

AFFORDABLE HOUSING, FINANCING & DISPOSITION & DEVELOPMENT AGREEMENT

Escrow No. _____
Date of Opening of Escrow: _____, 2016

THIS AFFORDABLE HOUSING, FINANCING & DISPOSITION & DEVELOPMENT AGREEMENT (this “**Agreement**”) is made this 28 day of June, 2016, by and between THE RIALTO HOUSING AUTHORITY, a California public body, corporate and politic (“**Authority**”), and RIALTO METROLINK SOUTH HOUSING PARTNERS, L.P., a California limited partnership (“**Developer**”). Authority and Developer are occasionally referred to herein as a “**party**” or collectively as the “**parties**”.

RECITALS

A. *The Housing Authority.* Pursuant to the provisions of the Housing Authority Law of the State of California (Part 2 of Division 24 of the California Health and Safety Code, Section 34200, *et seq.*) (“**Housing Authority Law**”), the City Council of the City of Rialto (“**City**”) has activated the Authority by Resolution No. 5047 on November 4, 2003. The Authority’s goal is to alleviate the lack of sanitary, safe and affordable housing within the City.

B. *The Site.* This Agreement pertains to the conveyance to Developer of two certain vacant properties located in the City of Rialto, County of San Bernardino, State of California, along Bonnie View Drive, west of Riverside Avenue, Parcel Nos. 0131-021-33 and 0131-021-40, in the aggregate size of approximately 2.566 acres and more particularly described in Exhibit “A” attached hereto (“**Site**”). Authority is the fee owner of the Site.

C. *The Project.* Developer proposes to purchase the Site for purposes of developing the Site as a 64-unit affordable rental housing complex (“**Project**”). Other than one (1) Manager’s Unit, the Project will consist of rental units covenanted for occupancy by households with a Low, Very Low, or Extremely Low Income for a period of fifty-five (55) years from the date of Certificate of Occupancy (“**Certificate of Occupancy**”) issued by the City for the Project. The date of the issuance of the Certificate of Occupancy shall be reflected in the Certificate of Completion. Developer shall be solely responsible for constructing Project buildings and developing the Site, which shall include approximately 55,420 square feet of net residential building area for the rental units (including one, two and three bedroom units), plus approximately 14,711 square feet of common areas. The Scope of Development for the Project is more specifically described in Exhibit “B” attached hereto and incorporated herein by this reference. The Project shall have the following number of units restricted at each income level:

- i. “Extremely Low Income”— 4 one bedroom units, 11 two bedroom units, and 5 three bedroom units;
- ii. “Very Low Income”—8 one bedroom units, 17 two-bedroom units, and 1 three bedroom unit;
- iii. “Low Income”—7 two bedroom units and 10 three bedroom units.

- iv. “Manager Unit” – 1 two bedroom unit that is not income restricted.

D. *Purchase Price.* The fair market value of the Site was appraised at Nine Hundred Fifty Thousand Dollars (\$950,000) on July 11, 2015, which fair market value shall constitute Developer’s **“Purchase Price”** for the entire Site. The Purchase Price will be paid by Developer pursuant to a promissory note (**“Purchase Money Note”**) secured by a deed of trust against the Property (**“Purchase Money Deed of Trust”**).

E. *Hard Money Loan to Developer.* In addition to the Purchase Price, the Authority also agrees to loan up to Four Million Five Hundred Fifty Thousand Dollars (\$4,550,000) to Developer for Developer’s use exclusively for the Project (**“Hard Money Loan”**), the funds of which are planned and budgeted to derive from those Housing Bonds issued by Authority in 2008 as the Tax Allocation Housing Bonds 2008 Series B (Taxable Bonds). The Hard Money Loan will be provided to Developer as follows:

- i. *Pre-Development Loan.* Upon execution of this Agreement, the sum of Two Hundred Fifty Thousand Dollars (\$250,000) of the Hard Money Loan (**“Pre-Development Loan”**) will be available for disbursement to Developer by Authority in accordance with the provisions of Section 304, subsection 1, to be used for Developer’s predevelopment costs listed in the **“Pre-Development Budget”** included as a part of the Project Budget/Proforma attached hereto as Exhibit “C” (**“Qualified Pre-Development Costs”**). The Pre-Development Loan will be distributed in accordance with Section 304 subsection 4 on a cost-by-cost basis within thirty (30) days of Developer’s submittal to the Authority of written evidence that it has actually incurred Qualified Pre-Development Costs (as defined in Section 304, subsection 4) together with an Assignment of Work Product in the form of Exhibit “N” attached hereto. The Predevelopment Loan will be evidenced by an Unsecured Promissory Note in the form of Exhibit “E” (**“Unsecured Note”**).
- ii. *Remainder of Hard Money Loan.* Upon and after Closing, the Authority will lend to Developer the remainder of the Hard Money Loan proceeds (approximately \$4,300,000 if all the Pre-Development Loan was disbursed) for a total maximum sum of Four Million Five Hundred Fifty Thousand Dollars (\$4,550,000 amount inclusive of the Pre-Development Loan). The remaining Hard Money Loan proceeds will be available for disbursement to Developer in accordance with Section 304, subsection 3. At Closing, the Unsecured Note shall be terminated by the parties and all amounts accrued and owing under the Unsecured Note shall be merged into, and due and owing under, the terms of the Hard Money Loan.

F. *Note & Security for Hard Money Loan and Purchase Money Loan.* Developer will be obligated to repay both the Purchase Money Loan and the Hard Money Loan, making a total debt obligation of Five Million Five Hundred Thousand Dollars (\$5,500,000) (the **“Authority Loan”**), which debt will be evidenced by multiple promissory notes, attached hereto as Exhibits “F-2” and “F-2” (the **“Notes”**), in favor of the Authority, and which Notes shall be

payable annually from fifty percent (50%) of Residual Cash Flow, to the extent Residual Cash Flow is available, over the course of fifty-five (55) years from the date of the first year after issuance of the Certificate of Occupancy for the Project, at which time the Notes will be fully due and payable. The Notes shall accrue interest at simple rate of 0.25% per annum. The Purchase Money Note (\$950,000) and the Hard Money Note (“\$4,550,000”) shall each be secured by separate deeds of trust, in the forms attached as Exhibit “G-1” and “G-2” (the “**Deeds of Trust**”), recorded upon the Site (in the order specified in this Agreement), both of which shall be reconveyed upon Developer’s full and complete performance of this Agreement, the Notes, and Regulatory Agreement.

G. *Project Entitlements & CEQA/NEPA.* The City shall be the lead agency in the environmental review process for the Project, as required by the California Environmental Quality Act (Cal. Pub. Res. Code § 21000, *et seq.*, “CEQA”) and the National Environmental Policy Act (42 U.S.C. §4321 *et seq.*, “NEPA”) if required. Developer specifically acknowledges and agrees that Developer shall satisfy all conditions necessary to ensure that the Project conforms to all applicable CEQA and, if applicable, NEPA requirements. Developer also agrees to supply information and otherwise assist City, upon City’s request, to determine the environmental impact of the proposed development and to allow City to prepare and process such environmental documents needed for the development pursuant to the requirements of CEQA and, if applicable, NEPA. The Developer shall merge the two (2) parcels currently comprising the Site into a single parcel and process to finalization a Parcel Map reflecting such single parcel to be recorded at or before the Closing.

H. *Tax Credits.* Developer shall submit up to four (4) consecutive applications to the California Tax Credit Allocation Commission (“TCAC”) to secure Tax Credit financing (starting with the TCAC application round of June 2016). The initial application shall be for 9% Tax Credits. If Tax Credit applications are denied in the course of the re-submittal rounds, the Authority’s Executive Director shall have the authority to extend Developer’s timeframe for making a Tax Credit application to a date no later than December 31, 2018. Authority shall provide reasonable cooperation to Developer in the course of these application rounds.

NOW, THEREFORE, based on the above recitals, which are deemed true and correct and which are incorporated into the terms of this Agreement, and in consideration of the mutual covenants set forth herein, the parties hereto agree as follows:

TERMS AND CONDITIONS

(§100) DEFINITIONS

The following terms as used in this Agreement shall have the meanings given unless expressly provided to the contrary:

(§101) Affiliate.

The term “**Affiliate**” shall mean any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Developer, which shall include, without limitation, each of the constituent partners of Developer’s limited partnership. The term “**control**,” as used in the immediately preceding sentence, means, with

respect to a person that is a corporation, the right to exercise, directly or indirectly, at least fifty percent (50%) of the voting rights attributable to the shares of the controlled corporation, and, with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person.

(§102) Affordable Rent.

