a transfer by Borrower under subparagraphs (a) through (k), inclusive except for subparagraph (h), above, not requiring City's prior approval, Borrower nevertheless agrees that at least ten (10) days prior to such assignment it shall give written notice to City of such transfer and satisfactory evidence that the transferee has assumed the obligations of this Agreement, if applicable.

805. Relationship Between City and Borrower. It is hereby acknowledged that the relationship between City and Borrower is not that of a partnership or joint venture and that City and Borrower shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein, City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Property. Borrower agrees to indemnify, hold harmless and defend City from any claim made against City arising from a claimed relationship of partnership or joint venture between City and Borrower with respect to the development, operation, maintenance or management of the Property.

806. No Third Party Beneficiaries. This Agreement is made for the sole protection of City and Borrower and their respective permitted successors and assigns, and no other person or persons shall have any right of action hereon, nor should any laborer, materialman, subcontractor, or other third party rely upon the funds deposited hereunder as a source of payment for work done or labor and/or materials supplied in respect to the improvements contemplated hereunder or otherwise, notwithstanding any representation to the contrary made by Borrower or any other person. This Agreement and the other Loan Documents contain all of the terms and conditions agreed to by Borrower, and no other agreement regarding the subject matter of this Agreement, unless it is in writing and signed by the City and Borrower, shall be deemed to exist or to bind any party hereto.

807. Signs. During the construction of the Project on the Property City may place or require to be placed signs upon the Property, for public display, stating City is providing financing for the development.

808. City Implementation. The City shall implement this Agreement through its City Manager. The City Manager is hereby authorized by the City to issue approvals, interpretations, waivers and enter into certain amendments to this Agreement on behalf of the City, to the extent that any such action(s) does/do not increase the obligations or liabilities of the City. All other actions shall require the consideration and approval of the City Council. Nothing in this Section shall restrict the submission to the City Council of any matter within the City Manager's authority under this Section, in the City Manager's sole and absolute discretion, to obtain the City Council's express and specific authorization on such matter. The specific intent of this Section is to authorize certain actions on behalf of the City by the City Manager, but not to require that such actions be taken by the City Manager, without further consideration by the City Council.

809. Counterparts. This Agreement may be executed in any number of counterparts and by different signatories hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument, for the same effect as if all signatories hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

810. Integration. This Agreement and the Loan Documents contain the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into the Loan Documents and shall be of no further force or effect. Each party is entering into the Loan Documents upon the representations set forth in the Loan Documents and upon each party's own independent investigation of any and all facts such party deems material.

811. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

812. Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.

813. No Waiver. City may at any time and from time to time waive any one or more of the terms or conditions contained in this Agreement, but any such waiver shall be deemed to be made pursuant to this Agreement and not in modification thereof, and any such waiver in any instance or under any particular circumstances shall not be construed a waiver of such term or

condition or of any subsequent default. In order to be effective, all such waivers must be in writing. The failure of City to promptly exercise its rights or remedies shall not be deemed to be a waiver or grounds for the claim of estoppel.

814. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

815. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

816. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth in full.

817. Incorporation of Attachments. All attachments referenced in this Agreement are hereby incorporated into this Agreement by this reference.

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

819. Time of Essence. Time is expressly made of the essence with respect to the performance by City and Borrower of each and every obligation and condition of the Loan Documents.

820. Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, shall execute any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

821. Conflicts of Interest. No member, official or employee of City shall have any personal interest, direct or indirect, in the Loan Documents, nor shall any such member, official or employee participate in any decision relating to the Loan Documents which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

822. Time for Acceptance of Agreement. This Agreement, when executed by Borrower and delivered to City, must be authorized, executed and delivered by City on or before forty-five (45) days after signing and delivery of this Agreement by Borrower or this Agreement shall be void, except to the extent that Borrower shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

823. Agreement Binding. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

824. Non-Liability of Officials and Employees of City. No member, official or employee of City shall be personally liable to Borrower, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Borrower or its successors, or on any obligations under the terms of the Loan Documents. Borrower hereby waives and releases any claim it may have against the members, officials or employees of City with respect to any default or breach by City or for any amount which may become due to Borrower or its successors, or on any obligations under the terms of the Loan Documents. Borrower makes such release with full knowledge of Civil Code Section 1542 and hereby waives any and all rights thereunder to the extent of this release, if such Section 1542 is applicable. Section 1542 of the Civil Code provides as follows:

“A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her, will have materially affected his or her settlement with the debtor or released party.”

[Signatures to appear on the following page.]

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

CITY:

Date: _____

CITY OF FORT BRAGG, a municipal corporation

By: _____

Tabatha Miller
City Manager

Attest:

City Clerk

Approved as to Form:

City Attorney

-AND-

Date: _____ **BORROWER:**

Fort Bragg South Street LP,
a California Limited Partnership

By: Community Revitalization and Development
Corporation,
a California nonprofit public benefit corporation,
Its Managing General Partner

By: _____
David Rutledge, President

By: Johnson & Johnson Investments, LP,
a California limited liability company,
Its Administrative General Partner

By: _____
Daniel J. Johnson, Managing Member

By: Danco Communities, a California Corporation
Its Co-Administrative General Partner

By: _____
Daniel J. Johnson, President

ATTACHMENT NO. 1

LEGAL DESCRIPTION

ATTACHMENT NO. 2

AMENDED AND RESTATED PROMISSORY NOTE

(441 South Street)

\$3,250,000.00

_____, 2020
Fort Bragg, California

1. FUNDAMENTAL PROVISIONS.

This Amended and Restated Promissory Note replaces and supersedes the unsecured Promissory Note executed by Danco Communities, a California corporation, in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) in favor of City, in connection with a Pre-Development Loan Agreement with the City, dated July 28, 2020. The following terms will be used as defined terms in this Secured Promissory Note (as it may be amended, modified, extended and renewed from time to time, this "Note"):

Lender/Payee: City of Fort Bragg, a California municipal corporation.

Borrower/Maker: Fort Bragg South Street LP, a California limited partnership

Principal Amount: Three Million Two Hundred Fifty Thousand and 00/100 Dollars (\$3,250,000.00).

Interest Rate: Three percent (3%) per annum simple interest.

Default Interest Rate: Eight percent (8%) per annum.

Maturity Date: Fifty-seven (57) years from the date of issuance of this Note unless the Maturity Date is accelerated as otherwise provided in this Note.

Business Day: Any day of the year other than Saturdays, Sundays and legal holidays on which Lender's main office at 416 North Franklin Street, Fort Bragg, CA 95437, is closed.

Deed of Trust: That certain Deed of Trust, Assignment of Rents Security Agreement and Fixture Filing of even date herewith executed by Borrower, as "Trustor," for the benefit of Lender, as "Beneficiary".

Loan Documents: The Loan Agreement, this Note, the Deed of Trust, the Regulatory Agreement and all other documents securing the repayment of the Note, and instruments executed by the Borrower.

Loan: The loan from Lender to Borrower in the Principal Amount and evidenced by this Note and/or the Loan Documents.

Loan Agreement: That certain Loan Agreement of even date herewith between Borrower, as Borrower, and Lender, as City.

2. PROMISE TO PAY.

For value received, Borrower promises to pay to the order of Lender, at its office at 416 North Franklin Street, Fort Bragg, CA 95437, or at such other place as the Lender hereof may from time to time designate in writing, the Principal Amount together with interest thereon, and all other sums due under and secured by the Deed of Trust or by any other Loan Documents.

3. RESIDUAL RECEIPTS REPAYMENT.

(a) Unless otherwise approved by Lender in writing, commencing on June 1, 2022, and on June 1 of each year thereafter for the Term, Borrower shall make annual repayments of the outstanding principal equal to Fifty Percent (50%) of the Residual Receipts, calculated as set forth in Section 4(c)(iii)(1) below.

Such annual payments shall be accompanied by the Borrower's report of Residual Receipts (including an independent auditor's report regarding the auditor's review of Annual Operating Expenses). The Borrower shall provide the Lender with the audited financial statement provided for in Section 5., and any other documentation reasonably requested by Lender to substantiate the Borrower's determination of Residual Receipts.

Prior to any sale of all or any portion of the Project, or refinancing of all or any portion of the outstanding debt from the Project (other than Refinanced Indebtedness, as defined in Section 608 of the Loan Agreement), and so long as there is any outstanding amount due and owing under this Note, Borrower shall notify Lender of any such proposed or intended sale or refinancing. In such event, Borrower and Lender shall meet and confer, and shall use good faith efforts, to determine the feasibility of the payoff or restructuring of the remaining balance owing under this Note as part of any such sale or refinancing in order to provide for repayment of this Note sooner than the 55 year repayment period.

Notwithstanding anything in this Note or the Agreement to the contrary, the entire outstanding amount due under this Note, including principal and all accrued and unpaid interest, may, at the option of the Lender, become immediately due and payable upon the occurrence of an event of default under the Loan Agreement, this Note, the Deed of Trust, or the Regulatory Agreement, after expiration of any applicable cure period.

Borrower may, if it has sufficient Residual Receipts available, prepay all or any part of this Note, without penalty, at any time during the term of this Note. Any unauthorized prepayments shall be the responsibility of the Borrower to return to the Project.

(b) For the purposes of this Note, "Residual Receipts" shall mean the sum of money

computed as follows:

(i) All rents, revenues, consideration or income (of any form) derived by Borrower in connection with or relating to the ownership or operation of the Project, including any net revenue derived from any refinancing of the Project and any revenue from contributions, loans or grants which is not required to meet future project obligations (but excluding tenants' security deposits, partner capital contributions and similar advances) less all of the following: all customary and reasonable costs (i.e., mandatory (hard) mortgage payments) and expenses in connection with the operation and maintenance of the Project, including but not limited to premiums for property and liability insurance, utility services not paid directly by tenants, maintenance and repair, security services and payments for social/supportive services; any adjuster payments to the investor limited partner required under the Agreement of Limited Partnership of Fort Bragg South Street LP, dated May 1, 2020 (the "Partnership Agreement"); loans made by the general partner of Borrower to fund operating deficits or construction cost overages; loans made by the investor limited partner or the developer to the Project; asset management fee payable to the investor limited partner and/or general partner of Borrower in an amount equal to that allowed under the Partnership Agreement); deferred developer fees in an amount equal to that allowed under the Partnership Agreement; fees payable to Borrower or partners of Borrower under the Partnership Agreement, not to exceed the amounts allowed under the Partnership Agreement; reasonable property management fees and any deferred management fees as provided in the Partnership Agreement; amounts (approved by Lender) expended to restore the Project after a casualty loss or condemnation; reasonable and customary cost for accounting and auditing the books and records of the Project; taxes; franchise tax filing fees; and any operating or other reserves reasonably required by Borrower's Partnership Agreement or the lenders approved by the City for the Project.

(ii) Notwithstanding the generality of the foregoing, the following items are not expenses or deductible in computing Residual Receipts:

(1) Payment of any fees or expenses or of any portion of the Residual Receipts to Borrower or any affiliate of Borrower, except as specifically set forth herein;

(2) Income taxes imposed upon Borrower's income;

(3) Payment of principal or interest on any indebtedness of Borrower to any lender, including any affiliate of Borrower (individual or entity) or partner of Borrower, except as specifically approved by Lender in writing or otherwise set forth herein; and

(4) Depreciation, cost recovery, amortization and similar items which do not involve the expenditure of cash.

(iii) Annual Payments from Residual Receipts. Unless otherwise approved by Lender in writing, Borrower shall make repayments of the outstanding principal and accrued interest equal to the Residual Receipts.

4. ANNUAL STATEMENTS.

Borrower shall deliver annual balance sheets showing all revenues and expenses of the Project starting in the year following the Project's conversion to permanent financing. An audited financial statement shall be delivered within one hundred twenty (120) days of the end of each calendar year prior to the payment of the Residual Receipts payment due to Lender. Lender shall have the right to inspect and audit Borrower's books and records concerning the calculation of the Residual Receipts Payment and to object within thirty (30) days from receipt of Borrower's statement. Failure to timely object shall be deemed acceptance. If Lender does object, Lender shall specify the reasons for disapproval. Borrower shall have thirty (30) days to reconcile any disapproved item. If Borrower and Lender cannot agree on the amount of the Residual Receipts payment, an independent auditor mutually selected by Borrower and Lender shall resolve any disputed items. The cost of the auditor shall be shared equally by Borrower and Lender.

5. PREPAYMENT.

(a) Borrower may prepay the Loan, in whole or in part, at any time and from time to time without premium or penalty.

(b) In no event shall Borrower be entitled to re-borrow any amounts prepaid.

6. LAWFUL MONEY.

Principal and interest are payable in lawful money of the United States of America.

7. APPLICATION OF PAYMENTS/LATE CHARGE.

(a) Unless otherwise agreed to, in writing, or otherwise required by applicable law, payments will be applied first to accrued, unpaid interest, then to any unpaid collection costs, late charges and other charges, and any remaining amount to principal, provided, however, during the continuance of an Event of Default, as defined herein or in any other Loan Document, Lender reserves the right to apply payments among principal, interest, late charges, collection costs and other charges in such order of priority as Lender shall from time to time determine in its sole discretion. All prepayments shall be applied to the indebtedness owing hereunder in such order and manner as Lender may from time to time determine in its sole discretion.

(b) If any regular monthly payment of interest and/or principal (excluding any balloon payment due at maturity) is not received by the Lender hereof within fifteen (15) days of when such payment is due, then in addition to the remedies conferred upon the Lender hereof pursuant to the provisions of this Note and/or the Loan Documents, a late charge of eight percent (8%) of the amount of the payment due will be due and owing by the Borrower and will be

added to the delinquent amount to compensate the Lender hereof for the costs, expenses, and damages of the Lender related to the delinquency of the Borrower in making such payment, regardless of any notice and/or cure periods (if any). Acceptance of any late charge will not constitute a waiver of default with respect to the overdue payment, and will not prevent or delay Lender from exercising any of its rights or remedies available under this Note and/or the Loan Documents.

(c) Upon the occurrence, and during the continuance, of an Event of Default, including the failure to pay upon final maturity, Lender, may at its option and in its sole discretion: (i) increase the applicable Interest Rate on this Note to the Default Interest Rate, and/or (ii) add any unpaid accrued interest to principal and such sum will bear interest therefrom until paid at the Default Interest Rate. The undersigned acknowledges that, during the time that any amount is in default, Lender will incur losses that are impracticable, costly, and inconvenient to ascertain. Those losses include, without limitation, the ability to invest amounts then due at the current rate of return and the unavailability of liquid funds. The undersigned agrees that the interest payable hereunder represents a reasonable sum considering all of the circumstances existing on the date of the execution of this Note and represents a reasonable estimate of the losses Lender will incur by reason of late payment. The undersigned further agrees that proof of actual losses would be costly, inconvenient, impracticable, and extremely difficult to fix. Acceptance of the interest will not constitute a waiver of the default with respect to the overdue installment and will not prevent Lender from exercising any of the other rights and remedies available under this Note and/or the Loan Documents. Notwithstanding anything contained herein, the interest rate will not exceed the maximum rate permitted by applicable law.

8. SECURITY.

This Note is secured, among other security, by security instruments covering real property and personal property of the undersigned located in California, including, without limitation, the Deed of Trust, which Deed of Trust creates a lien on that certain real and personal property described therein.