The term “**Affordable Rent**” shall mean the monthly payments charged to and paid by tenants for the use and occupancy of a Residential Unit and facilities associated therewith, including a reasonable allowance for utilities as determined by a licensed CUAC Consultant, but shall not include any optional services provided by Developer to residents. Affordable Rent shall have the meaning prescribed for that term for each Project income level as calculated in Health and Safety Code § 50053, which as of the Effective Date hereof is as follows:

- i. For Extremely Low Income households, the product of 1/12th of 30% times 30% of the AMI adjusted for family size appropriate for the unit.
- ii. For Very Low Income households, the product of 1/12th of 30 % times 50% of the AMI adjusted for family size appropriate for the unit.
- iii. For Low Income households, the product of 1/12th of 30% times 60% of the AMI adjusted for family size appropriate for the unit, except as may be otherwise provided in Section 603, subsection B, hereof. For those Low Income households whose gross incomes increase to exceed 60% of the AMI adjusted for family size, Affordable Rent shall be at a level not to exceed 30% of gross income of the household.

(§103) Agreement.

The term “**Agreement**” shall mean this entire Agreement, including all exhibits, which attachments are a part hereof and incorporated herein in their entirety, and all other documents incorporated herein by reference. The Exhibits inclusive to this Agreement include the following:

Exhibit A	Site Description
Exhibit B	Scope of Project
Exhibit C	Project Budget/Proforma
Exhibit D	Schedule of Performance
Exhibit E	Unsecured Promissory Note
Exhibit F-1	Purchase Money Note
Exhibit F-2	Hard Money Note
Exhibit G-1	Purchase Money Deed of Trust
Exhibit G-2	Hard Money Deed of Trust
Exhibit H	Notice of Completion
Exhibit I	Grant Deed
Exhibit J	Regulatory Agreement

Exhibit K
Exhibit L
Exhibit M
Exhibit N

Release of Construction Covenants
TO REMAIN BLANK
Completion Guaranty
Assignment of Work Product

(§104) AMI.

The term “**AMI**” means “**Area Median Income**” and shall mean the area median income for San Bernardino County as published by the California Department of Housing and Community Development, as adjusted for household size, pursuant to Health and Safety Code Section 50093, or its successor.

(§105) Authority Loans; Qualified Pre-Development Costs.

The term “**Authority Loans**” shall have the meaning set forth in Recital F and Section 127. The term “**Qualified Pre-Development Costs**” shall have the meaning set forth in Section 304, subsection 4.

(§106) City.

“**City**” means the City of Rialto, California, a California municipal corporation. City is not a party to this Agreement and shall have no obligations hereunder; provided, City is an intended third party beneficiary hereunder. Occasionally, this Agreement will contain provisions pertaining to permits, approvals or other actions that may be undertaken by the Authority or the City interchangeably. If a permit issuance, approval or action to be undertaken pursuant to a provision of this Agreement is described under the authority of the Authority, but such issuance, approval or action would more appropriately or customarily be performed by the City, then such provision may be interpreted as being under the authority of the City. All indemnity-related rights and obligations that accrue to Authority under this Agreement also inure to the City.

(§107) Closing.

The term “**Closing**” or “**Closing Date**” shall mean the closing of the Escrow by the Escrow Agent distributing the funds and documents received through Escrow to the party entitled thereto as provided herein, which Closing shall occur on or before the date established in Section 307, subsection 2.

(§108) Completion.

The term “**Completion**” means the date of recordation of the Notice of Completion, attached as Exhibit “H”.

(§109) Days.

The term “**Days**” shall mean calendar days and the statement of any time period herein shall be calendar days, and not working days, unless otherwise specified.

(§110) Deed.

The term “**Deed**” or “**Grant Deed**” shall mean that Grant Deed in substantially the form attached hereto as Exhibit “I” by which Authority as Grantor will convey fee title to the Site to Developer as Grantee.

(§111) Deed(s) of Trust.

The term “**Deed(s) of Trust**” shall mean one or both (as applicable) of the Deeds of Trust and Assignment of Rents securing the Notes as further described in Section 304(2). The parties contemplate two (2) Deeds of Trust: (i) a “**Purchase Money Deed of Trust**” securing the Purchase Money Note, which shall be substantially in the form attached hereto as Exhibit “G-1”, and (ii) a “**Hard Money Deed of Trust**” securing the Hard Money Note, which shall be substantially in the form attached hereto as Exhibit “G-2”. These Deeds of Trust shall be recorded on the Site with the Purchase Money Deed of Trust recorded senior in priority to the Hard Money Deed of Trust.

(§112) Development Fees.

The term “**Development Fees**” shall mean those fees, charges, and exactions imposed by the Authority, City or other governmental entities upon the development of the Project on the Site, including, but not limited to, application fees, building/grading/public infrastructure permit fees, processing fees, development impact fees, mitigation fees, park fees, storm drain fees, sewer fees, school fees, and other related charges.

(§113) Developer Fee.

The term “**Developer Fee**” means the fee paid to Developer, any Affiliate, or an affiliate or affiliates of Developer’s general partners and related to development services with respect to the development of the Project, in an amount not to exceed Two Million Dollars (\$2,000,000), the payment of which shall be due at such times as are provided in the amended/restated partnership agreement for Developer as approved in writing by Authority’s Board; some or all of the Developer Fee may be deferred and, if deferred, payable to Developer as a priority from the Residual Cash Flow (see definition of Residual Cash Flow) but only to the extent the Developer Fee has not been paid to Developer from any other source. The Developer Fee shall be paid according to the following schedule:

	<u>DEVELOPER FEE</u>	
	<u>PAY IN SCHEDULE</u>	<u>AMOUNT</u>
Construction Loan Close	50.00%	\$1,000,000
Completion Payment	40.00%	\$800,000
Stabilization	5.00%	\$100,000
Final Equity Payment	<u>5.00%</u>	<u>\$100,000</u>
TOTAL	100.00%	\$2,000,000

(§114) Effective Date.

The “**Effective Date**” of this Agreement shall be the date first written above, which shall be the date on which the Authority approved this Agreement at a duly-noticed public meeting of the Authority Board.

(§115) Enforced Delay.

The term “**Enforced Delay**” shall mean any delay described in Section 803 caused without fault and beyond the reasonable control of a party, which delay shall justify an extension of time to perform as provided in Section 803.

(§116) Escrow.

The term “**Escrow**” shall mean the escrow established pursuant to this Agreement for the conveyance of title to the Site from Authority to Developer.

(§117) Escrow Agent.

The term “**Escrow Agent**” shall mean Fidelity National Title Company located at 4210 Riverwalk Parkway, Suite 100, Riverside, CA 92505 and empowered hereunder to act as the Escrow Agent for this transaction. The Escrow Agent contact shall be Steve Gomez, (951) 710-5941.

(§118) Extremely Low Income Household.

The term “**Extremely Low Income Household**” shall mean a household earning no more than thirty percent (30%) of the AMI, as provided under California Health and Safety Code Section 50106.

(§119) General Partner(s).

The term “**General Partner**” shall mean any one or all of Developer’s General Partners: (i) Related/Rialto Metrolink South Development Co., LLC, a California limited liability company (acting as the administrative general partner); (ii) CORE Rialto Metro South MGP, LLC, a California limited liability company (acting as the managing general partner); (iii) HPI Rialto, LLC, a California limited liability company (a co-general partner); and (iv) LaBarge Industries, a California corporation (a co-general partner), and (v) any special purpose entity formed by any such General Partners for purposes of this Project as permitted by this Agreement. It is hereby approved that LaBarge Industries may form a limited liability company wholly-owned by LaBarge Industries, which limited liability company will be admitted to the Developer, and LaBarge Industries will withdraw from Developer, prior to Closing.

(§120) Gross Income.

The term “**Gross Income**” shall mean: (i) all rents and payments received by the Developer from tenants and occupants for the use and occupancy of the Site and the Project, (ii) laundry income, (iii) income from concessionaires and licensees, and (iv) rent subsidies, if

any, received by the Developer, but “Gross Income” shall not include any security deposits (unless and until such deposits have been forfeited by the tenants and are payable to the Developer), insurance or condemnation proceeds (except for loss rental claims), industry level operating reserves or deposits (not to exceed six (6) months of operating expenses plus debt expenses), interest on such reserve accounts (if added to funds on deposit in such accounts), capital contributions made to the Developer by the partners thereof, proceeds from the construction financing or the Authority Loan or other financing provided to the Developer, including financing provided by any partner of Developer, or proceeds from the sale or refinancing of the Site and/or Project.

(§121) Guaranty.

The term “**Guaranty**” shall mean that document referenced in Section 304, subsection 2, hereof.

(§122) Holder.

The term “**Holder**” shall mean the holder, including its successors, grantees, or assigns of record of any mortgage, deed of trust, or other security interest affecting the Site.

(§123) LIHTC or Tax Credits.

The term “**LIHTC**” or “**Tax Credits**” shall mean Low Income Housing Tax Credits administered and allocated by the California Tax Credit Allocation Committee (TCAC).

(§124) Low Income Household.

The term “**Low Income Household**” shall mean a household earning no more than sixty percent (60%) of the AMI or as provided pursuant to Health and Safety Code Section 50079.5, except as may be otherwise provided in Section 603, subsection B, hereof.