9. EVENT OF DEFAULT.

The occurrence of any of the following shall be deemed to be an event of default (“Event of Default”) hereunder:

(a) default in the payment of principal and/or interest, and/or any other sum advanced by Lender pursuant to the terms and provisions of this Note and/or the Loan Documents within five (5) days from the date due; and/or

(b) the failure to perform any of the other terms, provisions, and obligations of the Borrower and/or any indemnitor pursuant to the Loan Documents within thirty (30) days from the receipt of written notice from the Lender (the “30 Day Notice”) that such performance was due; provided, however that if such failure is not reasonably susceptible to cure within said thirty (30) days from receipt of the 30 Day Notice and provided that (i) Borrower shall have in good faith undertaken such cure within said thirty (30) day period and (ii) Borrower shall have

diligently prosecuted such cure thereafter, Borrower shall have additional time to prosecute such cure, such additional time not to exceed the one hundred twenty (120) days, from receipt by Borrower of the 30 Day Notice; and/or

(c) if any event occurs that is an Event of Default under any of the Loan Documents.

10. REMEDIES.

Upon the occurrence, and during the continuance, of an Event of Default, then at the sole election and option of the Lender hereof, the entire balance of principal together with all accrued interest thereon, and all other amounts payable by Borrower under the Loan Documents shall, without demand or notice, immediately become due and payable. Upon the occurrence of an Event of Default (and so long as such Event of Default shall continue), the entire balance of principal hereof, together with all accrued interest thereon, all other amounts due under the Loan Documents, and any judgment for such principal, interest, and other amounts due under the Loan Documents, shall bear interest at the Default Interest Rate, subject to the limitations contained in Section 14 hereof. No delay or omission on the part of the Lender hereof in exercising any right or remedy under this Note and/or under any of the other Loan Documents hereof shall operate as a waiver of such right.

Lender hereby agrees that any cure of any default made or tendered hereunder by Borrower's limited partner shall be accepted or rejected on the same basis as if made or tendered by Borrower.

11. WAIVER.

Borrower hereby waives diligence, demand for payment, presentment for payment, protest, notice of nonpayment, notice of protest, notice of intent to accelerate, notice of acceleration, notice of dishonor, and all other notices or demands of any kind (except notices specifically provided for in the Loan Documents, if any). Borrower waives to the full extent permitted by law, the right to plead any and all statutes of limitations and/or any defenses relating to marshaling of assets as a defense.

12. CHANGE, DISCHARGE, TERMINATION, OR WAIVER.

No provision of this Note may be changed, discharged, terminated, or waived except in a writing signed by the party against whom enforcement of the change, discharge, termination, or waiver is sought. No failure on the part of the Lender hereof to exercise and no delay by the Lender hereof in exercising any right or remedy under this Note and/or the Loan Documents and/or under the law shall operate as a waiver thereof.

13. ATTORNEY'S FEES.

The undersigned agrees to pay all reasonable costs including, without limitation, reasonable attorney fees, incurred by the Lender of this Note in enforcing payment, whether or not suit is filed, including, without limitation, all costs, attorney fees, and expenses incurred by

the Lender of this Note in connection with any bankruptcy, reorganization, arrangement, or other similar proceedings involving the undersigned that in any way affects the exercise by the Lender of this Note of its rights and remedies under this Note. All costs incurred by the Lender of this Note in any action undertaken to obtain relief from the stay of bankruptcy statutes are specifically included in those costs and expenses to be paid by the undersigned. Borrower will pay to Lender all attorney fees and other costs referred to in this Section 13 on demand, together with interest from the date of the demand at the Default Rate until paid.

14. SEVERABILITY.

If any provision of this Note is unenforceable, the enforceability of the other provisions shall not be affected and they shall remain in full force and effect.

15. INTEREST RATE LIMITATION.

Borrower hereby agrees to pay an effective rate of interest that is the sum of the interest rate provided for herein, together with any additional rate of interest resulting from any other charges of interest or in the nature of interest paid or to be paid in connection with the Loan, including, without limitation, the Loan Fee and any other fees to be paid by Borrower pursuant to the provisions of the Loan Documents. Lender and Borrower agree that none of the terms and provisions contained herein or in any of the Loan Documents shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of California. In such event, if any Lender of this Note shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on this Note to a rate in excess of the maximum rate permitted to be charged by the laws of the State of California, all such sums deemed to constitute interest in excess of such maximum rate shall, at the option of the Lender, be credited to the payment of other amounts payable under this Note and/or the Loan Documents or returned to Borrower.

16. NUMBER AND GENDER.

In this Note the singular shall include the plural and the masculine shall include the feminine and neuter gender, and vice versa.

17. HEADINGS.

Headings at the beginning of each numbered section of this Note are intended solely for convenience and are not part of this Note.

18. CHOICE OF LAW.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES.

19. INTEGRATION.

The Loan Documents contain the complete understanding and agreement of the Lender hereof and Borrower and supersede all prior representations, warranties, agreements, arrangements, understandings, and negotiations.

20. BINDING EFFECT.

The Loan Documents will be binding upon, and inure to the benefit of, the Lender hereof, Borrower, and their respective successors and assigns. Borrower may not assign its obligations under the Loan Documents.

21. TIME OF THE ESSENCE.

Time is of the essence with regard to each provision of the Loan Documents as to which time is a factor.

22. SURVIVAL.

The representations, warranties, and covenants of the Borrower in the Loan Documents shall survive the execution and delivery of the Loan Documents and the making of the Loan.

23. NONRECOURSE.

This Note is a nonrecourse obligation of Borrower. Neither Borrower nor any of its officers, directors, members, or general and limited partners shall have any personal liability for repaying the principal or interest of the Note. In any action brought to enforce the obligations of Maker under this Note, the Deed of Trust or any other instrument or agreement evidencing, securing or relating to the indebtedness evidenced by this Note, the judgment or decree shall be enforceable against Borrower solely and only to the extent of its interest in the property described in the Deed of Trust or its interest in any other security provided by Borrower as security for this Note, and Lender shall not seek any deficiency judgment against the Borrower. The foregoing provisions shall not prevent recourse to the collateral security for the loan, including but not limited to all contracts, documents, reports, surveys, materials, architectural drawings and specifications and other information related to the Project, or constitute a waiver, release or discharge of or otherwise affect the obligation to pay, any indebtedness evidenced by the loan documents executed in connection with the Project or limit the right of any person to name the Maker or any other person claiming an interest in or right to such collateral as party defendant in any action or suit for judicial foreclosure or in the exercise of any other remedy, including injunctive or other equitable relief, under any of the loan documents executed in connection with this Project so long as no deficiency judgment shall be sought against the Maker.

25. JOINT AND SEVERAL OBLIGATIONS.

If this Note is signed by more than one party as Borrower, all obligations of Borrower

herein shall be the joint and several obligations of each party executing this Note as Borrower.

[Signatures on following page]

MAKER / BORROWER:

BORROWER:

Fort Bragg South Street LP,
a California Limited Partnership

By: Community Revitalization and Development Corporation,
a California nonprofit public benefit corporation,
Its Managing General Partner

By: _____
David Rutledge, President

By: Johnson & Johnson Investments, LP,
a California limited liability company,
Its Administrative General Partner

By: _____
Daniel J. Johnson, Managing Member

By: Danco Communities, a California Corporation
Its Co-Administrative General Partner

By: _____
Daniel J. Johnson, President

ATTACHMENT NO. 3

FORM OF DEED OF TRUST

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Fort Bragg
416 North Franklin Street
Fort Bragg, CA 92101
Attn: _____
Title: _____

Space above line for Recorder’s use only
Exempt from Recording Fees pursuant to Govt. Code § 27383

CITY OF FORT BRAGG

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

This Deed of Trust is made as of _____, 2020, among FORT BRAGG SOUTH STREET LP, a California limited partnership (“**TRUSTOR**”), whose address is _____; _____ (“**TRUSTEE**”); and the CITY OF FORT BRAGG (“**BENEFICIARY**”), whose address is 416 North Franklin Street, Fort Bragg, California 92101.

Trustor irrevocably grants, conveys, transfers, and assigns to Trustee in trust, with power of sale and right of entry and possession, all of Trustor’s estate, right, title, and interest in, to and under the following property (collectively, the “**Property**”): (a) the real property in Mendocino County, California, described on **Exhibit A** attached hereto and incorporated herein by this reference, together with all existing and future easements and rights affording access to it (the “**Land**”), (b) together with all buildings, structures, and improvements now existing or hereafter constructed thereon (the “**Improvements**”), (c) together with all articles of personal property now or hereafter attached to, placed upon for an indefinite term, or used in connection with the Land and/or Improvements, together with all goods and other property that are, or at any time become, so related to the Property that an interest in them arises under real estate law, or they are otherwise adjudged to be a “**fixture**” under applicable law (each a “**Fixture**,” collectively “**Fixtures**”), (d) together with all other property and interests of any kind or character which may be reasonably necessary or desirable to promote the present and future beneficial use and enjoyment of such real property and improvements.

1. Secured Obligations. Trustor makes the grant, conveyance, transfer, and

assignment herein for the purpose of securing the following obligations (the “**Secured Obligations**”): (a) payment of the sum of Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000.00) with interest thereon according to the terms of a promissory note (the “**Note**”) of even date herewith, executed by Trustor in favor of Beneficiary or order and any extension or renewals thereof; (b) payment of such further sums as the then record owner of the Property may borrow from Beneficiary, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; and (d) performance of each agreement and obligation of Trustor under that certain Affordable Housing Loan Agreement executed by Trustor and Beneficiary dated _____, 2020 (the “**Loan Agreement**”), providing for the construction of improvements on the Property and operation of the Property and improvements thereon as affordable housing (the “**Project**”); and (e) obligations under the Regulatory Agreement (441 South Street) dated of even date herewith (the “**Regulatory Agreement**”) recorded against respective portions of the Property on even date with this Deed of Trust. The payment of the amount owing pursuant to the terms of the Note by Trustor does not extinguish the rights of the Beneficiary under the Regulatory Agreement. This Deed of Trust shall secure the Beneficiary against any default under the Regulatory Agreement for the term of the Regulatory Agreement.

2. Maintenance and Repair. Trustor shall (a) keep the Property in good condition and repair and not remove or demolish any building except as may be necessary to construct the Project; (b) complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed; (c) pay when due all claims for labor performed and materials furnished; (d) comply with all laws affecting the Property or requiring any alterations or improvements to be made; (e) not commit or permit waste; and (f) cultivate, irrigate, fertilize, fumigate, prune, and do all other acts which from the character or use of the Property may be reasonably necessary.

3. Insurance. Trustor shall maintain hazard insurance against loss by fire, hazards included with the term “**extended coverage**,” and any other hazards for which Beneficiary requires insurance, and liability insurance as set forth in the Regulatory Agreements. The insurance carrier and the insurance policies and amounts of coverage shall comply with the terms of the Regulatory Agreements or shall otherwise be acceptable to Beneficiary, the policies shall name Beneficiary as a loss payee or an additional insured, as applicable, the policies shall include Beneficiary as an additional insured, as applicable.

4. Defense of Security. Trustor shall appear in and defend any action or proceeding purporting to affect the security or the rights or powers of Beneficiary or Trustee. Trustor shall pay all costs and expenses, including costs of evidence of title and attorneys’ fees, in any such action or proceeding in which Trustee or Beneficiary may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

5. Payment of Taxes and Liens. Trustor shall pay (a) at least 10 days before delinquency, all non-abated taxes and assessments affecting the Property, including water stock assessments; (b) when due, all encumbrances, charges, and liens, with interest, on the Property, which are or appear to be prior or superior to this Deed of Trust; and (c) upon demand all reasonable and documented costs, fees, and expenses of this Deed of Trust. If Trustor fails to make any payment or to do any act provided for in this Deed of Trust after written notice of such

failure by Beneficiary and a reasonably opportunity to cure, then Beneficiary or Trustee may, without obligation to do so, and with or without notice to or demand upon Trustor, and without releasing Trustor from any obligation under this Deed of Trust: (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; (b) appear in or commence any action or proceeding purporting to affect the security, or the rights or powers of Beneficiary or Trustee; (c) pay, purchase, contest or settle any encumbrance, charge or lien which in the judgment of either appears to be senior to this Deed of Trust; and (d) in exercising any such powers, pay allowable expenses, including attorneys' fees.

6. Reimbursement of Costs. Trustor shall pay upon demand all reasonable and documented sums expended by Beneficiary or Trustee provided for in this Deed of Trust or allowed by law, with interest from date of expenditure at the maximum rate provided in the Note.

7. No Waiver. By accepting payment of any sum after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums or declare a default for failure to pay.

8. Reconveyance. That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said note or notes to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals of such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as “**the person or persons legally entitled thereto.**”

9. Assignment of Rents. Subject to the rights of senior lenders, Trustor hereby absolutely and unconditionally assigns to Beneficiary all of the rents, issues, profits, royalties, revenues, income, and other benefits (collectively, the “**Rents**”) derived from the Property, whether now due, past due or to become due, and hereby gives to and confers upon Beneficiary, either directly or through a receiver, the right, power, and authority, but not the obligation, to collect the Rents, and to sue, either in the name of Trustor or Beneficiary, for all such Rents and to apply the same to the indebtedness secured hereby in such order as Beneficiary may determine in its sole discretion. This assignment of Rents is intended to create and shall be construed to create an absolute assignment to Beneficiary of all of Trustor's right, title, and interest in the Rents. So long as no default exists by Trustor in the payment of any indebtedness secured hereby, or in any other covenant contained herein, or in said note or notes or in any other document evidencing or securing such indebtedness, Trustor shall have the right to collect all Rents from the Property and to retain, use, and enjoy the same. Upon the occurrence of such a default beyond any applicable notice and cure periods, without the necessity of demand or other notice to Trustor or any other act to enforce Beneficiary's interest pursuant to this assignment, Trustor shall have no interest whatsoever in the Rents that are received by Trustor after a default, and all such Rents shall be received and held by Trustor in constructive trust for Beneficiary and delivered promptly to Beneficiary, or to a court-appointed receiver for the Property, without the necessity for further notice to, or demand upon, Trustor. Upon the occurrence of such a default, beyond any applicable notice and cure periods, and at any time thereafter during the continuance

thereof, Beneficiary may, at its option, send any tenant of the Property a notice to the effect that: (a) a default has occurred; (b) Beneficiary has elected to exercise its rights under this assignment; and (c) such tenant is thereby directed to thereafter make all payments of Rents to or for the benefit of Beneficiary or as Beneficiary shall direct. Any such tenant shall be entitled to rely upon any notice from Beneficiary and shall be protected with respect to any payment of Rents made pursuant to such notice, irrespective of whether a dispute exists between Trustor and Beneficiary with respect to the existence of a default or the rights of Beneficiary hereunder. Any such tenant shall not be required to investigate or determine the validity or accuracy of such notice or the validity or enforceability of this assignment. Trustor hereby agrees to indemnify, defend, and hold any such tenant harmless from and against any and all losses, claims, damages or liabilities arising from or related to any payment of Rents by such tenant made in reliance on and pursuant to such notice.