(§126) Manager’s Unit

The term “**Manager’s Unit**” shall mean the one (1) two-bedroom Residential Unit within the Project that shall be designated by Developer as a residence for a Qualified Manager. The Manager’s Unit shall not be an income restricted Residential Unit.

(§127) Note(s); Note Amount.

The term “**Note**” shall mean the Unsecured Note, Hard Money Note or the Purchase Money Note, as applicable. This Agreement contemplates three (3) Notes memorializing Developer’s repayment obligations as follows

1. “**Unsecured Note**” refers to that certain Unsecured Promissory Note representing the Pre-Development Loan in the amount of Two Hundred fifty Thousand Dollars (\$250,000), which proceeds shall be distributed to Developer for Qualified Pre-Development Costs as set forth in Section 304, subsection 1. In the time specified in the Schedule of Performance, Developer shall execute the Unsecured

Promissory Note in the form attached hereto as Exhibit "E" which shall be delivered to Authority prior to any disbursement of any Pre-Development Loan proceeds to Developer. Upon Closing, the Unsecured Note will be terminated by the parties and the amount then outstanding under the Unsecured Note shall be merged into the Hard Money Note.

2. **"Hard Money Note"** refers to that certain Promissory Note Secured by Deed of Trust in the amount of Four Million Five Hundred Fifty Thousand Dollars (\$4,550,000), which, as of the Closing, shall consist of the amounts outstanding under the Unsecured Note with the balance of being available for distribution to Developer in accordance with Section 304, subsection 3. The Hard Money Note shall be in the form attached hereto as Exhibit "F-2" and secured by the Hard Money Deed of Trust in the form attached hereto as Exhibit "G-2".
3. **"Purchase Money Note"** refers to that certain Promissory Note Secured by Deed of Trust in the amount of Nine Hundred Fifty Thousand Dollars (\$950,000) evidencing Developer's obligation to repay the Purchase Price. The Purchase Money Note shall be in the form attached hereto as Exhibit "F-1" and secured by the Purchase Money Deed of Trust in the form attached as Exhibit "G-1" which shall be recorded in senior position to the Hard Money Deed of Trust.

Both the Purchase Money Note and Hard Money Note shall be payable as residual receipts loans, subordinate to Senior Financing, in the amounts of the Purchase Money Loan and the Hard Money Loan, respectively, all as further described in Section 304. Developer's repayment obligations to pay both the Hard Money Loan and the Purchase Money Loan are two (2) separate, distinct debt obligations owing by Developer to the Authority, secured by separate Deeds of Trust. The total of both Notes representing the total amounts being lent by Authority is FIVE MILLION, FIVE HUNDRED THOUSAND DOLLARS EVEN (\$5,500,000) which is sometimes jointly referenced herein as the **"Authority Loans"**.

(§128) Operating Expenses.

The Term **"Operating Expenses"** shall mean and include the following actual, reasonable and customary (for comparable, first-quality, income-restricted rental housing projects in San Bernardino County) the aggregate of the expenses directly incurred, paid and attributable to the following:

- i. Cost of utilities supplied to and used for the Project and payable by the Developer;
- ii. Cost of all insurance required for the Project in this Agreement, Developer's partnership agreement, the Senior Financing documents, or any ancillary documents concerning the operation of the Project;
- iii. Real property taxes, if any, and assessment payments;
- iv. Expenses and costs of Social Services programs (as defined in Section 502, subsection 7) and compliance/monitoring reporting for the Project;

- v. The deposits for the replacement reserves or operating reserves for the Project, in the amount provided by the Senior Financing or required by Developer's partnership agreement or any junior lender, if a greater requirement;
- vi. On-site administrative costs (including payroll and payroll taxes and expenses, employee benefits);
- vii. Operating, maintenance and repair expenses and services, and necessary capital expenditures for the upkeep and repair of the Project and any expenditures required based upon a physical needs assessment by the Qualified Tax Credit Investor or Senior Financing lender (including materials and labor) including charges for public services such as sewer charges, license and permit fees, goods, commodities, materials, equipment, furniture, furnishings, installation of appliances, fixtures, painting, cleaning, pest control, gardening, rubbish removal, security services, advertising and promotion, leasing commissions, accounting, and legal expenses attributable to the Site or the Project which are directly attributable and customarily incurred in the operation of real estate projects similar to the Project, including property management fees, expenses and costs payable to the Qualified Manager;
- viii. Any post-Closing legal fees or other expenses, fees, costs incurred by the Developer in connection with obtaining this Agreement or the Authority Loan to the extent not already included hereunder;
- ix. All scheduled, or otherwise due, payments of principal and/or interest on the Senior Financing, together with all financing fees and related charges payable by the Developer under the terms of the Senior Financing, including without limitation, issuer fees, trustee fees, remarketing fees, and rebate analyst fees, interest rate cap deposits and credit enhancer charges;
- x. All other fees and expenses which may be provided in Developer's annual budget prepared in accordance with the Senior Financing; and
- xi. Repayments of loans from a partner or Affiliate of a partner of the Developer in accordance with Developer's partnership agreement with the General Partners and the Qualified Tax Credit Investor for construction cost deficits, operating deficits or similar operating shortfalls; and
- xii. Repayments of any amounts owing to a General Partner, or an Affiliate of Developer in accordance with the partnership agreement due to an adjustment in the Tax Credit equity caused by an adjustment to Tax Credits available to the Project.

"Operating Expenses" shall not include the following: (a) repairs or replacements paid out of insurance proceeds received by the Developer; (b) book depreciation of buildings or other similar non-cash items of expense; (c) principal payments on all junior financing; (d) any deferred Developer Fee; and (e) any asset management or limited or General Partner fees; (f) salaries of employees of Developer or Developer's general overhead expenses, or expenses,

costs and fees paid to an Affiliate of Developer, to the extent any of the foregoing exceed the expenses, costs or fees that would be payable in a bona fide arms' length transaction between unrelated parties in the San Bernardino County area for the same work or services; (g) any amounts paid directly by a tenant of the Project to a third party in connection with expenses which, if incurred by Developer, would be Operating Expenses; (h) optional or elective payments with respect to debt secured by a lien senior to the Purchase Money Loan and Hard Money Loan (unless made with the consent of the Executive Director in his reasonable discretion); (i) any payments with respect to any Project-related loan or financing other than the Authority Loans (unless made with the consent of the Executive Director in his sole discretion); and (j) expenses, expenditures, and charges of any nature whatsoever arising or incurred by Developer *prior* to Completion of the Project with respect to the development, maintenance and upkeep of the Project, or any portion thereof, including, without limitation, all costs and capitalized expenses incurred by Developer in connection with the acquisition of the Site from the Authority, all Pre-Development Costs and preconstruction activities conducted by Developer in connection with the Project, including, without limitation, the preparation of all plans and the performance of any tests, studies, investigations or other work, and any on-site or off-site work in connection therewith.

(§129) Project.

The term “**Project**” shall mean all of the improvements required to be constructed by Developer on the Site pursuant to this Agreement and the site plans adopted for the Project (approximately 55,420 square feet of residential building space, plus approximately 14,711 square feet of common areas), including, but not limited to, the construction of buildings, glass and concrete work, landscaping, construction of parking areas, and related improvements. The overall Project is more particularly described in the Scope of Development attached hereto as Exhibit “B”. The Project will consist of one Manager’s Unit that is not income restricted, plus sixty-three (63) rental units covenanted for occupancy by households with a Low, Very Low, or Extremely Low Income for a period of fifty-five (55) years from issuance of the Certificate of Occupancy restricted to income levels as follows:

1. “Extremely Low Income”— 4 one bedroom units, 11 two bedroom units, and 5 three bedroom units;
2. “Very Low Income”—8 one bedroom units, 17 two-bedroom units, and 1 three bedroom unit;
3. “Low Income”—7 two bedroom units and 10 three bedroom units.
5. “Manager Unit”— 1 two bedroom unit that is not income restricted.

(§130) Project Budget/Proforma.

The term “**Project Budget/Proforma**” shall refer to the budget for the Project and Proforma attached hereto as Exhibit “C”.

(§131) Purchase Price.

The term “**Purchase Price**” shall mean the sum of Nine Hundred Fifty Thousand Dollars (\$950,000), which is the fair market value of the Site based on an appraisal conducted in July 11, 2015.

(§132) Qualified Manager.

The term “**Qualified Manager**” shall mean the resident manager of the Project who is selected and retained by Developer pursuant to the Regulatory Agreement. The Qualified Manager shall reside in the Manager’s Unit within the Project as designated by Developer. The Manager’s Unit shall be restricted to occupancy by the Qualified Manager and his/her household, and shall not be subject to an income or age restriction. National Community Renaissance of California, a California nonprofit public benefit corporation (“NCRC”) is hereby approved by Authority, with Authority’s approval of this Agreement, as the initial “Qualified Manager” for the Project.

(§133) Qualified Tax Credit Investor.

The term “**Qualified Tax Credit Investor**” shall mean an Affiliate or a person or entity, or affiliate of such person or entity, who (i) is an experienced limited partner and investor in multifamily housing developments receiving low income housing Tax Credits allocated by the State of California or the United States federal government, and (ii) has obtained a limited partnership or limited liability company membership interest in the Developer whereby it will receive at least ninety percent (90%) or more of the Tax Credits obtained in connection with the Project. Authority, through its Executive Director, shall have the right to reasonable prior approval, which shall not be unreasonably withheld, conditioned or delayed, of the Qualified Tax Credit Investor. To this end, Wells Fargo Bank is hereby approved by the Executive Director as a Qualified Tax Credit Investor as of the Effective Date of this Agreement.

(§134) Qualified Tenant.

The term “**Qualified Tenant**” shall mean those households seeking to rent Residential Unit (excluding the Manager Unit) who satisfy all of the following requirements:

1. Upon execution of a lease with Developer, each member of the household will occupy the Residential Unit as its principal residence, and each member intends to thereafter continuously occupy such Residential Unit as its principal residence.
2. Upon execution of a lease with Developer, the household is a Low, Very Low, or Extremely Low Income household.

3. The household has been selected in accordance with the tenant selection criteria set forth in the Regulatory Agreement.

(§135) Regulatory Agreement.

The term “**Regulatory Agreement**” shall mean that Regulatory Agreement attached hereto as Exhibit “J”, which shall be recorded against the Property at Closing and run with the land, which provides for the proper maintenance of common facilities and improvements and the management and use of the Project, which also sets forth the limitations on occupancy, residency and use of the Residential Units.

(§136) Related Agreements.

The term “**Related Agreements**” means the Regulatory Agreement, the Notes, the Deeds of Trust and the Deed.

(§137) Release of Construction Covenants.

The term “**Release of Construction Covenants**” shall mean that document prepared in accordance with Section 413 of this Agreement, in the form attached as Exhibit “K”, which shall evidence that the construction and development of the improvements required by this Agreement have been satisfactorily completed.

(§138) Residential Unit.

The term “**Residential Units**” shall mean and refer collectively to each and every Residential Unit located on the Site, including the Manager’s Unit.

(§139) Residual Cash Flow.

The term “**Residual Cash Flow**” shall mean for any fiscal year the amount of Gross Income for such fiscal year less: (i) the Operating Expenses, (ii) any partnership management fees for any such fiscal year, and (iii) any deferred Developer’s Fee. Partnership management/asset management fees shall exclude any payment of any item which is deducted separately as an Operating Expense and shall be limited as follows: (a) the limited partner fee shall be capped at \$5,000.00 per year for the 15 year TCAC compliance period (with CPI escalations up to 3% per year) and (b) any General Partner fee shall be limited to \$10,000 per year (with CPI escalations up to 3% per year) during the 55 year affordability period), and (c) management fees shall be limited to 8.1% of effective Gross Income (with CPI escalations of up-to 3% per year). Developer shall annually, on or before June 1, commencing in the year after the Certificate of Occupancy is issued for the Project, submit to Authority a Residual Cash Flow Report, in the form attached hereto as Exhibit “L”, which shall provide the basis for Developer’s payment of Residual Cash Flow to Authority.

(§140) Senior Financing; Construction & Permanent Loans.

“**Senior Financing**” and terms related to it shall refer to the following: the loan(s) taken out by Developer from third party lenders to fund the construction of the Project during the

construction phase (the “**Construction Loan**”) and to provide permanent financing after completion of the improvements replacing the Construction Loan after the completion and stabilization of the Project (“**Permanent Loan**”). The Authority Loan (including the Deeds of Trust and the Regulatory Agreement) shall be subordinate to the Senior Financing, as evidenced by such subordination agreements as may be required by the lender(s) for the Senior Financing, subject to the provisions of Article 600 herein. Senior Financing shall also include such financing and instruments, if any, recorded upon the Site in conjunction with LIHTC Program. Senior Financing and subordination thereto is more particularly described in Article 600 hereof.

(§141) Site.

The term “**Site**” shall mean the two (2) parcels of real property that are owned by the Authority, consisting of approximately 2.566 acres which Developer shall cause to be merged, and then transferred to Developer pursuant to this Agreement at Closing and upon which Developer shall construct the Project. The Site is legally described in Exhibit “A” hereto.

(§142) Title.

The term “**Title**” shall mean the fee title to the Site which shall be conveyed to Developer pursuant to the Deed.

(§143) Title Company.

The term “**Title Company**” shall mean Fidelity National Title Company, located at 4210 Riverwalk Parkway, Suite 100, Riverside, CA 92505, and empowered hereunder to act as the Title Company for this transaction. The title officer shall be Steve Gomez, (951) 710-5941.

(§144) TCAC.

The term “**TCAC**” shall mean the California Tax Credit Allocation Committee.

(§145) Very Low Income Household.

The term “**Very Low Income Household**” shall mean a household earning no more than fifty percent (50%) of the AMI, as provided pursuant to Health and Safety Code Section 50105.

(§200) PARTIES TO THE AGREEMENT

(§201) Authority.

1. **Authority.** Authority is a public body, corporate and politic, which has been authorized to transact business pursuant to action of the City of Rialto. Authority has full right, power and lawful authority to convey the Site as provided herein, and the execution, performance and delivery of this Agreement by Authority has been fully authorized by all requisite actions on the part of Authority.

2. **FIRPTA.** Authority is not a “foreign person” within the parameters of the Foreign Investment in Real Property Tax Act (“**FIRPTA**”) or any similar state statute, or is

exempt from the provisions of FIRPTA or any similar state statute, or Authority has complied and will comply with all the requirements under FIRPTA or any similar state statute.

3. No Conflict. Authority's execution, delivery and performance of its obligations set forth in this Agreement will not constitute a default or a breach under any contract, agreement or order to which Authority is a party or by which it is bound.

4. No Litigation. To Authority's actual knowledge, there is no threatened or pending litigation against Authority challenging the validity of this Agreement or any of the actions proposed to be undertaken by Authority or Developer pursuant to this Agreement. "Actual knowledge," as used herein, shall not impose a duty of investigation, and shall be limited to the actual knowledge of Authority's employees and agents who have participated in the preparation of this Agreement and the Developer's acquisition of the Site.

5. Authority Acting As Lender Only. Authority's participation in the Project is solely as a lender and that the Authority is not participating in the Project as a developer or owner. Any actions by the Authority which are not fully consistent with the Authority's role as a lender are intended only to carry out routine government functions and impose constitutionally or statutorily authorized conditions acceptable to the Developer. As such, the Project and the Authority's participation through this Agreement are outside the scope of California Constitution Article XXXIV and its enabling legislation.

(§202) Developer.

1. Identification. Developer is Rialto Metrolink South Housing Partners, L.P., a California limited partnership. The General Partner(s) of the Developer are identified in Section 119 of this Agreement. Developer is a limited partnership in which a Qualified Tax Credit Investor will be admitted to the partnership in consideration of certain capital contributions that will be used by Developer to fund a portion of the cost of acquiring and developing the Site and operating the Project. The principal office of Developer for the purposes of this Agreement is located at 18201 Von Karman Ave. Suite 900, Irvine, CA 92612. Developer warrants and represents to Authority that Developer will be qualified to do business in good standing under the laws of the State of California and has all requisite power and authority to carry out Developer's business as now and whenever conducted and to enter into and perform Developer's obligations under this Agreement.

2. Successors and Assigns. Except as may be expressly provided hereinbelow, all of the terms, covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of Developer and the permitted successors, assigns and nominees of Developer as to each portion of the Site. Wherever the term "**Developer**" is used herein, such term shall include any permitted successors and assigns of Developer as herein provided.

3. Qualifications. The qualifications and identity of Developer and its general partners are of particular concern to the Authority, and it is because of such qualifications and identity that Authority has entered into this Agreement with Developer. The Authority has considered the experience, financial capability, and product being marketed by Developer and its general partners, the Site location and characteristics, the public costs of

acquiring and developing the Site and return on investment, and the product mix necessary to produce the Project. Based upon these considerations, the Authority has imposed those restrictions on Transfer set forth in this Agreement.

(§203) Restrictions on Transfer.

1. Transfer Defined. As used in this section, the term “Transfer” shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this Agreement, the Site, or the improvements thereon. A Transfer shall also include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Developer in the aggregate, taking all Transfers into account on a cumulative basis, except transfers of such ownership or control interest between members of the same immediate family, or Transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the Transferor’s immediate family. In the event Developer or its successor is a corporation or trust, such Transfer shall refer to the Transfer of the issued and outstanding capital stock of Developer, or of beneficial interests of such trust. In the event that Developer is a limited or general partnership, such Transfer shall refer to the Transfer of more than twenty-five percent (25%) of the limited or general partnership interest that is not excepted from the prohibitions hereof pursuant to subparagraph (3) below. In the event that Developer is a joint venture, such Transfer shall refer to the Transfer of more than twenty-five percent (25%) of the ownership and/or control of any such joint venture partner, taking all Transfers into account on a cumulative basis.