10. Default and Foreclosure. Upon default by Trustor in payment or performance of any Secured Obligation, subject to any applicable notice and cure period, Beneficiary may declare all sums secured immediately due and payable by delivery to Trustee of a declaration of default and demand for sale and of a notice of default and of a notice of sale, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, said note or notes, and all documents evidencing expenditures secured by this Deed of Trust. Upon default of any obligation secured by this Deed of Trust and acceleration of all sums due, Beneficiary may instruct Trustee to proceed with a sale of the Property under the power of sale granted in this Deed of Trust, noticed and held in accordance with California Civil Code Sections 2924, et seq., as such statutes may be amended from time to time. Trustor waives all rights it may have to require marshaling of assets or to require sales of assets in any particular order, including any rights under California Civil Code Sections 2899 and 3455.

Beneficiary hereby agrees that any cure of any default made or tendered hereunder by Trustor's limited partner shall be accepted or rejected on the same basis as if made or tendered by Trustor.

11. Distribution of Foreclosure Proceeds. The proceeds generated by any Foreclosure ("Proceeds") shall be distributed as follows: (i) First, senior liens and encumbrances (if any) on the Project shall be fully paid from the Proceeds; (ii) Second, City shall be fully paid any amounts owing under the Secured Obligations; (iii) Third, to the Borrower to the extent the Borrower or its affiliate has unreimbursed predevelopment costs advanced in connection with the Project; (iv) Fourth, City shall be paid the difference between the appraised value of the completed Project (applicable portion thereof) as restricted by the Regulatory Agreement ("Restricted Value") and the Proceeds ("Differential"); (v) Fifth, any remaining Proceeds shall be distributed in accordance with California Civil Code Section 2924(k). The Differential shall be deposited in City's housing fund. Borrower expressly acknowledges and agrees that the Agreement and this Deed of Trust constitutes a lien against the Project and the Differential, including in accordance with California Civil Code Sections 2872, 2924 to 2924h, inclusive ("Differential Lien"). In the event of a Foreclosure, for purposes of distribution of the Differential only, the Differential Lien shall be considered a junior lien or encumbrance within the meaning of California Civil Code section 2924k(a)(3). Borrower hereby irrevocably instructs any holder of the Differential or similar proceeds generated by Foreclosure to

immediately disburse the Differential to City, and agrees to defend, indemnify and hold City and such holder harmless from any and all claims related to such distribution. As used herein, "Foreclosure" means any judicial or non-judicial foreclosure, trustee's sale, deed-in-lieu transfer, short sale, or similar transaction.

12. Substitution of Trustee. Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers, and duties. Said instrument must contain the name of the original Trustor, Trustee, and Beneficiary hereunder, the book and page where this Deed of Trust is recorded, and the name and address of the new Trustee.

13. Successors and Assigns. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "**Beneficiary**" shall mean the owner and holder, including pledgees, of the secured note or notes, whether or not named as Beneficiary herein.

14. Trustee Acceptance. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

15. Further Assurances. Trustor shall, at its own cost and expense, do, execute, acknowledge, and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers, and assurances as Trustee or Beneficiary shall from time to time reasonably require, for better assuring, conveying, assigning, transferring, and confirming unto Trustee the Property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Trustee, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust, or for filing, registering, or recording this Deed of Trust. Trustor shall, on demand, execute and deliver, and hereby authorizes Trustee and Beneficiary, or either of them, to execute in the name of Trustor, to the extent it may lawfully do so, one or more financing statements, chattel mortgages, or comparable security instruments, to evidence more effectively the lien hereof. Immediately upon the execution and delivery of this Deed of Trust, and thereafter from time to time, Trustor shall cause this Deed of Trust, and any security instruments creating a lien or evidencing the lien hereof upon any personal property and each instrument of further assurance, to be filed, registered, or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee to, the Property encumbered hereby.

16. Condemnation and Insurance Proceeds. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or other taking of all or any portion of the Property, or knowledge of any casualty damage to the Property, or damage in

any other manner, Trustor shall immediately notify Beneficiary thereof. Trustor hereby authorizes and empowers Beneficiary as attorney-in-fact for Trustor to make proof of loss, to adjust and compromise any claim under the insurance policies covering the Property, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Beneficiary's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this Section shall require Beneficiary to incur any expense or take any action hereunder. Trustor hereby authorizes and empowers Beneficiary, at Beneficiary's option, as attorney-in-fact for Trustor, to commence, appear in, and prosecute, in Beneficiary's or Trustor's name, any action or proceeding relating to any condemnation or other taking of all or any part of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or any part thereof, or for conveyances in lieu of the Property, or any part thereof, shall be paid to Beneficiary. The foregoing powers of attorney are coupled with an interest and are irrevocable. Trustor hereby authorizes Beneficiary to apply such awards, payments, proceeds or damages relating to condemnation of the Property and insurance covering the Property, after the deduction of Beneficiary's expenses incurred in the collection of such amounts, subject to the requirements of applicable law and the provisions hereof, to restoration or repair of the Property or to payment of the sums secured by this Deed of Trust. Beneficiary shall be under no obligation to question the amount of any compensation, awards, proceeds, damages, claims, rights of action, and payments relating to condemnation or other taking of the Property or insured casualty affecting the Property, and may accept the same in the amount in which the same shall be paid. Trustor shall execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking or such insurance as Beneficiary may require. Notwithstanding the above, the Beneficiary shall release all insurance and condemnation proceeds to Trustor to be used to reconstruct the improvements on the Property provided that Beneficiary reasonably determines that such restoration, repair or rebuilding is economically feasible, provided, Beneficiary acknowledges and agrees that if any casualty affects the Property at any point after the execution of this Deed of Trust and prior to the construction of the Trustor's new Improvements, the Trustor shall not be obligated to reconstruct any improvements on the Property. If such insurance proceeds shall be insufficient for such purposes, Trustor shall make up the deficiency. If the Project is subject to a partial condemnation or taking, then the proceeds received therefrom shall be applied to restore the Project taken, provided the Beneficiary determines that such restoration is economically feasible and no default exists under the Loan Documents following the expiration of all applicable cure periods. If the Project is subject to a total condemnation, or if Beneficiary determines that restoration of the Project is not feasible following a partial condemnation, or if a default exists then the proceeds from any condemnation award or claim for damages shall be used first to repay all sums under the Note, with the excess, if any, paid to Trustor, subject to the rights of the senior lender.

17. Severability. If any one or more of the provisions contained in this Deed of Trust shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein or therein, but only to the extent of such invalidity.

18. Estoppel Certificate. Trustor shall, within thirty (30) days of a written request from Beneficiary, furnish Beneficiary with a written statement, duly acknowledged, setting forth the sums secured by this Deed of Trust and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Deed of Trust.

19. California Uniform Commercial Code Security Agreement; Fixture Filing. Trustor hereby grants Beneficiary a security interest in all personal property of Trustor located on the Property and wherever located and used in any way in connection with or in any way relating to the Property, and whether now owned or hereafter in existence, acquired or created (including equipment, inventory, goods, documents, instruments, general intangibles, chattel paper, accounts, accounts receivable, deposit accounts, and contract rights), and all fixtures of Trustor now owned or hereafter in existence, acquired or created on, of or relating to the Property, and all substitutions, replacements, additions, accessions, and proceeds (including insurance proceeds) of all of the foregoing (collectively, the “**Personal Property**”). Beneficiary may file this Deed of Trust, or a reproduction hereof, in the real estate records or other appropriate index, as a financing statement for the Personal Property. Any reproduction of this Deed of Trust or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Trustor shall execute and deliver to Beneficiary, upon Beneficiary’s request, any financing statements, as well as extensions, renewals, and amendments thereof, and reproductions of this Deed of Trust in such form as Beneficiary may require to perfect a security interest with respect to the Personal Property. Trustor shall pay all costs of filing such financing statements and any extensions, renewals, amendments, and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Beneficiary may reasonably require. Upon Trustor’s breach of any covenant or agreement of Trustor contained in this Deed of Trust, including the covenants to pay when due all sums secured by this Deed of Trust, Beneficiary shall have the remedies of a secured party under the California Uniform Commercial Code and, at Beneficiary’s option, may also invoke any remedies provided in this Deed of Trust as to the Personal Property. In exercising any of such remedies, Beneficiary may proceed against the Property and any of the Personal Property separately or together and in any order whatsoever, without in any way affecting the availability of Beneficiary’s remedies under the California Uniform Commercial Code or the remedies provided in the Deed of Trust. This Deed of Trust also covers goods which are or which are to become fixtures on the Property and constitutes and is filed as a fixture filing under the California Uniform Commercial Code.

20. Due-On-Sale or Encumbrance. Except as set forth in Section 3.4 of the Regulatory Agreement and except for any Permitted Transfer (as such term is defined in the Loan Agreement), if all or any part of the Property, or any interest therein, or any beneficial interest in Trustor (if Trustor is not a natural person or persons but is a corporation, partnership, trust, limited liability company or other legal entity), is sold, transferred, mortgaged, assigned, pledged, or further encumbered, whether directly or indirectly, whether voluntarily or involuntarily, or by operational law, Beneficiary may, at Beneficiary’s option, declare all of the sums secured by this Deed of Trust to be immediately due and payable, and Beneficiary may invoke any remedies permitted by this Deed of Trust.

21. Three-Year Tax Credit Period. If the Project is assisted by federal tax credits

and it is determined that Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, is applicable to the Beneficiary, the Beneficiary agrees to comply with the three-year extended use requirement set forth therein in the event that the Beneficiary takes ownership of the Project or any portion thereof as a result of a foreclosure. The Beneficiary further agrees to execute and record a subordination agreement, in a form reasonably approved by Beneficiary, subordinating the lien of the Deed of Trust to the California Tax Credit Allocation Committee's regulatory agreement.

[CONTINUED ON NEXT PAGE]

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to Trustor at Trustor's address hereinbefore set forth, and to Trustor's limited partner at its address set forth in the Loan Agreement entered into by and between Trustor and Beneficiary referenced in Section 1, above.

TRUSTOR:

BORROWER:

Fort Bragg South Street LP,
a California Limited Partnership

By: Community Revitalization and Development Corporation,
a California nonprofit public benefit corporation,
Its Managing General Partner

By: _____
David Rutledge, President

By: Johnson & Johnson Investments, LP,
a California limited liability company,
Its Administrative General Partner

By: _____
Daniel J. Johnson, Managing Member

By: Danco Communities, a California Corporation
Its Co-Administrative General Partner

By: _____
Daniel J. Johnson, President

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

ACKNOWLEDGEMENT

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 _____, 2020 before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____ (seal)

ACKNOWLEDGEMENT

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 _____, 2020 before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____ (seal)

ATTACHMENT NO. 4

FORM OF REGULATORY AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Fort Bragg
416 North Franklin Street
Fort Bragg California 95437
Attn: _____

Space above line for Recorder's use only
Exempt from Recording Fees pursuant to Govt. Code § 27383

CITY OF FORT BRAGG

**REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS, CONDITIONS AND RESTRICTIONS
RESTRICTING USE OF PROPERTY FOR AFFORDABLE HOUSING
(441 South Street)**

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS CONDITIONS AND RESTRICTIONS RESTRICTING USE OF PROPERTY FOR AFFORDABLE HOUSING (the "**Regulatory Agreement**") is entered into as of _____, 2020, by and between the CITY OF FORT BRAGG, a California municipal corporation (the "**City**") and FORT BRAGG SOUTH STREET LP, a California limited partnership ("**Owner**"), and is made with reference to the following recited facts (each, a "**Recital**").

RECITALS

A. The Owner owns or will own and operates that certain real property specifically defined as the "**Property**" as described in "**Exhibit A**," attached hereto. The Property shall be developed with a multifamily rental housing development (the "**Project**") consisting of a total of sixty-eight (68) residential rental units (plus a manager's unit) which provide rental housing to extremely low, very low- and lower income households at affordable rents, as more specifically described in this Regulatory Agreement. The residential units shall be allocated into three distinct components, subject to applicable law, including without limitation federal and California fair housing law and Section 42 of the Internal Revenue Code, which are (i) twenty (20) units for permanent supportive housing (the "**Permanent Supportive Housing**") plus a

manager's unit; (ii) twenty-three (23) unit for senior residential cottages (“**Senior Housing**”); and (iii) twenty-five (25) units for workforce/family units (“**Workforce Housing**”)

B. The Owner and the City entered into an Affordable Housing Loan Agreement, dated _____, 2020, pursuant to which the City loaned Owner Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000.00) to help finance apportion of the costs for the acquisition of the Property and development of the Project.

C. In consideration of the City's Loan, Owner executed an Amended and Restated Promissory Note, secured by a Deed of Trust on the Property, and this Regulatory Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES, COVENANTS AND UNDERTAKINGS SET FORTH IN THIS REGULATORY AGREEMENT AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE OWNER AND THE CITY COVENANT, DECLARE AND AGREE FOR THEMSELVES, THEIR SUCCESSORS AND ASSIGNS, AS FOLLOWS:

1. DEFINITIONS

1.1 **Definitions.** As used in this Regulatory Agreement, the following words, phrases and terms shall have the meaning as provided in the initial paragraph of this Regulatory Agreement, the Recitals, the Loan Agreement, or in this Section 1, unless the specific context of usage of a particular word, phrase or term may otherwise require:

1.1.1 **Affordable Rent.** In reference to each Affordable Unit, and subject to the terms of Section 2.2.2, “**Affordable Rent**” shall be set at a level which is no higher than thirty percent (30%) of gross income for the household size appropriate for the applicable Affordable Unit, which adjustment assumptions are 1.5 persons per bedroom. The gross monthly rent for the 30% Units shall not exceed one-twelfth of 30% of 30% of the Area Median Income, adjusted by household size appropriate for the unit. The gross monthly rent for the 40% Units shall not exceed one-twelfth of 30% of 40% of the Area Median Income, adjusted by household size appropriate for the unit. The gross monthly rent for the 50% Units shall not exceed one-twelfth of 30% of 50% of the Area Median Income, adjusted by household size appropriate for the unit. The gross monthly rent for the 60% Units shall not exceed one-twelfth of 30% of 60% of the Area Median Income, adjusted by household size appropriate for the unit.

1.1.2 **Affordable Units.** The sixty-eight (68) residential units included in the Project that are restricted by Owner for rental to and occupancy by Qualifying Households in accordance with the terms and conditions of this Agreement as follows:

Unit Type	AMI Rent	# of Units
Permanent Supportive Housing		21
One Bedroom	30%	9
One Bedroom	40%	9
Two Bedroom	30%	1
Two Bedroom	40%	1
Manager's Unit		1
Senior Housing		23
One Bedroom	50%	1
One Bedroom	60%	16
Two Bedroom	50%	2
Two Bedroom	60%	4
Workforce Housing		25
Three Bedroom	50%	3
Three Bedroom	60%	22

The units designated as 30% AMI shall be available and rented to households whose income (adjusted by household size appropriate for the applicable unit) does not exceed thirty percent (30%) of the Area Median Income (collectively, the “**30% Units**”); the units designated as 40% AMI shall be available and rented to households whose income does not exceed forty percent (40%) of the Area Median Income (collectively, the “**40% Units**”), the units designated as 50% AMI shall be available and rented to households whose income does not exceed fifty percent (50%) of the Area Median Income (collectively, the “**50% Units**”), and the units designated as 60% AMI shall be available and rented to households whose income does not exceed sixty percent (60%) of the Area Median Income (collectively, the “**60% Units**”).