2. Restrictions Prior to Completion. Subject to Section 203, subsection 3 below, any Transfer of the Developer’s interest in the Site or the Project, in whole or in part, and any Transfer of the Developer’s interest in all or any part of this Agreement or the Related Agreements, shall be subject to the written approval of the Authority through its Board, which approval shall be given or withheld within thirty (30) days of the Developer’s written request therefor, subject to any timeframes required by the Ralph M. Brown Act, Gov. Code §§ 54950 *et seq.* The Authority’s approval shall not be unreasonably withheld or delayed, and the Authority shall consent to any such Transfer by the Developer, without any adjustment to the financial terms and conditions of this Agreement or the Related Agreements, if prior to such Transfer, each of the following requirements is satisfied: (1) the Developer submits or causes to be submitted to the Authority all information reasonably requested for the Authority to make its determination required hereunder; (2) there is no event of default continuing under this Agreement or the Related Agreements; (3) the transferee satisfies the qualification standards with respect to creditworthiness, reputation and experience customarily applied by Fannie Mac or Freddie Mac, as applicable, to the approval of borrowers in connection with the transfer of similar loans on multifamily properties; (4) the transferee executes an assumption agreement that is acceptable to the Authority and that, among other things, requires the transferee to perform all obligations of the Developer set forth in this Agreement and the Related Agreements; and (5) the Developer pays, or causes the proposed transferee to pay, the amount of the Authority’s out-of-pocket costs (including reasonable staff and attorneys’ fees) incurred in reviewing the Transfer request.

In the absence of a specific written agreement with Authority, prior to the issuance of a Release of Construction Covenants, no Transfer by Developer of all or any portion of its interest

in the Site or this Agreement (including without limitation an assignment or transfer not requiring Authority approval hereunder) shall be deemed to relieve it or any successor party from any obligations under this Agreement with respect to the completion of the development of the Project with respect to that portion of the Site which is so transferred. In addition, no attempted assignment of any of Developer's obligations hereunder shall be effective unless and until the successor party executes and delivers to Authority an assumption agreement, in a form approved by the Authority, assuming such obligations.

3. Exceptions. The foregoing prohibition shall not apply to any of the following:

A. Any mortgage, deed of trust, or other form of conveyance for financing, as provided in Section 412, but Developer shall notify Authority in advance of any such mortgage, deed of trust, or other form of conveyance for financing pertaining to the Site.

B. Any mortgage, deed of trust, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (A) above, provided that the amount of indebtedness incurred in the restructuring or refinancing does not exceed the outstanding balance on the debt incurred to finance the Project, including any additional costs of construction, whether direct or indirect.

C. The granting of easements to any appropriate governmental agency or utility or permits to facilitate the development of the Site.

D. 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.

E. A sale or Transfer of forty-nine percent (49%) or more of an ownership or controlling interest between members of the same immediate family, or Transfers to a trust, testamentary or otherwise, in which the beneficiaries consist solely of immediate family members of the trustor or Transfers to a corporation or partnership in which the immediate family members or shareholders of the Transferor have a controlling majority interest of 51% or more.

F. A sale or Transfer of a limited partner interest(s) in Developer to a Qualified Tax Credit Investor, and any subsequent transfers of such limited partner interest(s) in Developer to a Qualified Tax Credit Investor.

G. A sale or Transfer to a California limited partnership in which Developer, or an Affiliate of Developer, is a general partner.

H. The transfer (i) of an interest in and/or of an existing partner to another existing partner, or (ii) of an interest in an existing General Partner to an Affiliate of any General Partner, or (iii) of an interest in an existing General Partner so long as such transfer, together with any prior transfer of an interest or interests in an existing general partner, do not

result in more than forty-nine percent (49%) of the interest in an existing general partner having been transferred since the date hereof, or (iv) the removal of a General Partner by the Qualified Tax Credit Investor and replacement thereof in accordance with the terms of the Developer's partnership agreement.

I. Transfers of an interest to a new partner which is an Affiliate of an existing partner, including transfers of an additional General Partner interest to an Affiliate of the Qualified Tax Credit Investor.

J. The lease of Residential Units to Qualified Tenants or the lease of the Manager Unit to a Qualified Manager.

K. Assignments for financing purposes as required in order to effect the Senior Financing.

L. Admission of the Qualified Tax Credit Investor to the Developer or the transfer of the Qualified Tax Credit Investor's interest in Developer to another party, or the redemption of the Qualified Tax Credit Investor's interest in the Developer provided that, prior to any such Transfer, the Qualified Tax Credit Investor has paid in full its capital contribution to Developer as and to the extent required in the Developer's partnership agreement, or such transferee assumes in writing the Qualified Tax Credit Investor's obligation to make capital contributions under the Developer's partnership agreement.

M. Transfer of the interest of a General Partner in the Developer to another entity wholly owned and controlled by The Related Companies of California, LLC, a California limited liability company.

N. A conveyance resulting from eminent domain action or an acquisition under threat of an acquisition under threat of eminent domain.

4. Restrictions After Completion. It is hereby acknowledged by Developer and Authority that the Authority Loans are being provided for the Project. Therefore, subsequent to the recordation of the Notice of Completion, except as otherwise permitted under the Section 203, subsection 3, Developer may not sell, Transfer, convey, hypothecate, assign or lease all or any portion of its interest in the Site without complying with any Transfer restrictions contained within the Related Agreements, as applicable.

(§300) DISPOSITION OF THE SITE

(§301) Financing Milestones.

1. In General. The parties acknowledge that Developer intends to finance the acquisition, development, construction, and equipping costs for the Project with funds from a variety of sources, including those funding sources identified on the "**Project Budget/Proforma**" attached to this Agreement as Exhibit "C". Developer shall diligently apply for and pursue each funding source identified in the Project Budget/Proforma in the amounts identified in the Project Budget/Proforma, including without limitation Tax Credits at the earliest feasible opportunity, taking into account rules, requirements and scoring criteria applicable to

each funding source. Not counting the Authority Loans to be provided pursuant to this Agreement, Developer shall demonstrate, to Authority's reasonable satisfaction, that Developer has secured a bona fide award of LIHTC and Senior Financing in amounts (i) sufficient to provide for development of the Project, and (ii) in accordance with the amounts and timing provided in the Project Budget/Proforma.

2. Timing of Funding Source Applications. Developer shall submit up to four (4) consecutive applications to the TCAC for LIHTC for the application rounds including: the second round of 2016, the first and second rounds of 2017 and the first round of 2018. Authority shall provide reasonable cooperation to Developer in the course of these application rounds.

3. Application Denials by Funding Sources. If the Tax Credit application is denied after submission under the re-submittal rounds permitted by Section 301, subsection 2, the Authority's Executive Director shall have the authority, to: (i) meet and confer with Developer to determine whether Developer shall make another application if all parties agree that such application would be competitive under the then-applicable scoring criteria for the subject funding source, and (ii) extend Developer's timeframe for making a Tax Credit application submittal to a date no later than December 31, 2018, and provided that (iii) neither party shall have an obligation to continue this Agreement.

(§302) Employment of Local Residents. A goal of the Authority with respect to this Project and other major projects within the City is to secure employment opportunities for Rialto residents. To that end, Developer covenants that Developer shall use commercially reasonable efforts to cause all solicitations for full or part-time, new or replacement, employment relating to the construction of the Project, including minority owned business enterprises, to be listed with the Authority or City at the following address: 150 S. Palm Avenue, Rialto, CA 92376. Prior to the commencement of construction, and as soon as practicable, Developer and its prime contractor(s) shall contact the Authority or City to schedule a pre-construction orientation meeting to discuss the encouragement of local hires for Project construction and on-site management. In addition, Developer's contractor(s) shall: (i) establish a point of contact to provide information about available job opportunities, and (ii) conduct outreach efforts to attract local subcontractors and tradesmen. In addition, Developer shall include in each contract with any contractor and shall obligate the contractor to include in each subcontract with any subcontractor undertaking work on the Project, a provision obligating such contractor to make such efforts or to cause its subcontractors to make such efforts. Developer shall be deemed to have complied with its obligations set forth in this Section if its construction contract(s) with contractors contains language substantially as follows: "[Name of contractor] shall make reasonable efforts to cause all solicitations for full or part-time, new or replacement, employment relating to the construction/installation of [describe the applicable work of improvements], including minority owned business enterprises, to be listed with the City of Rialto. The City is an express third party beneficiary of the foregoing obligations of [name of contractor] and shall have the authority to enforce the same (provided that no such exercise by the Authority of its rights or remedies provided for herein impairs or jeopardizes the rights of [name of Developer])." The provisions of this Section are not intended, and shall not be construed, to benefit or be enforceable by any person whatsoever other than the Authority and City. In addition, and notwithstanding any other provision set forth in this Agreement to the contrary, in no event shall

Developer be deemed to be in Default of its obligations set forth in this Agreement if it performs its obligations set forth in this Section but a contractor of Developer commits a default under the applicable provisions of its construction contract.

(§303) Disposition of the Site.

Developer hereby agrees to purchase from Authority, and Authority agrees to sell to Developer all Authority's rights, title and interest in the Site upon the terms and conditions hereinafter set forth. Developer agrees to develop the Site with sixty four (64) units of which sixty-three (63) will be income-restricted rental Residential Units and one (1) Residential Unit for a Qualified Manager as described in the Scope of Development and Project Budget/Proforma. The Site shall be sold to Developer for the Purchase Price, which shall be paid pursuant to the Purchase Money Note secured by the Purchase Money Deed of Trust in favor of the Authority, as more particularly described in Section 304.

(§304) Authority Loan, Security & Covenants.

Subject to and conditioned upon Developer's satisfaction and continued compliance with the provisions of this Agreement, the Authority agrees to provide Developer with the Hard Money Loan for development of the Project as follows:

1. **Hard Money Loan.** The total estimated cost of the Project is approximately \$22,875,154.00, as further described in the Project Budget/Proforma. This estimated cost includes the Site acquisition costs and the hard and soft costs of constructing the Project. The Authority agrees to provide the Hard Money Loan to Developer in an amount equal to Four Million Five Hundred Fifty Thousand Even Dollars (\$4,550,000) to fund the actual costs for the development, construction and operation of the Project. About \$250,000 of the Hard Money Loan proceeds will be disbursed as the Predevelopment Loan to reimburse Developer for Qualified Pre-Development Costs on a cost-by-cost basis within 30 days after Developer's submittal to the Authority of written evidence that it has actually incurred Qualified Pre-Development Costs, as identified in Exhibit "C" hereto. At Closing the Pre-Development Loan will be deemed terminated and the sums under the Pre-Development Loan will be deemed distributed under the Hard Money Loan with the remaining Hard Money Loan proceeds, (approximately \$4,300,000) to be disbursed to Developer in accordance with Section 304, subsection 3.

A. **Hard Money Loan Only for Project Costs.** The Hard Money Loan shall only be utilized for the payment of Developer's costs as necessary to carry out the Project as reflected in the Project Budget/Proforma and for amounts not allocated for distribution under the Senior Financing, and Developer shall certify such matters to Authority. Developer shall demonstrate that the Hard Money Loan disbursement was properly used for these purposes upon reasonable written request of the Authority. The Hard Money Loan is based on the attached Project Budget/Proforma which assumes a successful Tax Credit funding application during the term of this Agreement.

B. **Refinancing.** Developer shall not be in default of a Note and need not seek approval of Authority in refinancing any outstanding loan or note secured by the Site if all

net proceeds from such refinance are not greater than the unpaid balance of the Senior Financing, and any costs associated with such refinancing and the debt service arising from such refinance does not reduce the Residual Cash Flow.

C. Disbursement of Hard Money Loan Proceeds After Closing.

(i) *Disbursement via Third-Party Escrow.* The parties may determine to utilize the services of a third-party disbursement escrow for disbursement of the Hard Money Loan proceeds available after Closing. This may include a disbursement escrow process established and administered by one of the lenders of Senior Financing (“**Senior Lender**”). The escrow service or Senior Lender (as applicable) and Authority shall enter into a mutually-agreeable written agreement providing for the assumption of such escrow responsibilities, and such agreement shall provide for any distributions to comply with all the conditions and requirements set forth in Section 304, subsection 3 (including, but not limited to, the issuance of updated title endorsements to the Authority’s Title Policy). The form of the escrow agreement shall be approved by the Executive Director on behalf of the Authority. Once a disbursement escrow is established, if all conditions to Closing been fulfilled, the Authority shall disburse all Hard Money Loan proceeds remaining after Closing directly into the established disbursement escrow for ultimate distribution to Developer in accordance with the terms of this Agreement and subject to the conditions for disbursement set forth in Section 304, subsection 3.

(ii) *Disbursements Directly by Authority.* If all conditions to disbursement of Hard Money Loan proceeds remaining after Closing have been fulfilled, pursuant to Section 304, subsection 3 (including, but not limited to, the issuance of updated title endorsements to the Authority’s Title Policy), the Authority shall disburse Hard Money Loan proceeds directly to Developer in accordance with the terms of this Agreement and subject to verification that such proceeds will be used towards actual Project costs as reflected in the Project Budget/Proforma.

(iii) *Pre-Closing Increases in Pre-Development Loan.* If Hard Money Loan proceeds are required for Project costs prior to Close of Escrow, Developer may request in writing an increase of the Pre-Development Loan as necessary to pay Authority-approved Project costs and Authority, may in its discretion, approve such additional sums provided that Developer has submitted all required documentation reasonably requested by the Authority to (i) amend such Notes as appropriate to reflect the additional draw-down, and (ii) demonstrate that the additional amounts will be used solely for actual Project costs as reflected in the Project Budget/Proforma.

D. Compliance with Law. Developer acknowledges that the Authority Loans are subject to all terms and conditions of this Agreement, and all applicable laws and regulations of any other local, state or federal agency with jurisdiction over the source of these funds and that the Project will be developed, constructed, and operated in accordance with the Authority’s and City’s applicable laws and regulations and the terms of this Agreement. It is expressly understood and agreed by the parties that this Section does not limit the amount of costs that may be charged or imposed by the Authority or City for the Project or the Project approvals.

E. **Affordability Covenant.** In consideration for the Authority Loans, which shall accrue a below-market interest rate, Developer shall, for a continuous fifty-five (55) year period from the date of issuance of a Certificate of Occupancy for the Project, operate and maintain the Project in compliance with the terms of the Regulatory Agreement to provide affordable housing. The Regulatory Agreement will be recorded concurrent with the Close of Escrow.

2. **Security for Authority Loans.** Developer's repayment obligations to pay the full amount of the Purchase Money Note (\$950,000.00) shall be secured by the Purchase Money Deed of Trust (Exhibit "G-1") as a single debt obligation of Developer in favor of the Authority. Developer's repayment obligations to pay the full amount of the Hard Money Loan (\$4,550,000) shall be secured by the Hard Money Deed of Trust (Exhibit "G-2") as a single debt obligation of Developer in favor of the Authority.

The total Authority Loan as represented by the Purchase Money Note and the Hard Money Note is FIVE MILLION, FIVE HUNDRED THOUSAND DOLLARS EVEN (\$5,500,000). Developer shall make and give to the Authority the following types of security for the respective loans:

A. **Two Notes, Two Deeds of Trust.** Developer's obligations are evidenced by two (2) separate Notes (the Purchase Money Note and the Hard Money Note), each having the forms attached hereto as Exhibits "F-1" and "F-2", respectively. These Notes shall provide:

(iv) *Residual Receipts Loans.* That the Purchase Money Note and Hard Money Note shall each be a residual receipts loan, repayment of which, including all principal and accrued interest, shall be made in aggregate annual payments equal to the Authority's Proportional Share from fifty percent (50%) of Residual Cash Flow, to the extent Residual Cash Flow is available, commencing in the first year after issuance of the Certificate of Occupancy for the Project, and any unpaid amounts shall accrue simple interest at a rate of one-quarter of one percent (0.25%) per annum. Each Note shall have a term of fifty-five years from the issuance of the Certificate of Occupancy for the Project. The unpaid balance of the Note, plus accrued interest, if not paid in full within such fifty-five (55) year term, is due and payable in full at the end of the fifty-five (55) year term. For purposes of this subsection, the term "Proportional Share" means the percentage of 50% of Residual Cash Flow to which the Authority will be entitled under Section 304, 2.A.(i) hereto, which percentage of Residual Cash Flow shall be equal to the percentage resulting from dividing the original principal balance of the Authority Loans by the sum of the original principal balances of all loans made to Developer and payable from residual receipts.

(v) *Cross-Defaults.* That any Default of this Agreement or the Regulatory Agreement by Developer which remains uncured after the period provided for cure under this Agreement or the Regulatory Agreement, as applicable, shall be a breach of each Note, in which event the entire outstanding principal balance of each Note, plus accrued interest, shall become due and payable by Developer on demand by the Authority.

(vi) *Each Secured by Deed of Trust.* That each Note shall be secured at and after the Close of Escrow by recordation of a Deed of Trust and Assignment of Rents having

a form and content the same in all material respects to the Deeds of Trust attached hereto, as follows: (i) a Purchase Money Deed of Trust securing the Purchase Money Note, which shall be substantially in the form attached hereto as Exhibit "G-1", and (ii) a Hard Money Deed of Trust securing the Hard Money Note, which shall be in the form attached hereto as Exhibit "G-2". These Deeds of Trust will be recorded at Close of Escrow.