1.1.3 **Annual Report.** A report in substantially the form of Exhibit “C” attached to this Regulatory Agreement or in such other form as subsequently reasonably required by the City.

1.1.4 **Approval.** Any license, permit, approval, consent, certificate, ruling, variance, authorization, conditional use permit, or amendment to any of the foregoing, as shall be necessary or appropriate under any Law to commence, perform, or complete the Construction of the Project.

1.1.5 **Area Median Income.** The then current area median income for Mendocino County, as determined by and published by the United States Department of Housing and Urban Development (“**HUD**”) as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen months, then the City shall provide Owner with other income determinations which are reasonably similar with respect to method of calculation to those previously published by HCD or HUD.

1.1.6 **Available.** When an Affordable Unit is held available for occupancy by a Qualifying Household. An Affordable Unit shall be considered to be held available for occupancy by a Qualifying Household, until occupied or reoccupied by a Qualifying Household, provided that the Owner is exercising bona fide good faith efforts to let or relet the Affordable Unit to a Qualifying Household.

1.1.7 **Bankruptcy Law.** Title 11, United States Code, and any other or successor State or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

1.1.8 **Bankruptcy Proceeding.** Any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

1.1.9 **City.** The City of Fort Bragg, California, a municipal corporation.

1.1.10 **City Manager.** The appointed City Manager of the City, or his or her designee.

1.1.11 **City Parties.** Collectively, City, its governing body, elected officials, employees, agents and attorneys.

1.1.12 **City Party.** Individually, City, its governing body, elected officials, employees, agents or attorneys.

1.1.13 **Claim.** Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and if an Indemnitor improperly fails to provide a defense for an Indemnitee, then Legal Costs of counsel retained by the Indemnitee) and any judgment.

1.1.14 **CMFA Regulatory Agreement.** The Regulatory Agreement and Declaration of Restrictive Covenants by and between the Owner and California Municipal

Finance Authority.

1.1.15 **Condemnation.** Any of the following: (a) Any temporary or permanent taking of (or of the right to use or occupy) all or any part of the Property by condemnation, eminent domain, or any similar proceeding; or (b) any action by any Government not resulting in an actual transfer of an interest in (or of the right to use or occupy) all or any part of the Property, but creating a right to compensation, such as a change in grade of any street upon which the Property abuts.

1.1.16 **Control.** Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person and contractually bind such Person, whether by ownership of Equity Interests, by contract, or otherwise.

1.1.17 **County.** The County of Mendocino, California.

1.1.18 **Deed of Trust.** The Deed of Trust, executed by Owner as Trustor, in favor of the City as Beneficiary, of even date with this Regulatory Agreement.

1.1.19 **Default Interest.** Interest at an annual rate equal to the lesser of: (a) eight percent (8%) per annum; or (b) the Usury Limit.

1.1.20 **Environmental Claim.** Any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements and expenses, including Legal Costs and fees and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or Hazardous Substance Discharge.

1.1.21 **Environmental Law.** Any Law regarding any of the following at, in, under, above, or upon the Property: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, remediation, control, disposal, generation, storage, release, discharge, transportation, use of, or liability or standards of conduct concerning, Hazardous Substances.

1.1.22 **Equity Interest.** All or any part of any direct or indirect equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity nature) in any entity, at any tier of ownership, that directly or indirectly owns or holds any ownership or equity interest in a Person.

1.1.23 **Event of Default.** The occurrence of any one or more of the following:

(a) *Reporting Default.* If the Owner fails to deliver any Annual Report as and when required in Section 2.5.6 or fails or refuses to allow and cooperate with any City audit of Project Records in accordance with Section 2.10, each after fifteen (15) calendar days' Notice of such failure;

(b) *Bankruptcy or Insolvency.* Owner admits in writing that it is

unable to pay its debts as they become due or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within one hundred twenty (120) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Owner's assets or Owner's interest in this Regulatory Agreement (unless such appointment, attachment, execution, or other seizure was involuntary, and is contested with diligence and continuity and vacated and discharged within one hundred twenty (120) days);

(c) *Transfer.* The occurrence of a Transfer, other than a Permitted Transfer (as such term is defined in the Loan Agreement), whether voluntarily or involuntarily or by operation of Law, in violation of the terms and conditions of this Regulatory Agreement or the Amended Loan Agreement;

(d) *Other Default.* Any default, other than those specifically addressed in Section 1.1.1(a), Section 1.1.23(b) or Section 1.1.23(c), that is not cured within thirty (30) days after Notice to the Owner describing the default in reasonable detail, or, in the case of a default that cannot with reasonable diligence be cured within thirty (30) days after the effective date of such Notice, if the Owner does not do all of the following: (a) within thirty (30) days after Notice of such default, advise the City of the intention of the Owner to take all reasonable steps to cure such default; (b) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (c) complete such cure within a reasonable time under the circumstances; or

1.1.24 **Full Insurable Value.** The actual cost of replacing the property in question, without allowance for depreciation, as calculated from time to time (but not more often than once every calendar year) by the insurance company or companies providing property insurance coverage for such property.

1.1.25 **Government.** Each and every governmental agency, City, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Property or the Project (or any activity this Regulatory Agreement requires or allows), including the government of the United States of America, the State and the County governments and their subdivisions and municipalities, including the City, the City, and all other applicable governmental agencies, authorities, and subdivisions thereof. "Government" shall also include any planning commission, board of standards and appeals, department of buildings, city council, zoning board of appeals, design review board or committee or similar body having or claiming jurisdiction over the Property or any activities on or at the Property.

1.1.26 **Hazardous Substance.** Any flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum, petroleum products, and any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (b) substances designated as "hazardous substances" pursuant to 33 U.S.C. § 1321; (c) defined as a "hazardous waste" under Section 1004 of the

Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, *et seq.*, as amended; (d) defined as a “hazardous substance” or “hazardous waste” under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601, *et seq.*, or any so-called “superfund” or “superlien” law; (e) defined as a “pollutant” or “contaminant” under 42 U.S.C. § 9601(33); (f) defined as “hazardous waste” under 40 C.F.R. Part 260; (g) defined as a “hazardous chemical” under 29 C.F.R. Part 1910; (h) any matter within the definition of “hazardous substance” set forth in 15 U.S.C. § 1262; (i) any matter, waste or substance regulated under the Toxic Substances Control Act (“TSCA”) [15 U.S.C. Sections 2601, *et seq.*]; (j) any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, *et seq.*; (k) those substances listed in the United States Department of Transportation (DOT) Table [49 C.F.R. 172.101]; (l) any matter, waste or substances designated by the EPA, or any successor City, as a hazardous substance [40 C.F.R. Part 302]; (m) any matter, waste or substances defined as “hazardous waste” in Section 25117 of the California Health and Safety Code; (n) any substance defined as a “hazardous substance” in Section 25316 of the California Health and Safety Code; (o) any matter, waste, or substance that is subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (p) other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under Law or in the regulations adopted pursuant to said Law, including manure, asbestos, polychlorinated biphenyl, flammable explosives and radioactive material. Hazardous Substances do not include substances of a type and quantity typically used in the construction and operation of developments similar to the Project and used in compliance with Environmental Laws

1.1.27 **Hazardous Substance Discharge.** Any deposit, discharge, generation, release, or spill of a Hazardous Substance that occurs at, on, under, into or from the Property, or during the transportation of any Hazardous Substance to or from the Property, or that arises at any time from the Construction, installation use or operation of the Project or the Project or any activities conducted at, on, under or from the Property, whether or not caused by a Party.

1.1.28 **HUD.** The Secretary of the United States Department of Housing and Urban Development.

1.1.29 **Income Certification Form.** A certification in substantially the form of Exhibit “B” attached to this Regulatory Agreement or in such other form subsequently reasonably required by City.

1.1.30 **Indemnify.** Where this Regulatory Agreement states that any Indemnitor shall “indemnify” any Indemnitee from, against, or for a particular Claim, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise). “**Indemnified**” shall have the correlative meaning.

1.1.31 **Indemnitee.** Any Person entitled to be Indemnified under the terms of

this Regulatory Agreement.

1.1.32 **Indemnitor.** A Party that agrees to Indemnify any other Person under the terms of this Regulatory Agreement.

1.1.33 **Legal Costs.** In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs and expenses, and consultant and expert witness fees and expenses.

1.1.34 **Liability Insurance.** Commercial general liability insurance against claims for bodily injury, personal injury, death or property damage occurring upon, in, or about the Property, the Project or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG001, with a minimum liability limit of Two Million Dollars (\$2,000,000) for any one occurrence and which may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Project or the general aggregate limit shall be twice the required minimum liability limit for any one occurrence.

1.1.35 **Maintenance Deficiency.** Defined in Section 3.5.2.

1.1.36 **Maintenance Standard.** Defined in Section 3.5.1

1.1.37 **Notice.** Any consent, demand, designation, election, notice, or request relating to this Regulatory Agreement, including any Notice of Default. All Notices must be in writing.

1.1.38 **Notice of Default.** Any Notice claiming or giving Notice of a Default or alleged Default.

1.1.39 **Notify.** To give a Notice.

1.1.40 **Parties.** Collectively, the City and the Owner.

1.1.41 **Party.** Individually, either the City or the Owner, as applicable.

1.1.42 **Person.** Any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

1.1.43 **Project.** The improvements that have been constructed on the Property, which shall include a sixty-eight (68) unit multifamily residential housing development and associated amenities, consisting of Supportive Housing, Senior Housing and Workforce Housing, as described in Recital A, subject to applicable law, including, without limitation, California and federal fair housing law and Section 42 of the Internal Revenue Code.

1.1.44 **Project Records.** All books, records, statements, contracts and other

records of the Owner or any Affiliate relating in any way to the use, occupancy or operation of the Property or the Project, including Income Certification Forms completed by applicants or tenants of the Project, Annual Reports, accounting of Project revenues, and accounting of Project expenses. All Project Records shall be prepared in accordance with industry standards and generally accepted accounting principles.

1.1.45 **Property.** That certain real property located within the City of Fort Bragg, County of Mendocino, State of California, specifically described in the legal description attached as Exhibit “A” to this Regulatory Agreement, which is incorporated into this Regulatory Agreement by this reference.

1.1.46 **Property Insurance.** Insurance providing coverage for the Property and all improvements on or to the Property against loss, damage, or destruction by fire and other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements comprising the Project (excluding excavations and foundations), and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with “ordinance or law” coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located on the Property; an “increased cost of construction” endorsement; and an endorsement covering demolition and cost of debris removal, all subject to policy sublimits. Property Insurance shall also include rental or business interruption insurance in an amount, at least, equal to the average annual Gross Income of the Project for the preceding three (3) calendar years and providing for a 12-month extended period of indemnity.

1.1.47 **Qualifying Household.** A household that: (1) intends to reside in an Affordable Unit; and (2) upon initial income certificate, and each year thereafter (subject to the terms of this Regulatory Agreement) meets the income restrictions as set forth in Section 2.2.1 of this Regulatory Agreement for the applicable Affordable Unit, based on a household size appropriate for the Affordable Unit.

1.1.48 **Security Instrument.** Any security instrument, deed of trust, security deed, contract for deed, deed to secure debt, or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant real property (including leasehold) security for any obligation (including a purchase-money or other promissory note) encumbering the Property, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned, or supplemented from time to time, unless and until paid, satisfied, and discharged of record. If two or more such security instruments are consolidated or restated as a single lien or held by the same Lender (as applicable), then all such security instruments so consolidated or restated shall constitute a single Security Instrument. A participation interest in a security instrument (or partial assignment of the secured loan) does not itself constitute a Security Instrument.

1.1.49 **TCAC.** TCAC means the California Tax Credit Allocation Committee.

1.1.50 **Term.** The period of time beginning on the date of recordation of this Regulatory Agreement and ending on the fifty-seventh (57th) anniversary of the date of the Amended and Restated Promissory Note.

1.1.51 **Transfer.** Regarding any property, right or obligation means any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, right or obligation, or of any legal, beneficial, or equitable interest or estate in such property, right or obligation or any part of it (including the grant of any easement, lien, or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in the owner of such property, right or obligation by the holders of such Equity Interest(s); (c) any transaction described in “b” affecting any Equity Interest(s) or any other interest in such property, right or obligation or in any such owner (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever, except for a transfer by the investor limited partner of its Equity Interests in Owner or the removal of the general partner by the limited partner for a default under Owner’s limited partnership agreement; or (d) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses “b” through “d,” shall be deemed a Transfer by the Owner even though the Owner is not technically the transferor. A “Transfer” shall not, however, include any of the following (provided that the other Party has received Notice of such occurrence) relating to the Property and/or any Equity Interest: (i) a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law and the State real estate transfer tax; (ii) a conveyance only to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; (iii) a conveyance only to any Person that, as of the date this Regulatory agreement is recorded, holds an Equity Interest in the entity whose Equity Interest is being transferred; (iv) the original sale of Equity Interests in Owner; (v) a conveyance only to an Affiliate of Owner; or (vi) a Permitted Transfer (as such term is defined in the Loan Agreement).

1.1.52 **Unavoidable Delay.** A delay in either Party performing any obligation under this Regulatory Agreement, except payment or deposit of money, arising from or on account of any cause whatsoever beyond the Party’s reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, litigation, governmental action or inaction, regional natural disasters or inability to obtain required materials. Unavoidable Delay shall not include delay caused by a Party’s financial condition, illiquidity, or insolvency.

1.1.53 **Waiver of Subrogation.** A provision in, or endorsement to, any insurance policy, by which the carrier agrees to waive rights of recovery by way of subrogation against either Party to this Regulatory Agreement for any loss such policy covers.

1.1.54 **Workers Compensation Insurance.** Workers compensation insurance complying with the provisions of State law and an employer’s liability insurance policy or endorsement to a liability insurance policy, with a minimum liability limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease, covering all employees of the Owner and the Management Agent.

2. **AFFORDABLE RENTAL HOUSING COVENANTS AND RESTRICTIONS**

2.1 Reservation of Property for Project. The Owner covenants and agrees to reserve and restrict the Property for operation of the Project and, thereafter, use and make Available the Affordable Units within the Project for residential occupancy by individuals and families who, at the time of initial occupancy of an Affordable Unit and continuously thereafter (subject to the other provisions of this Regulatory Agreement), until the end of the Term, are members of a Qualifying Household.

2.2 Restrictive Covenant for Affordable Units on the Property. For the Term of this Regulatory Agreement, the Owner shall make available and rent the Affordable Units as follows:

2.2.1 As defined in Section 1.1.2 of this Agreement, the gross monthly rent for the 30% Units shall not exceed one-twelfth of 30% of 30% of the Area Median Income, adjusted by household size appropriate for the unit. The gross monthly rent for the 40% Units shall not exceed one-twelfth of 30% of 40% of the Area Median Income, adjusted by household size appropriate for the unit. The gross monthly rent for the 50% Units shall not exceed one-twelfth of 30% of 50% of the Area Median Income, adjusted by household size appropriate for the unit. The gross monthly rent for the 60% Units shall not exceed one-twelfth of 30% of 60% of the Area Median Income, adjusted by household size appropriate for the unit. The adjustment assumptions for household size are 1.5 persons per bedroom.