B. Rights Nonexclusive. The rights established in this Section and under each of the Purchase Money Deed of Trust and Hard Money Deed of Trust are not intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity.

C. Guaranty. Provided NCRC is the general contractor for the Project, NCRC (or in the event NCRC is not the general contractor, an entity mutually acceptable to Developer and the Authority) shall guaranty the completion of the development of the Project by executing a written guaranty ("**Guaranty**"). The Guaranty will be submitted into Escrow by NCRC (or applicable guarantor), in substantially the form attached hereto as Exhibit "M" prior to Close of Escrow for delivery to Authority at Closing.

3. Conditions Precedent to Disbursement of Balance of Hard Money Loan After Closing. At or following Closing, the remaining loan proceeds under the Hard Money Loan shall be disbursed by Authority, disbursement escrow holder, or Senior Lender (as applicable) to or for the benefit of Developer from time to time for an Authorized Cost (as defined below) only upon satisfaction of all the following conditions:

- A. Developer delivers to Authority a written loan disbursement request specifying (i) the specific Authorized Cost with copies of all applicable or supporting documents; (ii) releases of mechanic lien rights executed by the payees, if applicable, for the requested distribution; (iii) that the requested items are not covered by the Senior Financing and have not been paid from Senior Financing; (iv) that the requested items are consistent with the Project Budget/Proforma; (v) that there is no Default nor potential Default under this this Agreement, the Guaranty, Assignment of Work Product, the Notes, the Deeds of Trust or the Regulatory Agreement; (vi) the Senior Financing is not in default; and (vii) all Developer's representations and warranties in this Agreement are true and correct at the time of the request.
- B. That title policy endorsements in a form and amount satisfactory to Authority and insuring the Hard Money Deed of Trust is in the same lien position as at the Closing, will be furnished to Authority concurrently with the disbursement of the requested funds to Developer.
- C. Developer will have delivered to Authority all documents, instruments, policies, evidence of satisfaction of conditions, and other materials reasonably requested by Authority under the terms of this Agreement or any of the other loan documents financing the Project.
- D. All disbursement requests by Developer pursuant to this Section shall be submitted in

writing to Authority, in a form reasonably satisfactory to Authority, and copied to the disbursement escrow holder or Senior Lender (as applicable). Such disbursement requests shall expressly and clearly identify a reasonable amount of time for Authority to undertake its reviews and approvals required by this Section as conditions to disbursement, which amount of time shall be no less than five (5) business days.

For purposes of this Section, "**Authorized Costs**" shall include Development Fees, the Developer Fee (to be disbursed in increments as specified in this Agreement), and any hard or soft construction costs directly related to the Project which are not otherwise covered by the Senior Financing.

4. Disbursement of Pre-Development Loan Proceeds Before Closing. Prior to Closing, Developer may request, from time to time, distribution of the Pre-Development Loan for amounts of Qualified Pre-Development Costs incurred by Developer. "**Qualified Pre-Development Costs**" shall mean the items identified in the Project Budget/Proforma at Exhibit "C". Such amounts will be distributed on a cost-by-cost basis within thirty (30) days of Developer's submittal to the Authority of written evidence that it has actually accrued the Qualified Pre-Development Costs.

Developer's obligation to repay the Pre-Development Loan shall be memorialized in the form of the Unsecured Note attached hereto as Exhibit "E" ("**Unsecured Note**"). The Unsecured Note will terminate upon Closing, with the amounts then outstanding under the Pre-Development Loan to be absorbed into the Hard Money Note secured by the Hard Money Deed of Trust.

Prior to disbursement of Pre-Development Loan in accordance with the foregoing, Developer must have executed and delivered to Authority (i) the executed Unsecured Note, (ii) an executed Assignment of Work Product in the form attached hereto as Exhibit "N".

5. No Financial Assistance. Except as is expressly provided for in this Agreement, the Authority shall have no obligation to provide Developer with additional financial assistance, to make any monetary or financial contributions toward the Project, to pay any development costs, to waive development fees or costs for necessary Authority approvals, or to otherwise carry-out or complete the Project. However, nothing in this section shall be deemed to limit Authority's rights to protect its security under the Deeds of Trust.

6. Source of Funds. Authority represents and warrants that the source of funds for the Authority Loan is the Tax Allocation Housing Bonds 2008 Series B (Taxable Bonds). Authority represents and warrants that it has obtained all consents of and approvals by, or required by, any California or federal governmental authority, including, without limitation, the California Department of Finance, in connection with the execution and delivery of this Agreement, the making of the Authority Loan and all other documents and transactions referenced herein.

(§305) General Indemnity

Except as to the negligence, sole negligence or willful misconduct of Authority or City, Developer expressly agrees to and shall indemnify, defend, release, and hold Authority, City, its officers, officials, agents, servants, employees, attorneys and contractors harmless from and against, any claim, liability, loss, damage, entry, cost, or expense (including, but not limited to, reasonable attorneys' fees, expert fees, and court costs) which arises out of or is in any way connected with Developer's performance under this Agreement and/or Developer's possession and use of the Site. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of the employees, agents, servants, or subcontractors of Developer or its tenants or the tenants' invitees. The parties expressly agree that any payment, attorneys' fees, costs or expense that the Authority/City incurs or makes to or on behalf of an injured employee under Authority/City's self-administered workers' compensation is included as a loss, expense or cost for the purpose of this provision. Authority/City shall not be responsible for any acts, errors or omissions of any person or entity except Authority, the City and their respective officers, agents, servants, employees or contractors. The parties expressly agree that the obligations of Developer under this Section shall survive the expiration or early termination of the Agreement.

Other than as authorized by the Guaranty, no deficiency judgment may be obtained against the Developer or its partners except for actual or constructive fraud, material intentional misrepresentation, intentional bad faith waste of or on the Project and such other matters as are referred to below. Consequently, no deficiency amount may be recovered from Developer or its partners under the provisions hereof, except as may be provided herein. Notwithstanding the generality of the foregoing, however, Developer shall, except as to the negligence, sole negligence or willful misconduct of Authority/City, indemnify, defend, protect and hold the Authority/City harmless from and against any and all loss, damage, liability, action, cause of action, cost or expense, including, without limitation, reasonable attorneys' fees and expenses incurred by the holder thereof, arising as a result of any (i) fraud or material misrepresentation by the Developer under or in connection with this Agreement or the Related Agreements; (ii) bad faith waste of the real property encumbered by the Deeds of Trust; and (iii) losses resulting from the Developer's failure to maintain insurance as required under the provisions of the Deeds of Trust. The Developer's obligation to indemnify the Authority/City hereof as aforesaid shall be recourse obligations of the Developer, and in the event of any breach of such obligations, the Authority/City shall have the right to proceed directly against the Developer to recover any and all losses, damages, liability, costs and expenses (including without limitation, reasonable attorneys' fees and expenses) and may bring any action and institute any proceeding to obtain a deficiency judgment in or following foreclosure for any and all such losses, damages, liabilities, costs and expenses resulting from such breach.

(§306) Reserved.

(§307) Escrow.

1. Opening Escrow. Within twenty (20) days after Developer receives notice that it has secured a bona fide award of LIHTC, and other funding sources required by the Project Budget/Proforma, the parties shall open an escrow ("Escrow") with the Escrow Agent

(as defined in Section 117) by causing an executed copy of this Agreement to be deposited with Escrow Agent. Escrow shall be deemed open on the date that a fully executed copy of this Agreement is delivered to Escrow Agent and accepted by Escrow Agent ("**Opening of Escrow**"). Escrow Agent shall provide written notice of the Opening of Escrow date to Developer and Authority. This Agreement shall constitute the joint escrow instructions of Authority and Developer for the Site, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of Escrow. Escrow Agent is empowered to act under these instructions. Authority and Developer shall promptly prepare, execute, and deliver to the Escrow Agent such additional escrow instructions consistent with the terms herein as shall be reasonably necessary. No provision of any additional escrow instructions shall modify this document without specific written approval of the modifications by both Developer and Authority.

2. Time for Closing Escrow. Escrow shall close on the business day following the fulfillment of all conditions and deposits to Escrow required under Section 308 and notification of same by Escrow Agent ("**Closing Date**"). Notwithstanding the foregoing, under no circumstances shall Escrow extend more than (i) One Hundred Eighty (180) calendar days from the TCAC award date, or (ii) December 31, 2018, whichever occurs earlier. The Executive Director may authorize on Authority's behalf a mutually-agreed extension of Escrow up to an additional 180 days. The terms the "**Close of Escrow**" and/or the "**Closing**" are used herein to mean the time the Grant Deed, the Deeds of Trust and Regulatory Agreement are all concurrently recorded in the Office of the County Recorder of San Bernardino County, California. Possession of the Site, shall be delivered to Developer at the Closing.

(§308) Conditions to Close of Escrow for Acquisition.