2.2.2 Notwithstanding the foregoing, during the term of a regulatory agreement associated with the provision of low income housing tax credits by TCAC and recorded against the Property (the "CMFA Regulatory Agreement"), the Owner may use the occupancy standards, occupancy assumptions, and rent levels that are permitted by TCAC in the CMFA Regulatory Agreement, in place of the requirements imposed by this Regulatory Agreement.

2.3 Continuous Operation Covenant. The Owner covenants to and for the benefit of the City to cause the Project to be continuously operated, in accordance with the other provisions of this Section 2, throughout the Term.

2.4 Abandonment. The Owner shall not abandon or surrender the operation of all or any part of the Project during the Term, except due to material casualty or condemnation.

2.5 Affordable Rent. The monthly rent charged to a Qualifying Household for the occupancy of an Affordable Unit may never exceed an Affordable Rent for such Affordable Unit.

2.5.1 **Rent Increases.** Rent for Affordable Units may be increased only once per calendar year, based on changes in Area Median Income; provided that the City may, in its reasonable discretion, waive the above restrictions on rent increases. Notwithstanding the foregoing, the rent for each Affordable Unit must never exceed an Affordable Rent for the Affordable Unit.

2.5.2 **Determination of Household Income.** Determination of Qualifying Household income shall be made by the Owner at the time of initial application by an individual

or family for occupancy of an Affordable Unit. At the time of initial application, the Owner shall require an applicant to complete the Income Certification Form and certify the accuracy of the information provided on such form. Annually thereafter, the Owner shall require each Qualifying Household occupying an Affordable Unit to recertify the Qualifying Household's income on the Income Certification Form. The Owner shall make a good faith effort to verify the accuracy of income information provided in any Income Certification Form by an applicant for occupancy of an Affordable Unit or by a Qualifying Household occupying an Affordable Unit, by taking one or more of the following steps, as reasonably required or indicated: (1) obtain an income tax return and copy of each W2 Wage and Earnings Statement for the most recently concluded income tax year; (2) conduct a credit reporting agency or similar search; (3) obtain an income verification form from the applicant's or the Qualifying Household's current employer(s); (4) obtain an income verification form from the United States Social Security Administration and/or the California Department of Social Services, if the applicant or the Qualifying Household receives assistance from either of such agencies; or (5) if the applicant or an adult member of a Qualifying Household is unemployed and has no such income tax return, obtain another form of independent verification. For purposes of this Section 2.6.2, the Owner may conclusively rely upon the evidence of the age of the occupant(s) of an Affordable Unit as presented in a valid California Driver's License, other form of identification issued by the State of California or the United States Government, which includes a date of birth. All such verification information shall only be obtained by the Owner after obtaining the applicant's or the Qualifying Household's written consent for the release of such information to the Owner. Failure to consent in writing to the release of such income verification information to the Owner may disqualify an applicant for occupancy of an Affordable Unit or be grounds for termination of Qualifying Household's occupancy of an Affordable Unit.

2.5.3 If, upon any recertification, the income of a previously Qualifying Household is less than one hundred forty percent (140%) of the appropriate income level for the applicable Affordable Unit as adjusted for household size, then such household shall continue to be deemed a Qualifying Household under this Regulatory Agreement. If, upon any recertification, the income of a previously Qualifying Household exceeds one hundred forty percent (140%) of Lower Income as adjusted for household size, then, to the extent allowed by Law, including Section 42 of the Internal Revenue Code and the CMFA Regulatory Agreement, the Owner shall notify such household that its lease for its Affordable Unit will not be renewed upon the expiration of its lease, unless the household again becomes a Qualifying Household upon recertification prior to the expiration of its lease.

2.5.4 The Owner shall maintain on file all Income Certification Forms completed by applicants for occupancy of Affordable Units and by Qualifying Households that occupied or are occupying Affordable Units in accordance with Section 2.10.1 and shall provide copies of the rent roll and Income Certification Forms to the City for its review and approval within fifteen (15) days following Notice to the Owner.

2.5.5 The Owner shall, and the Owner shall make best efforts to cause each Qualifying Household occupying an Affordable Unit to, permit the City to conduct inspections of the Property, the Project and each Affordable Unit, from time-to-time, for purposes of verifying compliance with this Regulatory Agreement, upon fifteen (15) days prior written notice to the Owner.

2.5.6 On each April 30 during the Term and within sixty (60) days following the expiration of the Term, the Owner shall submit an Annual Report to the City. The City shall maintain the confidentiality of the information contained in any Annual Report specifically relating to any particular Qualifying Household occupying an Affordable Unit, to the extent reasonably allowed by Law, as determined by the City's general or special counsel.

2.6 Loss of Subside. It is anticipated that all of the Permanent Support Housing Affordable Units will receive Project-Based Section 8 or other rental subsidies (the "Rental Subsidy") throughout the Term, as reflected in the budget for the Development approved by the City. If at any time there is a material reduction, termination or nonrenewal of the Rental Subsidy through no fault of the Borrower, such that the Rental Subsidy shown on the budget for the Development approved by the City is no longer available, Borrower shall, in anticipation of such loss in Rental Subsidy, use good faith efforts for a period of sixty (60) days, to obtain alternative sources of rental subsidies and shall provide the City weekly progress reports on Borrower's efforts to obtain alternative sources of rental subsidies. If at the end of such sixty (60) day period Borrower is unable to secure an alternate source of rental subsidy, notwithstanding Section 2.2 and 2.5, Borrower may increase the Affordable Rent on one or more of the 30% Units and 40% Units Affordable Units to the TCAC 50% Rent, subject to the following requirements:

2.6.1 Any such Affordable Rent increase must be pursuant to a transition plan approved by the City showing how the Affordable Rent increase will be phased-in, and which 30% Units will be subject to the increase, and, if applicable, be consistent with remedial measures set forth in California Code of Regulations Title 4, Division 17, Chapter 1, Section 10337(a)(3) or successor regulation applicable to California's Federal and State Low Income Housing Tax Credit Program;

2.6.2 At the time Borrower requests an increase in the Rent, Borrower shall provide the City with a copy of the proposed Annual Operating Budget showing the impact of the loss or reduction of the Rental Subsidy;

2.6.3 Any subsequent Affordable Rent increases remain subject to Section 2.5.1 above;

2.6.4 The number of 30% Units and 40% Units subject to the Affordable Rent increase and the level of Affordable Rent increase may not be greater than the amount required to ensure that the Project generates sufficient income to cover its operating costs and debt service as shown on the Annual Operating Budget, and as is necessary to maintain the financial stability of the Project; and

2.6.5 Borrower shall continue to use good faith efforts to obtain alternative sources of rental subsidies and shall provide the City with annual progress reports on efforts to obtain alternative sources of rental subsidies that would allow the rents on the 30% Units or 40% Units to be reduced back to the Affordable Rents set out in Section 2.2. Upon receipt of any alternative rental subsidies, Borrower shall reduce the Rents on the 30% Units back to the Affordable Rents set out in Section 2.5, to the extent that the alternative rental subsidies provide

sufficient income to cover the operating costs and debt service of the Project as shown on the Annual Operating Budget.

2.7 Rent Increases on Foreclosure. Notwithstanding Section 2.2 and 2.5, in the event that a lender that provides Additional Borrower Financing (as defined in the Loan Agreement) forecloses on the Project (or receives a deed in lieu of foreclosure), the Affordable Rents on one or more of the 30% Units may be increased to the TCAC 50% Rent to maintain the financial feasibility of the Development, subject to the following requirements:

2.7.1 Any such Affordable Rent increase must be pursuant to a transition plan approved by the County showing: (i) how the Affordable Rent increase will be phased-in; (ii) which 30% Units will be subject to the increase; and (iii) the operating income and expenses for the Project comparing the current rent structure to the proposed rent structure;

2.7.2 The number of 30% Units subject to the Affordable Rent increase and the level of rent increase may not be greater than the amount required to ensure that the Project generates sufficient income to cover its operating costs and debt service, and as is necessary to maintain the financial stability of the Project; and

2.7.3 The Affordable Rent increase may occur only at the time of renewal of the term of the lease of an existing Tenant or the time of leasing a 30% Unit to a new Tenant. Any subsequent Affordable Rent increases remain subject to Section 2.5.1 above.

2.8 Owner Covenant Regarding Lease of Affordable Units. The Owner, for itself, its successors and assigns, covenants and agrees that, if any Affordable Unit is rented or leased during the Term, the rental or lease of the Affordable Unit shall be accomplished through a written lease agreement and all of the following restrictions shall apply:

2.8.1 A Qualifying Household shall be the record tenant and only occupant of the Affordable Unit.

2.8.2 The Owner shall provide a legible copy of this Regulatory Agreement to each prospective tenant of any Affordable Unit, upon request by such tenant.

2.8.3 The lease for each Affordable Unit shall expressly state that it is subject and subordinate to this Regulatory Agreement and shall incorporate each and every provision of this Regulatory Agreement, either expressly or by reference.

2.8.4 The lease for each Affordable Unit shall be for a period of not less than twelve (12) months.

2.8.5 The lease for each Affordable Unit shall not contain any of the following provisions:

(a) An agreement by the Qualifying Household to be sued, to admit guilt or to the entry of a judgment in favor of the Owner in a lawsuit brought in connection with the lease;

(b) An agreement by the Qualifying Household that the Owner may take, hold or sell personal property of any member(s) of the Qualifying Household, without notice to the Qualifying Household and a court decision on the respective rights of the Owner and the member(s) of the Qualifying Household, other than an agreement by the Qualifying Household concerning disposition of personal property remaining in the Affordable Unit after the Qualifying Household has moved out of the Affordable Unit;

(c) An agreement by the Qualifying Household not to hold the Owner or its agents legally responsible for any willful misconduct or negligence attributable to the Owner or its agents;

(d) An agreement by the Qualifying Household that the Owner may institute a lawsuit, involving or affecting the Qualifying Household or any of its members, without notice to the Qualifying Household;

(e) An agreement by the Qualifying Household that the Owner may evict the Qualifying Household without instituting a civil court proceeding in which the Qualifying Household has an opportunity to present a defense or before a court decision on the respective rights of the Owner and the Qualifying Household;

(f) An agreement by the Qualifying Household to waive any right to a trial by jury;

(g) An agreement by the Qualifying Household to waive the Qualifying Household's right to appeal or to otherwise challenge a court decision in connection with the lease;

(h) An agreement by the Qualifying Household to pay attorney's fees or other legal costs, even if the Qualifying Household wins in a court proceeding by the Owner against the Qualifying Household; provided, however, the Qualifying Household may be obligated to pay costs if the Qualifying Household loses such a legal action;

(i) An agreement by the Qualifying Household to pay one (1) or more security deposits (or the equivalent) totaling in excess of the amount of one month's rent for such Affordable Unit. Failure to pay any security deposit installment may constitute a breach of the lease.

2.8.6 Each lease for an Affordable Unit shall contain all of the following provisions:

(a) An agreement authorizing the Owner to immediately terminate the tenancy of a Qualifying Household occupying an Affordable Unit, where one or more members of that Qualifying Household misrepresented any fact material to the qualification of such household as a Qualifying Household;

(b) An agreement providing that each Qualifying Household occupying an Affordable Unit shall be subject to annual certification or recertification of income as a condition to continued occupancy of the Affordable Unit;

(c) An agreement providing that each Qualifying Household occupying an Affordable Unit may be subject to rental increases in accordance with this Regulatory Agreement;

(d) Providing that the Owner will not discriminate on the basis of race, creed, color, gender, sexual orientation, national origin, ancestry, religion, marital status, age, disability or receipt of public assistance or housing assistance in connection with rental of an Affordable Unit, or in connection with the employment or application for employment of persons for operation and management of the Project, and all contracts, applications and leases entered into for such purposes shall contain similar non-discrimination clauses to such effect; and

(e) Providing that the Qualifying Household shall occupy the Affordable Unit as its principal residence and shall not sublease all or part of the Affordable Unit for any purpose.

2.8.7 The Owner shall not terminate the tenancy or refuse to renew the lease or rental agreement of a Qualifying Household except for: (i) serious or repeated violations of the terms and conditions of the lease; (ii) because the previously Qualifying Household is no longer a Qualifying Household subject to Section 2.5.3 hereof; (iii) for violation of applicable Federal, State, or local law; or (iv) for other good cause. The Owner shall, in connection with termination of the tenancy of a Qualifying Household or a refusal to renew the lease or rental agreement of a Qualifying Household, serve written notice upon the Qualifying Household specifying the grounds for the action in accordance with all applicable Laws and at least thirty (30) days before the effective date of the termination of the tenancy, unless the termination is pursuant to a legal action in unlawful detainer.

2.9 Tenant Selection Policies and Criteria. The Owner shall adopt written tenant selection policies and criteria that:

2.9.1 are consistent with the purpose of providing affordable rental housing for Qualifying Households at an Affordable Rent;

2.9.2 are reasonably related to tenant eligibility and ability to perform the obligations of the lease for an Affordable Unit;

2.9.3 subject to applicable fair housing laws, give reasonable preference and consideration to the housing needs of individuals that are involuntarily displaced by activities of the City;

2.9.4 provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable;

2.9.5 give prompt written notice to any rejected applicant of the grounds for rejection;

2.9.6 provide for all of the Affordable Units to be Available for occupancy on a continuous basis to Qualifying Households at an Affordable Rent;

2.9.7 do not give preference to any particular class or group of Persons in leasing or renting the Affordable Units, except as provided in 2.9.3, and as required pursuant to conditions placed on one or more sources of funding for development of the Project that provides funding to provide housing for a specific population or housing need, and to the extent that a tenant must be a Qualifying Household;

2.9.8 provide that there shall be no discrimination against or segregation of any Person or group of Persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Property, nor shall Owner or any Person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Property. Notwithstanding the immediately preceding sentence, with respect to familial status, this Section 2.9.8 shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in this Section 2.9.8 shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code. All deeds, leases or contracts made or entered into by the Owner as to Affordable Units, the Project or the Property shall contain covenants prohibiting discrimination, as set forth in Health and Safety Code Section 33436(b).

2.10 Project Records Retention; Audit and Examination Rights.

2.10.1 **Retention of Project Records.** The Owner shall prepare and maintain and shall cause its Affiliates to prepare and maintain complete and accurate Project Records for all periods during the Term. The Owner shall, at all times during the Term and for a period of six (6) years following the end of the Term, maintain and cause to be maintained by its Affiliates, safe and intact, all of the Project Records for a period of not less than six (6) years from the generation of such Project Records. From time to time, upon request from the City, the Owner shall make all Project Records, whether in the custody or control of the Owner or its Affiliates, available to the City, the City's auditor, representative or agent for examination and copying at any reasonable time, on fifteen (15) calendar days advance Notice. The Owner shall also provide the City any additional information concerning the Affordable Units, the Project or the Property reasonably requested by the City.

2.10.2 **Audit Procedures.**

(a) The City may cause an audit of any and all Project Records by an independent auditor of the City's selection. The City shall preserve the confidentiality of information contained in the Project Records, to the extent permitted by Law, as determined by the City's general counsel.

(b) If the Owner fails to provide any Annual Report to the City, as and when required under Section 2.5.6, and such failure is not cured within the time periods described in Section 1.1.22(d) of this Regulatory Agreement, the Owner shall be in Default

under this Regulatory Agreement. Notwithstanding any other provision of this Regulatory Agreement, if the Owner fails to deliver any Annual Report to the City, within thirty (30) calendar days after Notice specifying such Default, the City shall have the right, in addition to any other rights or remedies the City may have under this Regulatory Agreement regarding such Default, to conduct an audit of any and all applicable Project Records to attempt to identify the information that should have been provided by the Owner in such Annual Report. The Owner shall reimburse the City for the reasonable cost of any audit conducted pursuant to this Section 2.10.2(b), on Notice of such cost from the City. The Owner shall pay Default Interest to the City on the amount of any audit cost becoming due to the City from the Owner pursuant to this Section 2.10.2(b) that is not paid within fifteen (15) calendar days following Notice requesting such payment, from the date of such Notice until paid in full.

2.11 Compliance. The Owner shall, during the Term and at the Owner's sole cost and expense, in all material respects: (a) comply with all Laws; and (b) procure and comply with all Approvals required by Law.

3. **PROJECT MANAGEMENT**

3.1 Management. The Owner shall operate the Project in a manner that will provide decent, safe and sanitary residential facilities to the occupants of the Project, will comply with all the provisions of this Regulatory Agreement, any other applicable contract or agreement between the City and the Owner, and all applicable Law. The Owner shall be responsible for management of the Project, including, without limitation, the selection of Qualifying Households for Affordable Units, certification and recertification of household size and income for Qualifying Households occupying all Affordable Units, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility for the management or operation of the Project or the Property. For the purposes of this Regulatory Agreement, the Owner may directly perform the management functions associated with the Project through its employees or by means of a service contract with an Affiliate, without seeking approval from the City. If the Owner desires to retain a Person other than the Owner or an Affiliate, to manage the Project on the Owner's behalf, the Owner shall submit for City's approval the identity of any proposed management agent, together with additional information relevant to the background and experience of any proposed management agent, as reasonably requested by the City. The City may approve the proposed management agent by Notice to the Owner within thirty (30) days following the City's receipt of all requested information regarding such agent, as provided for in the immediately preceding sentence. Unless the proposed management agent is reasonably disapproved by the City within such thirty (30) day period, the management agent shall be deemed approved by the City. The City hereby approves the John Stewart Company as the management agent for the Project.

3.1.1 **Performance Review**. Upon Notice from the City, the Owner shall, with the participation of the City, periodically review the management practices and financial status of the Project and the Owner or management agent. The City shall not request such periodic review more frequently than twice each calendar year. The purpose of each periodic review will be to enable the City to determine whether or not the Project is being operated, maintained, and managed in accordance with the requirements and standards of this Regulatory Agreement and all applicable Law relevant to the Regulatory Agreement.

3.1.2 **Replacement of Management Agent.** Any contract for the operation or management of the Project entered into by the Owner with a Person shall provide that the contract shall have a term of no more than one (1) calendar year and that the contract is subject to the provisions of this Regulatory Agreement. If the Affordable Units are not being operated and managed materially in accordance with the requirements and standards of this Regulatory Agreement and all applicable Law, the City shall provide written notice to the Owner of such deficiency and shall within 30 days following the receipt of such notice the Owner shall remove the management agent and replace the management agent with a different Person approved by the City, pursuant to Section 3.1. The Owner's failure to remove and replace the Management Agent in any such circumstance shall constitute a Default by the Owner under this Regulatory Agreement.

3.2 Insurance.

3.2.1 **Owner to Insure.** To protect the City Parties against all insurable Claims resulting from the actions of Owner or the Management Agent in connection with this Regulatory Agreement, the Property or the Project, Owner shall maintain, at the sole cost and expense of Owner, the following insurance (or its then reasonably available equivalent): (a) Liability Insurance; (b) Property Insurance; and (c) Workers Compensation Insurance.

3.2.2 **Nature of Insurance Program.** All Liability Insurance, Property Insurance, Builder's Risk Insurance policies this Regulatory Agreement requires shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A-" and a minimum financial size category of "VII" (exception may be made for the State Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in the State. The Owner may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that: (1) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to Property and the Project, which amount(s) shall equal or exceed the amount(s) required by this Regulatory Agreement; and (2) such policy otherwise complies with the requirements of this Regulatory Agreement.

3.2.3 **Policy Requirements and Endorsements.** All insurance policies required by this Regulatory Agreement shall contain (by endorsement or otherwise) the following provisions:

(a) *Insured.* Liability Insurance policies shall name the City as "additional insured." Property Insurance and Builders Risk Insurance policies shall name the City as a "loss payee." The coverage afforded to the City shall be at least as broad as that afforded to Owner regarding the Property and the Project and may not contain any terms, conditions, exclusions or limitations applicable to the City Parties that do not apply to Owner.

(b) *Primary Coverage.* Any insurance or self-insurance maintained by the City Parties shall be excess of all insurance required under this Regulatory Agreement and shall not contribute with any insurance required by this Regulatory Agreement.

(c) *Contractual Liability.* Liability Insurance policies shall contain contractual liability coverage for the Owner's indemnity obligations under this Regulatory Agreement and the City and Owner acknowledge and agree that any proceeds received by Owner as a result of such coverage shall constitute Surplus Cash that may be used for the purpose of indemnifying the City in accordance with the requirements of this Regulatory Agreement. The Owner's obtaining or failure to obtain such contractual liability coverage shall not relieve the Owner from nor satisfy any indemnity obligation of the Owner under this Regulatory Agreement.

(d) *Notice to City.* Each insurance carrier shall give the City no less than thirty (30) calendar days' advance written notice of any cancellation or non-renewal of any insurance policy required by this Regulatory Agreement. Also, phrases such as "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates of insurance or any coverage for the City Parties. The Owner shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits are exhausted or upon insolvency of the insurer that issued the policy.

(e) *Deliveries to City.* Evidence of Owner's maintenance of all insurance policies required by this Regulatory Agreement shall be delivered to the City on the date of this Regulatory Agreement. No later than three (3) days before any insurance required by this Agreement expires, is cancelled or its liability limits are reduced or exhausted, Owner shall deliver to the City evidence of Owner's maintenance of all insurance this Regulatory Agreement requires. Each insurance policy required by this Regulatory Agreement shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) calendar days' advance written notice of such action has been given to City by certified mail, return receipt requested; provided; however, that only ten (10) days' advance written notice shall be required for any such action arising from non-payment of the premium for the insurance. Phrases such as "endeavor to" and "but failure to mail such Notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the City Parties pursuant to this Regulatory Agreement.

(f) *Waiver of Certain Claims.* Owner shall cause each insurance carrier providing any Liability Insurance, Worker's Compensation Insurance, Automobile Liability Insurance or Property Insurance coverage under this Regulatory Agreement to endorse their applicable policy(ies) with a Waiver of Subrogation with respect to the City Parties, if not already in the policy. To the extent that the Owner obtains insurance with a Waiver of Subrogation, the Owner and the City release each other, and their respective authorized representatives, from any Claims for damage to any Person or property to the extent such Claims are paid by such insurance policies obtained pursuant to or in satisfaction of the provisions of this Regulatory Agreement.

(g) *No Representation.* No Party makes any representation that the limits, scope, or forms of insurance coverage this Regulatory Agreement requires are adequate or sufficient.

(h) *No Claims Made Coverage.* None of the insurance coverage required under this Regulatory Agreement may be written on a claims-made basis.

(i) *Fully Paid and Non-Assessable.* All insurance obtained and maintained by Owner in satisfaction of the requirements of this Regulatory Agreement shall be fully paid for and non-assessable. However, Owner's policies may be subject to insurer audits.

(j) *City Option to Obtain Coverage.* During the continuance of an Event of Default arising from the failure of Owner to carry any insurance required by this Regulatory Agreement, the City may, at its sole option, purchase any such required insurance coverage and the City shall be entitled to immediate payment from the Owner of any premiums and associated reasonable costs paid by the City for such insurance coverage. Any amount becoming due and payable to the City under this Section 3.2.3(j) that is not paid within fifteen (15) calendar days after written demand from the City for payment of such amount, with an explanation of the amounts demanded, will bear interest from the date of the demand at the rate of eight percent (8%) per annum or the Usury Limit, whichever is less. Any election by the City to purchase or not to purchase insurance otherwise required by the terms of this Regulatory Agreement to be carried by Owner shall not relieve the Owner of its obligation to obtain and maintain any insurance coverage required by this Regulatory Agreement.

(k) *Separation of Insured.* All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for Owner and the City Parties. Insurance policies obtained in satisfaction of or in accordance with the requirements of this Agreement may provide a cross-suits exclusion for suits between named insured Persons, but shall not exclude suits between named insured Persons and additional insured Persons.

3.2.4 Insurance Independent of Indemnification. The insurance requirements of this Regulatory Agreement are independent of the Owner's indemnification and other obligations under this Regulatory Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit, or modify the Owner's indemnification or other obligations under this Regulatory Agreement or to limit the Owner's liability under this Regulatory Agreement, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage. Further, the Owner's provision of the insurance required by this Regulatory Agreement shall not preclude the City from taking such other actions as are available to the City under any other provision of this Regulatory Agreement or otherwise at law or in equity.

3.2.5 Deductibles and Self-Insured Retentions. All deductibles and self-insured retentions under the Owner's insurance policies are subject to the City's prior written approval, which shall not be unreasonably withheld. The Owner shall pay or get the insurance company to waive any and all deductibles and self-insured retentions under all insurance policies issued in satisfaction of the terms of this Regulatory Agreement regarding any Claims relating to the City Parties, except to the extent that any such Claims arise from the negligence or willful misconduct of an City Party.

3.2.6 No Separate Insurance. The Owner shall not carry separate or additional insurance relating to the Project that is concurrent in form or contributing in the event

of loss with the insurance required under this Regulatory Agreement, unless such insurance is endorsed in favor of the City Parties as required by this Regulatory Agreement.

3.2.7 **No Representation.** Neither Party makes any representation that the limits, scope, or forms of insurance coverage this Regulatory Agreement requires are adequate or sufficient.

3.3 **Casualty.** If any casualty occurs to the Project during the Term, Owner shall, except as otherwise provided in this Section 3.3, restore the Project with reasonable promptness. If the cost of Restoration of the Project following a casualty exceeds the insurance proceeds available to Owner for such Restoration (if Owner maintains all insurance required by this Regulatory Agreement and inclusive of any deductible or self-insured retention amounts), then Owner shall not be required to restore the Project, but this Regulatory Agreement shall not be affected.

3.4 **Condemnation.** If any portion of the Project is taken by exercise of the power of eminent domain by a Government during the Term, then Owner shall restore the remaining portions of the Project with reasonable promptness, to the extent practicable.

3.5 **Maintenance.** The Owner, for itself, its successors and assigns, covenants and agrees that:

3.5.1 **Maintenance Standard.** The entirety of the Property and the Project shall be maintained by the Owner in good condition and repair, normal wear and tear excepted, and a neat, clean and orderly condition, including, without limitation, maintenance, repair, reconstruction and replacement of any and all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation, and all other improvements on or to the Property, now existing or made in the future by or with the consent of the Owner, as necessary to maintain the appearance and character of the Property, as improved with the Project. The Owner's obligation to maintain the Property and the Project described in the immediately preceding sentence shall include, without limitation, all of the following, at the Owner's sole cost and expense: (i) maintaining the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability; (ii) removing all papers, mud, sand, debris, filth and refuse and thoroughly sweeping areas to the extent reasonably necessary to keep areas in a clean and orderly condition; (iii) removing or covering graffiti with the type of surface covering originally used on the affected area, (iv) placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines; (v) installing, operating, keeping in repair and replacing where necessary, such artificial lighting facilities as shall be reasonably required; (vi) providing security services as reasonably indicated; (vii) maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of plants and other landscaping material as necessary to maintain the appearance and character of the landscaping; (viii) properly maintaining the windows, structural elements, and painted exterior surface areas of the Project in a clean and presentable manner; (ix) keeping the common areas of the Project and the Property free of accumulated debris, appliances, inoperable motor vehicles or motor vehicle parts, or free of storage of lumber, building materials or equipment not regularly in use on the Property; (x) parking of any commercial motor vehicle in excess of 7,000 pounds gross

weight anywhere on the Property on other than on a temporary basis; and (xi) the use of garage areas on the Property for purposes other than the parking of motor vehicles and the storage of personal possessions and mechanical equipment of the Owner or persons residing at the Property. The Owner's obligation to maintain the Project and the Property described in the two immediately preceding sentences is, collectively, referred to in this Regulatory Agreement as the "**Maintenance Standard.**" The Owner may contract with a maintenance contractor to provide for performance of all or part of the duties and obligations of the Owner with respect to the maintenance of the Property or the Project; provided, however, that the Owner shall remain responsible and liable for the maintenance of the Property and the Project, at all times.

3.5.2 **Maintenance Deficiency.** If, at any time during the Term, there is an occurrence of a material adverse condition on any area of the Property or the Project in contravention of the Maintenance Standard (each such occurrence being a "**Maintenance Deficiency**"), then the City may notify the Owner in writing of the Maintenance Deficiency. If the Owner fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) calendar days following its receipt of notice of the Maintenance Deficiency, the City shall have the right to enter the Property and/or the Project and perform all acts necessary to cure the Maintenance Deficiency, or to take any other action at law or in equity that may then be available to the City to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the City for the abatement of a Maintenance Deficiency pursuant to this Section 3.5.2 shall be reimbursed to the City by the Owner within thirty (30) calendar days after written demand to the Owner for payment. If any amount becoming due to the City under this Section 3.5.2 is not paid within thirty (30) calendar days after written demand to the Owner for payment, the Owner shall also pay Default Interest on such amount until paid in full.

3.5.3 **Graffiti.** Graffiti, as defined in Government Code Section 38772, that has been applied to any exterior surface of a structure or improvement on the Property that is visible from any public right-of-way adjacent or contiguous to the Property, shall be removed by the Owner by either painting over the evidence of such vandalism with a paint that has been color-matched to the surface on which the paint is applied, or graffiti may be removed with solvents, detergents or water, as appropriate. If any such graffiti is not removed within seventy-two (72) hours following the time of the discovery of the graffiti, or if Owner fails to commence and diligently pursue to remove such graffiti within seventy-two (72) hours following the time of the discovery of the graffiti, the City shall have the right to enter the Property and/or the Project and remove the graffiti, without notice to the Owner. Any sum expended by the City for the removal of graffiti pursuant to this Section 3.5.3, shall be limited to an amount not to exceed Five Hundred Dollars (\$500) per entry by the City and shall be reimbursed to the City by the Owner within thirty (30) calendar days after written demand to the Owner for payment. If any amount becoming due to the City for graffiti removal under this Section 3.5.3 is not paid within thirty (30) calendar days after written demand to the Owner for payment, the Owner shall also pay Default Interest in such amount, until paid in full.

3.6 No City Responsibility for Project. The City shall have no responsibility for the construction, installation, management, operation or maintenance of the Project or the Property.

4. COVENANTS RUN WITH THE LAND

4.1 Covenants to Run With the Land. The Owner and the City hereby declare their mutual specific intent that the covenants, conditions, restrictions, reservations and agreements set forth in this Regulatory Agreement are part of a plan for the promotion and preservation of affordable rental housing within the City and that each shall be deemed covenants running with the land of the Property, binding upon and each successor-in-interest of the Owner in the Project or the Property for the duration of the Term. Regardless of classification or characterization, each of the covenants, conditions, restrictions and agreements contained in this Regulatory Agreement touch and concern the land of the Property and each of them is expressly declared to be for the benefit and in favor of the City for the duration of the Term, regardless of whether the City is or remains an owner of any land or interest in land to which such covenants, conditions, restrictions or agreements relate. The City, in the event of any breach of this Regulatory Agreement, has the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings, to enforce the curing of such breach, as provided in this Regulatory Agreement, at law or in equity. The Owner hereby expressly assumes the duty and obligation to perform each of the agreements and covenants and to honor each of the reservations and restrictions set forth in this Regulatory Agreement. Each and every contract, deed or other instrument hereafter executed covering or conveying all or any portion of the Property or the Project or any interest in the Property or the Project or any Affordable Unit shall incorporate all of the provisions of this Regulatory Agreement, either expressly or by reference, and any contract, deed or other instrument transferring any estate or interest in the Property or the Project shall conclusively be deemed to have been executed, delivered and accepted subject to the agreements, covenants, conditions, reservations, and restrictions of this Regulatory Agreement, regardless of whether such agreements, covenants, conditions, reservations and restrictions are set forth in or referenced such contract, deed or other instrument.

5. REMEDIES

5.1 Remedies. If an Event of Default occurs, then the City shall, at the City's option, have any or all of the following described remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Regulatory Agreement. The City's remedies shall include:

5.1.1 **Suits Before End of Term.** The City may sue the Owner for damages or other relief, from time to time, at the City's election, without terminating this Regulatory Agreement, including by mandamus or other suit, action or proceeding at law or in equity, to require the Owner to perform the covenants or agreements or observe the conditions or restrictions of this Regulatory Agreement, or enjoin any acts or things that may be unlawful or in violation of the rights of the City under this Regulatory Agreement; or by other action at law or in equity, as necessary or convenient to enforce the covenants, agreements, conditions or restrictions of this Regulatory Agreement.

5.1.2 **Receipt of Moneys.** No receipt of money by the City from the Owner after any Notice of Default shall affect any Notice previously given to the Owner, or waive the City's right to enforce payment or deposit of any amount payable or later falling due, or the

City's right to enter the Project, it being agreed that after service of Notice of Default or the commencement of suit or proceedings, or after final order or judgment, the City may demand, receive, and collect any moneys due or thereafter falling due, without in any manner affecting such Notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the Owner's liability to the City.

5.1.3 **No Waiver.** No failure by the City to insist upon strict performance of any condition, covenant, agreement, restriction or reservation of this Regulatory Agreement or to exercise any right or remedy upon a Default, and no acceptance of full or partial payment of any amount due or becoming due to the City during the continuance of any such Default, shall waive any such Default or such condition, covenant, agreement, restriction or reservation. No obligation of the Owner under this Regulatory Agreement, and no Default, shall be modified, except by a written instrument executed by the City. No waiver of any Default shall modify this Regulatory Agreement. Each and every covenant, agreement, condition, restriction and reservation of this Regulatory Agreement shall continue in full force and effect with respect to any other then-existing or subsequent Default of such condition, covenant, agreement, restriction or reservation of this Regulatory Agreement.

5.1.4 **Damages.** The City may recover from the Owner all damages the City incurs by reason of the Owner's Default and reimbursement of the City's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. The City may recover such damages at any time after the Owner's Default, including after the expiration of the Term. Notwithstanding any Law to the contrary, the City need not commence separate actions to enforce the Owner's obligations for each amount or payment not paid, or each month's accrual of damages and costs for the Owner's Default, but may bring and prosecute a single combined action for all such damages and costs.

5.1.5 **Injunction of Breaches.** Whether or not an Event of Default has occurred, the City may obtain a court order enjoining the Owner from continuing any Default or from committing any threatened Default. The Owner specifically and expressly acknowledges that damages would not constitute an adequate remedy to the City for any Default.

5.2 **Specific Enforcement.** The Owner agrees that specific enforcement of the Owner's non-monetary obligations under this Regulatory Agreement is one of the reasons that the City agreed to restructure the Loan and that, if the Owner breaches any such obligation, potential monetary damages to the City, as well as to prospective Qualifying Households, would be difficult, if not impossible, to evaluate and quantify. Therefore, in addition to any other relief to which the City may be entitled as a consequence of the Owner's default under this Regulatory Agreement, the Owner agrees to the imposition of the remedy of specific performance against the Owner under this Regulatory Agreement.

5.3 **Enforcement.** The City shall have the power to enforce this Regulatory Agreement and no other Person shall have any right or power to enforce any provision of this Regulatory Agreement on behalf of the City or to compel the City to enforce any provision of this Regulatory Agreement against the Owner, the Project, the Property or any Affordable Unit. Further, pursuant to Health and Safety Code Section 33334.3(f)(7), this Regulatory Agreement shall be enforceable by the City, any resident of an Affordable Unit, any resident association with members who reside

in Affordable Units, former residents of Affordable Units who last resided in any such Affordable Unit, applicants for occupancy of Affordable Units and persons on an affordable housing waiting list, subject to the specific requirements of such law.

5.4 Cure by Limited Partner. The Limited Partner of Owner shall have the opportunity, but not the obligation, to effect a cure on behalf of Owner within the cure periods afforded to Owner as set forth herein, and City shall accept such cure as if it had been made by Owner. Notwithstanding the foregoing sentence, failure to provide such notice to the limited partner shall not result in any liability to the City nor permit Owner additional time to cure a default hereunder.

5.5 Termination by Agreement. Any provision of this Regulatory Agreement may be terminated upon written agreement between the City and the Owner, if the City in its sole and absolute discretion determines that such a termination will not adversely affect the affordable rental housing goals or requirements of the City.

6. GENERAL PROVISIONS

6.1 Relationship of Parties. Nothing contained in this Regulatory Agreement shall be interpreted or understood by any of the Parties, or by any Third Person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the City and the Owner or the Owner's agents, employees or contractors. The Owner shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform any services required of them by the terms of this Regulatory Agreement regarding the Project or the Property. Except as otherwise expressly provided in this Regulatory Agreement, the Owner has the right to exercise full control of employment, direction, compensation and discharge of all Persons assisting the Owner in the development, operation or maintenance of the Project or the Property. The Owner shall be solely responsible for all matters relating to payment of its employees, including compliance with tax withholding and all other Laws governing such employees. The Owner shall be solely responsible for its own acts and those of its agents and employees.

6.2 No Claims. Nothing contained in this Regulatory Agreement shall create or justify any claim against the City by any Person that the Owner may have employed or with whom the Owner may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the operation or maintenance of the Project or the Property.

6.3 Approvals.

6.3.1 Any approvals required from the City under this Regulatory Agreement shall not be unreasonably withheld, conditioned or delayed, except where otherwise specifically provided in this Regulatory Agreement. Wherever this Regulatory Agreement states that a Party's approval shall be "reasonable" or not unreasonably withheld: (a) such approval shall not be unreasonably withheld, delayed or conditioned; (b) no withholding of approval shall be deemed reasonable, unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and indicating specific reasonable changes in the proposal under

consideration that would make it acceptable; and (c) if a Party grants its consent to any matter, this shall not waive its rights to require such consent for any further or similar matter.

6.3.2 Except as otherwise specifically provided in this Regulatory Agreement, whenever this Regulatory Agreement calls for approval by a Party of a proposed document to be submitted by the other Party, the receiving Party shall notify the other Party of its approval or disapproval of such document within thirty (30) calendar days after receipt of the proposed document. Unless otherwise provided in this Regulatory Agreement, a Party's failure to respond within such thirty (30) calendar day period shall be deemed the Party's approval. A Party shall provide specific reasons for any disapproval.

6.4 Warranty Against Payment of Consideration for Regulatory Agreement. Owner represents and warrants to the City that: (a) it has not employed or retained any Person to solicit or secure this Regulatory Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Owner and Third Persons to whom fees are paid for professional services related to planning, design or Construction of the Project or documentation of this Regulatory Agreement; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Owner or any of its agents, employees or representatives to any elected or appointed official or employee of either the City or the City in an attempt to secure this Regulatory Agreement or favorable terms or conditions for this Regulatory Agreement. Breach of the representations or warranties of this Section 6.4 shall entitle the City to terminate this Regulatory Agreement upon seven (7) days' Notice to the other Parties and Escrow Agent. Upon any such termination of this Regulatory Agreement, Owner shall immediately refund any payments made to or on behalf of Owner by the City or the City pursuant to this Regulatory Agreement or otherwise related to the Property, any Approval, or the Project, prior to the date of any such termination.

6.5 Non-liability of City Officials or Employees. No City Party shall be personally liable to the Owner, or any successor in interest to the Owner, in the event of any Default by the City under this Regulatory Agreement, except to the extent of the negligence or willful misconduct of a City Party..

6.6 Governing Law. This Regulatory Agreement shall be governed by the laws of the State of California. without application of conflicts of laws principles. Any legal action brought in connection with this Agreement shall be instituted in the Superior Court of Mendocino County, State of California, or in the Federal District Court for the Northern District of California.

6.7 Amendment. This Regulatory Agreement may be amended only by a written instrument executed by both the Owner and the City.

6.8 Attorneys' Fees. In the event that a Party brings an action to enforce in this Regulatory Agreement or otherwise arising out of this Regulatory Agreement, the prevailing Party in such action shall be entitled to recover from the other Party Legal Costs to be fixed by the court in which a judgment is entered, as well as the costs of such suit. For the purposes of this Regulatory Agreement, the words "reasonable attorneys' fees" in the case of the City, include both the costs of outside legal counsel retained by the City and the salaries, costs and overhead of the

lawyers employed in the Office of the City Attorney of the City who are legal counsel to the City in such an action, as allocated on an hourly basis.

6.9 Severability. If any term or provision of this Regulatory Agreement or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Regulatory Agreement, or the application of such term or provision to Persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Regulatory Agreement shall be valid and be enforced to the fullest extent Law allows.

6.10 Time is of the Essence. Time is of the essence with respect to the performance of each term, provision, covenant, condition, restriction, reservation or agreement contained in this Regulatory Agreement.

6.11 Titles and Headings for Reference Only. The titles and headings of the articles, paragraphs and sections of this Regulatory Agreement are for convenience and reference only and are not to be considered a part of this Regulatory Agreement and shall not in any way interpret, modify or restrict the meaning of any term, provision, covenant, condition, restriction, reservation or agreement contained in this Regulatory Agreement.

6.12 Notices.

6.12.1 Any and all Notices sent by either Party to the other Party pursuant to or as required by this Regulatory Agreement shall be proper, if in writing and transmitted to the principal office of the City or the Owner, as applicable, as designated in Section 6.12.2, by one or more of the following methods: (i) messenger for immediate personal delivery, (ii) a nationally recognized overnight delivery service (i.e., Federal Express, United Parcel Service, etc.) or (iii) registered or certified United States mail, postage prepaid, return receipt requested. Such Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice, in accordance with this Section 6.12. Any such Notice shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that it is delivered by personal delivery, on the date of delivery by a nationally recognized overnight courier service or three (3) calendar days after it is placed in the United States mail, as provided in this Section 6.12. Rejection, other refusal to accept or the inability to deliver a Notice because of a changed address of which no notice was given, shall be deemed receipt of the Notice. All notices sent to Owner shall also be sent to Owner's limited partner at the address below

6.12.2 The following are the authorized addresses for the submission of Notices to the Parties:

If to the City: City of Fort Bragg
416 North Franklin Street
Fort Bragg, CA 95437
Attn: City Manager

With a copy to: City of Fort Bragg
416 North Franklin Street
Fort Bragg CA 95437
Attn: City Attorney

If to the Owner: Fort Bragg South Street LP

Attn: _____

With a copy to: c/o Red Stone Equity Partners
1100 Superior Avenue, Suite 1640
Cleveland, OH 44114
Attn: General Counsel

Bocarsly Emden Cowan Esmail & Arndt LLP
633 W 5th Street, 64th Floor
Los Angeles, CA 90017
Attn: Kyle Arndt, Esq.

6.13 Entire Agreement.

6.13.1 This Regulatory Agreement may be executed in counterpart originals, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. This Regulatory Agreement includes _____ () pages and three (3) exhibits.

6.13.2 None of the terms, conditions, covenants, restrictions, reservations, terms, provisions or agreements set forth in this Regulatory Agreement shall be deemed to be merged with any deed conveying title to any estate or interest in the Property or the Project.

6.13.3 This Regulatory Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

6.13.4 Signatures delivered by facsimile shall be binding as originals upon the Parties so signing and delivering; provided, however, that original signature(s) shall be required for documents to be recorded.

**SIGNATURE PAGE
TO
REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS, CONDITIONS AND RESTRICTIONS
RESTRICTING USE OF PROPERTY FOR AFFORDABLE HOUSING
(441 South Street)**

IN WITNESS WHEREOF, the Owner and the City have caused this Regulatory Agreement to be signed, acknowledged and attested on their behalf by their duly authorized representatives, as set forth below:

CITY:

Date: _____

CITY OF FORT BRAGG, a municipal corporation

By: _____

Tabatha Miller

Title: City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Date: _____ **BORROWER:**

Fort Bragg South Street LP,
a California Limited Partnership

By: Community Revitalization and Development
Corporation,
a California nonprofit public benefit corporation,
Its Managing General Partner

By: _____
David Rutledge, President

By: Johnson & Johnson Investments, LP,
a California limited liability company,
Its Administrative General Partner

By: _____
Daniel J. Johnson, Managing Member

By: Danco Communities, a California Corporation
Its Co-Administrative General Partner

By: _____
Daniel J. Johnson, President

**[SIGNATURES OF PRINCIPALS MUST BE
NOTARY ACKNOWLEDGED FOR RECORDING]**

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.

ACKNOWLEDGEMENTS

State of California
County of _____

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

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing Section 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.

ACKNOWLEDGEMENTS

State of California
County of _____

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

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing Section 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.

ACKNOWLEDGEMENTS

State of California
County of _____

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

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing Section 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.

ACKNOWLEDGEMENTS

State of California
County of _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

**EXHIBIT “A”
TO
REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS, CONDITIONS AND RESTRICTIONS
RESTRICTING USE OF PROPERTY FOR AFFORDABLE HOUSING
(441 South Street)**

Legal Description

Real property in the City of Fort Bragg, County of Mendocino, State of California, described as follows:

EXHIBIT “B”

TO

**REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS, CONDITIONS AND RESTRICTIONS
RESTRICTING USE OF PROPERTY FOR AFFORDABLE HOUSING
(441 South Street)**

Income Certification Form

[Attached behind this cover page]

TENANT INCOME CERTIFICATION

Initial Certification Recertification Other _____

Effective Date: _____
 Move-In Date: _____
 (MM-DD-YYYY)

PART I - DEVELOPMENT DATA			
Property Name: _____	County: _____	TCAC#_CA- _____	BIN #: _____
Address: _____		Unit Number: _____	# Bedrooms: _____ Square Footage: _____

PART II. HOUSEHOLD COMPOSITION							
<input type="checkbox"/> Vacant (Check if unit was vacant on December 31 of the Effective Date Year)							
HH Mbr #	Last Name	First Name	Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	F/T Student (Y or N)	Last 4 digits of Social Security #
1				HEAD			
2							
3							
4							
5							
6							
7							

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)				
HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
TOTALS	\$ _____	\$ _____	\$ _____	\$ _____
Add totals from (A) through (D), above			TOTAL INCOME (E):	\$ _____

PART IV. INCOME FROM ASSETS				
HH Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
TOTALS:			\$ _____	\$ _____
Enter Column (H) Total		Passbook Rate	= (J) Imputed Income	\$ _____
If over \$5000 \$ _____ X		0.06%		\$ _____
Enter the greater of the total of column I, or J: imputed income			TOTAL INCOME FROM ASSETS (K)	\$ _____
(L) Total Annual Household Income from all Sources [Add (E) + (K)]				\$ _____

HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Signature	(Date)	Signature	(Date)
Signature	(Date)	Signature	(Date)

PART V. DETERMINATION OF INCOME ELIGIBILITY			
TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES: From item (L) on page 1 \$ 	Unit Meets Federal Income Restriction at: <input type="checkbox"/> 60% <input type="checkbox"/> 50% Unit Meets Deeper Targeting Income Restriction at: <input type="checkbox"/> Other _____%	RECERTIFICATION ONLY: Current Federal LIHTC Income Limit x 140%: \$ _____ Household Income exceeds 140% at recertification: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Current Federal LIHTC Income Limit per Family Size: \$ _____			
Household Income as of Move-in: \$ _____	Household Size at Move-in: _____		

PART VI. RENT			
Tenant Paid Monthly Rent: \$ _____ Monthly Utility Allowance: \$ _____ Other Monthly Non-optional charges: \$ _____	Federal Rent Assistance: \$ _____ *Source: _____ Non-Federal Rent Assistance: \$ _____ (*0-8) Total Monthly Rent Assistance: \$ _____		
GROSS MONTHLY RENT FOR UNIT: (Tenant paid rent plus Utility Allowance & other non-optional charges) \$ 	*Source of Federal Assistance 1 **HUD Multi-Family Project Based Rental Assistance (PBRA) 2 Section 8 Moderate Rehabilitation 3 Public Housing Operating Subsidy 4 HOME Rental Assistance 5 HUD Housing Choice Voucher (HCV), tenant-based 6 HUD Project-Based Voucher (PBV) 7 USDA Section 521 Rental Assistance Program 8 Other Federal Rental Assistance 0 Missing ** (PBRA) Includes: Section 8 New Construction/Substantial Rehabilitation; Section 8 Loan Management; Section 8 Property Disposition; Section 202 Project Rental Assistance Contracts (PRAC)		
Maximum Federal LIHTC Rent Limit for this unit: \$ _____ Unit Meets Federal Rent Restriction at: <input type="checkbox"/> 60% <input type="checkbox"/> 50% Unit Meets Deeper Targeting Rent Restriction at: <input type="checkbox"/> Other: _____%			

PART VII. STUDENT STATUS		
ARE ALL OCCUPANTS FULL TIME STUDENTS? <input type="checkbox"/> yes <input type="checkbox"/> no	If yes, Enter student explanation* (also attach documentation) <div style="border: 1px solid black; padding: 2px; width: fit-content; margin-left: auto;"> Enter 1-5 </div>	*Student Explanation: 1 AFDC / TANF Assistance 2 Job Training Program 3 Single Parent/Dependent Child 4 Married/Joint Return 5 Former Foster Care

PART VIII. PROGRAM TYPE				
Mark the program(s) listed below (a. through e.) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification.				
a. Tax Credit <input type="checkbox"/> See Part V above.	b. HOME <input type="checkbox"/> <i>Income Status</i> <input type="checkbox"/> ≤ 50% AMGI <input type="checkbox"/> ≤ 60% AMGI <input type="checkbox"/> ≤ 80% AMGI <input type="checkbox"/> OI**	c. Tax Exempt <input type="checkbox"/> <i>Income Status</i> <input type="checkbox"/> 50% AMGI <input type="checkbox"/> 60% AMGI <input type="checkbox"/> 80% AMGI <input type="checkbox"/> OI**	d. AHDP <input type="checkbox"/> <i>Income Status</i> <input type="checkbox"/> 50% AMGI <input type="checkbox"/> 80% AMGI <input type="checkbox"/> OI**	e. _____ <input type="checkbox"/> <i>(Name of Program)</i> <i>Income Status</i> <input type="checkbox"/> _____ <input type="checkbox"/> OI**
**Upon recertification, household was determined over-income (OI) according to eligibility requirements of the program(s) marked above.				

SIGNATURE OF OWNER/REPRESENTATIVE

Based on the representations herein and upon the proof and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

SIGNATURE OF OWNER/REPRESENTATIVE DATE

PART IX. SUPPLEMENTAL INFORMATION FORM

The California Tax Credit Allocation Committee (CTCAC) requests the following information in order to comply with the Housing and Economic Recovery Act (HERA) of 2008, which requires all Low Income Housing Tax Credit (LIHTC) properties to collect and submit to the U.S. Department of Housing and Urban Development (HUD), certain demographic and economic information on tenants residing in LIHTC financed properties. Although the CTCAC would appreciate receiving this information, you may choose not to furnish it. You will not be discriminated against on the basis of this information, or on whether or not you choose to furnish it. If you do not wish to furnish this information, please check the box at the bottom of the page and initial.

Enter both Ethnicity and Race codes for each household member (see below for codes).

TENANT DEMOGRAPHIC PROFILE						
HH Mbr #	Last Name	First Name	Middle Initial	Race	Ethnicity	Disabled
1						
2						
3						
4						
5						
6						
7						

The Following Race Codes should be used:

- 1 – White – A person having origins in any of the original people of Europe, the Middle East or North Africa.
- 2 – Black/African American – A person having origins in any of the black racial groups of Africa. Terms such as “Haitian” or “Negro” apply to this category.
- 3 – American Indian/Alaska Native – A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment.
- 4 – Asian – A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- 5 – Native Hawaiian/Other Pacific Islander – A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- 6 – Other
- 7 – Did not respond. **(Please initial below)**

Note: Multiple racial categories may be indicated as such: 31 – American Indian/Alaska Native & White, 41 – Asian & White, etc.

The Following Ethnicity Codes should be used:

- 1 – Hispanic – A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. Terms such as “Latino” or “Spanish Origin” apply to this category.
- 2 – Not Hispanic – A person not of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.
- 3 – Did not respond. **(Please initial below)**

Disability Status:

- 1 – Yes
 - If any member of the household is disabled according to Fair Housing Act definition for handicap (disability):
 - A physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment or being regarded as having such an impairment. For a definition of “physical or mental impairment” and other terms used, please see 24 CFR 100.201, available at <http://www.fairhousing.com/index.cfm?method=page.display&pageID=465>.
 - “Handicap” does not include current, illegal use of or addiction to a controlled substance.
 - An individual shall not be considered to have a handicap solely because that individual is a transvestite.
- 2 – No
- 3 – Did not respond **(Please initial below)**

Resident/Applicant: I do not wish to furnish information regarding ethnicity, race and other household composition.

(Initials)
(HH#) 1. 2. 3. 4. 5. 6. 7.

INSTRUCTIONS FOR COMPLETING TENANT INCOME CERTIFICATION

This form is to be completed by the owner or an authorized representative.

Part I - Development Data

Enter the type of tenant certification: Initial Certification (move-in), Recertification (annual recertification), or Other. If other, designate the purpose of the recertification (i.e., a unit transfer, a change in household composition, or other state-required recertification).

Effective Date	Enter the effective date of the certification. For move-in, this should be the move-in date. For annual income recertification's, this effective date should be no later than one year from the effective date of the previous (re)certification.
Move-In Date	Enter the most recent date the household tax credit qualified. This could be the move-in date or in an acquisition rehab property, this is not the date the tenant moved into the unit, it is the most recent date the management company income qualified the unit for tax credit purposes.
Property Name	Enter the name of the development.
County	Enter the county (or equivalent) in which the building is located.
TCAC#	Enter the project number assigned to the property by TCAC. Please include hyphens between the state abbreviation, four digit allocating year, and project specific number. For example: CA-2010-123
BIN #	Enter the building number assigned to the building (from IRS Form 8609).
Address	Enter the physical address of the building, including street number and name, city, state, and zip code.
Unit Number	Enter the unit number.
# Bedrooms	Enter the number of bedrooms in the unit.
Square Footage	Enter the square footage for the entire unit.
Vacant Unit	Check if unit was vacant on December 31 of requesting year. For example, for the collection of 2011 data, this would refer to December 31, 2011.

Part II - Household Composition

List all occupants of the unit. State each household member's relationship to the head of household by using one of the following definitions:

H Head of Household	S Spouse	U Unborn Child/Anticipated Adoption or Foster
A Adult Co-Tenant	O Other Family Member	
C Child	F Foster child(ren)/adult(s)	
L Live-in Caretaker	N None of the above	

Date of Birth	Enter each household member's date of birth.
Student Status	Enter "Yes" if the household member is a full-time student or "NO" if the household member is not a full-time student.
Last Four Digits of Social Security Number	For each tenant 15 years of age or older, enter the last four digits of the social security number or the last four digits of the alien registration number. If the last four digits of SSN or alien registration is missing, enter 0000. For tenants under age 15, social security number not required, although please enter 0000.

If there are more than 7 occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.

Part III - Annual Income

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.

From the third party verification forms obtained from each income source, enter the gross amount anticipated to be received for the twelve months from the effective date of the (re)certification. Complete a separate line for each income-earning member. List **each** respective household member number from Part II. Include anticipated income only if documentation exists verifying pending employment. If any adult states zero-income, please note "zero" in the columns of Part III.

- Column (A) Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business.
- Column (B) Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc.
- Column (C) Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, disability, etc.).
- Column (D) Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.
- Row (E) Add the totals from columns (A) through (D), above. Enter this amount.

Part IV - Income from Assets

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the twelve months from the effective date of the certification. If individual household member income is provided, list the respective household member number from Part II and complete a separate line for each member.

- Column (F) List the type of asset (i.e., checking account, savings account, etc.)
- Column (G) Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).
- Column (H) Enter the cash value of the respective asset.
- Column (I) Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).
- TOTALS Add the total of Column (H) and Column (I), respectively.

If the total in Column (H) is greater than \$5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 0.06% and enter the amount in (J), Imputed Income.

- Row (K) Enter the greater of the total in Column (I) or (J)
- Row (L) Total Annual Household Income From all Sources Add (E) and (K) and enter the total

HOUSEHOLD CERTIFICATION AND SIGNATURES

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than 5 days prior to the effective date of the certification.

Part V – Determination of Income Eligibility

- Total Annual Household Income from all Sources Enter the number from item (L).
- Current LIHTC Income Limit per Family Size Enter the Current Move-in Income Limit for the household size – specifically, the max income limit for the federal 50% or 60% set aside.
- Household Income at Move-in For recertifications only. Enter the household income from the move-in certification.

Household Size at Move-in	Enter the number of household members from the move-in certification.
Current Federal LIHTC Income Limit x 140%	For recertifications only. Multiply the current LIHTC Maximum Move-in Income Limit by 140% and enter the total. 140% is based on the Federal Set-Aside of 20/50 or 40/60, as elected by the owner for the property, not deeper targeting elections of 30%, 40%, 45%, 50%, etc. Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the LIHTC Income Limit per Family Size at Move-in date (above), then the available unit rule must be followed.
Unit Meets Federal Income Restriction at	Check the appropriate box for the income restriction that the household meets according to what is required by the federal set-aside(s) for the project.
Unit Meets Deeper Targeting Income Restriction	If your agency requires an income restriction lower than the federal limit, enter the percent required.

Part VI - Rent

Tenant Paid Monthly Rent	Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).
Federal Rent Assistance	Enter the amount of rent assistance received from a federal program, if any.
Non-Federal Rent Assistance	Enter the amount of non-federal rent assistance received, if any.
Total Monthly Rent Assistance	Enter the amount of total rent assistance received, if any.
Source of Federal Rent Assistance	If federal rent assistance is received, indicate the single program source.
Monthly Utility Allowance	Enter the utility allowance. If the owner pays all utilities, enter zero.
Other Monthly Non-Optional Charges	Enter the amount of <u>non-optional</u> charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.
Gross Monthly Rent for Unit	Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges. The total may NOT include amounts other than Tenant Paid Rent, Utility Allowances and other non-optional charges. In accordance with the definition of Gross Rent in IRC §42(g)(2)(B), it may not include any rent assistance amount.
Maximum LIHTC Rent Limit for this unit	Enter the maximum allowable gross rent for the unit. This amount must be the maximum amount allowed by the Current Income Limit per Family Size – specifically, the max rent limit for the federal 50% or 60% set aside.
Unit Meets Federal Rent Restriction at	Indicate the appropriate rent restriction that the unit meets according to what is <u>required</u> by the federal set-aside(s) for the project.
Unit Meets Deeper Targeting Rent Restriction at	If your agency requires a rent restriction lower than the federal limit, enter the percent required.

Part VII - Student Status

If all household members are full time* students, check “yes”. Full-time status is determined by the school the student attends. If at least one household member is not a full-time student, check “no.”

If “yes” is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

Part VIII – Program Type

Mark the program(s) for which this household’s unit will be counted toward the property’s occupancy requirements. Under each program marked, indicate the household’s income status as established by this certification/recertification. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

Tax Credit	See Part V above.
HOME	If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household’s designation.
Tax Exempt	If the property participates in the Tax Exempt Bond program; mark the appropriate box indicating the household’s designation.

- AHDP If the property participates in the Affordable Housing Disposition Program (AHDP), and this household's unit will count towards the set-aside requirements, select the appropriate box to indicate if the household is a VLI, LI or OI (at recertification) household.
- Other If the property participates in any other affordable housing program, complete the information as appropriate.

SIGNATURE OF OWNER/REPRESENTATIVE

It is the responsibility of the owner or the owner's representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well trained in tax credit compliance.

These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.

PART IX. SUPPLEMENTAL INFORMATION

Complete this portion of the form at move-in and at recertification's (only if household composition has changed from the previous year's certification).

Tenant Demographic Profile Complete for each member of the household, including minors. Use codes listed on supplemental form for Race, Ethnicity, and Disability Status.

Resident/Applicant Initials All tenants who wish not to furnish supplemental information should initial this section. Parent/Guardian may complete and initial for minor child(ren).

**EXHIBIT “C”
TO
REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS, CONDITIONS AND RESTRICTIONS
RESTRICTING USE OF PROPERTY FOR AFFORDABLE HOUSING
(441 South Street)**

Form of Annual Report

[Attached behind this cover page]