1. Developer's Conditions to Closing. Developer's obligation to acquire the Site and to Close Escrow shall, in addition to any other conditions set forth herein in favor of Developer, be conditional and contingent upon the satisfaction, or waiver by Developer, of each and all of the following conditions (collectively, "**Developer's Conditions to Closing**") within the timeframes stated in Section 307, subsection 2, above:

A. Developer shall have approved the environmental condition of the Site as set forth in Section 311. Developer shall have received any and all approvals required under CEQA and NEPA (if required).

B. Developer shall have approved of title as set forth in Section 309 and the Title Company shall have unconditionally committed to issue the Owner's Title Policy to Developer subject only to those title conditions approved by Developer as set forth in Section 311 and the Deed, the Deeds of Trust, and the Regulatory Agreement, which documents shall have been deposited into Escrow in a recordable form.

C. Authority shall have deposited into escrow a certificate ("**FIRPTA Certificate**") in such form as may be required by the Internal Revenue service pursuant to Section 1445 of the Internal Revenue Code.

D. Developer shall have obtained evidence of financing commitments pursuant to Section 310, including approval of such commitments by the Executive Director (which approval shall not be unreasonably withheld or delayed), for the development of the Site in an amount sufficient to develop the Project on the terms and conditions acceptable to the Developer and as set forth in the Project Budget/Proforma to develop the Project, and shall have approved the loan or grant documents associated therewith. Such financing commitments for Construction Loans shall close concurrent with Closing.

E. Developer shall have obtained a reservation of LIHTC from the TCAC in an amount acceptable to the Developer to develop the Project. Developer shall have approved an amended and restated agreement of limited partnership pursuant to which a Qualified Tax Credit Investor is admitted as a limited partner of Developer and agrees to contribute tax credit equity to Developer, all on terms and conditions acceptable to Developer and subject to the reasonable review and approval of Authority's Executive Director, which approval shall not be unreasonably delayed or withheld.

F. Authority shall have deposited into Escrow the executed Grant Deed and any documents under this Agreement to which the Authority is a party.

G. Developer shall have obtained from the City all required approvals, including site plan review, conditional use, subdivision, building, grading, landscaping, and others for the development of the Site as the Project in the manner provided by this Agreement, and Project shall be "permit ready" i.e. building permits will issue immediately upon payment of necessary permit fees.

H. Authority shall have delivered the original Unsecured Note into Escrow to be cancelled concurrently with Closing.

I. No litigation shall be threatened or pending which seeks to prevent the construction or operation of the Project, or any part thereof, according to the terms set forth in this Agreement.

J. Authority shall deposit into Escrow an estoppel certificate certifying that Developer has completed all acts, other than as specified, necessary for conveyance, if such be the fact, and such other matters as may be reasonably requested by the lenders of the Senior Financing and the Qualified Tax Credit Investor.

K. At the Closing, the Authority shall not be in material Default in any of its obligations set forth in this Agreement and all representations and warranties of Authority contained herein shall be true and correct in all material respects, to the best of Authority's knowledge.

L. Developer shall have obtained written approval by the Authority of its executed Construction Contract under Section 403, subsection 2 and the Management Plan under Section 502, subsection 4.B.

M. Developer shall have entered into a Housing Assistance Payments Contract for Project-Based Section 8, or AHAP, with the San Bernardino County Housing Authority for no less than eight (8) project-based vouchers with a term of no less than twenty (20) years.

Any waiver of the foregoing conditions must be express and in writing. In the event that the foregoing conditions have not been satisfied within the times provided therefor herein, either party may terminate this Agreement by delivering a written notice in accordance with Sections 313 and 708 hereof.

2. Authority's Conditions to Closing. Authority's obligation to sell the Site and to Close Escrow hereunder, shall, in addition to any other conditions set forth herein in favor of Authority, be conditional and contingent upon the satisfaction, or waiver by Authority, of each and all of the following conditions (collectively, "**Authority's Conditions to Closing**") within the timeframes stated in Section 407, subsection 2, above:

A. Developer shall have obtained evidence of financing commitments pursuant to Section 310 for the acquisition and development of the Site and Authority shall have approved such commitments in accordance with Sections 310 and 602. Such financing commitments are to close concurrent with Closing.

B. Developer shall have obtained a reservation of LIHTC from the TCAC and other funding sources identified in the Project Budget/Proforma in such amounts as delineated therein.

C. Developer shall have submitted to the City plans and drawings for all improvements to be constructed on the Site, including for site plan review, conditional use, building, grading, landscaping and other plans and drawings, as provided in Section 502, and all necessary plans shall have been reviewed or revised as required by the Developer and Authority, and final. All approvals pursuant to CEQA and NEPA (if required) have been approved as final.

D. Developer shall not have made or attempted to make a Transfer in violation of Section 303, provided that Authority shall give notice of any violation of Section 303 and afford Developer the opportunity to cure the violation.

E. Developer shall have deposited into Escrow the Guaranty, Notes, Deeds of Trust, a Notice of Affordability Restrictions (as defined in the Regulatory Agreement), and Regulatory Agreement in an executed and recordable format where applicable.

F. At the Closing, Developer shall not be in material Default in any of its obligations set forth in this Agreement and all representations and warranties of Developer contained herein shall be true and correct in all material respects, to the best of Developer's knowledge.

G. Developer shall have obtained approval by the Authority of the executed Construction Contract under Section 403, subsection 2 and the Management Plan under Section 502, subsection 4.B.

H. Developer shall have submitted to the Authority the estimate construction cost under Section 503, subsection 5, and the schedule of the work under Section 503, subsection 6.

I. Title Company shall have unconditionally committed to issue the Authority Title Policies as specified in Section 309, subsection 4.

J. Developer has deposited into Escrow full copies of the final partnership agreement and any Senior Financing which shall be delivered to Authority at Closing.

Any waiver of the foregoing conditions must be express and in writing. In the event that Developer fails to satisfy Authority's foregoing conditions or defaults in the performance of its obligations hereunder and within the timeframes provided for herein, Authority may terminate this Escrow.

3. Both Parties' Conditions to Closing. Prior to the Closing Date, Developer and Authority shall execute and deliver a certificate ("**Taxpayer ID Certificate**") in such form as may be required by the IRS pursuant to Section 6045 of the Internal Revenue Code, or the regulations issued pursuant thereto, certifying as to the description of the Site, Date of Closing, gross price, and taxpayer identification number for Developer and Authority. Prior to the Closing, Developer and Authority shall cause to be delivered to the Escrow Agent such other items, instruments and documents, and the parties shall take such further actions, as may be necessary or desirable in order to complete the Closing. At the Closing neither party shall be in breach of its obligations hereunder.

(§309) Title Matters.

1. Condition of Title. Authority shall convey to Developer fee interest in the entire Site, subject only to: (i) the Approved Exceptions; (ii) current taxes and liens not yet payable; (iii) quasi-public utility, public alley and public street easements of record approved by Developer, which approval shall not be unreasonably withheld; and (iv) covenants, conditions and restrictions, reciprocal easements, and other encumbrances and title exceptions approved by Developer under this Section 309.

2. Authority Not to Encumber Site. Authority hereby warrants to Developer that it has not and will not, from the Effective Date of this Agreement through Close of Escrow, transfer, sell, hypothecate, pledge, or otherwise encumber the Site without express written permission of Developer or as otherwise specified in this Agreement.

3. Approval of Title Exceptions. No later than thirty (30) days following the Effective Date, Authority shall deliver to Developer and Title Company an ALTA survey of the Site ("**Survey**") and a preliminary title report issued by the Title Company ("**Title Report**") for the Site, together with legible copies of the documents underlying the exceptions in the Title Report ("**Exceptions**"). The Survey and Title Report are hereinafter referred to as "**Title Diligence**". The Developer shall have the right to reasonably approve or disapprove the Title Diligence. The Developer shall have sixty (60) days from the date of its receipt of the Title Diligence to give written Notice to the Authority and Escrow Agent of the Developer's approval

or disapproval of any aspect of the Title Diligence, within its reasonable discretion. Developer's failure to provide Notice of its approval of the Title Diligence within such time limit shall be deemed disapproval of the Title Diligence. If the Developer delivers Notice to the Authority of its disapproval of any Exceptions, encumbrances, or liens in the Title Report or items plotted on the Survey (collectively, the "**Title Matters**"), the Authority shall have the right, but not the obligation, to give its written notice to Developer and to Escrow Agent within thirty (30) days that it will, no later than the date of Closing, remove any disapproved Title Matters, or to deliver Notice to the Developer providing assurances satisfactory to the Developer within said time period that such Title Matters will be removed on or before the Closing. If the Authority cannot or does not elect to remove any of the disapproved Title Matters within that period, Authority shall provide Notice of such fact to Developer and Developer shall have thirty (30) days after receiving such Notice to either give the Authority written Notice that the Developer elects to proceed with the purchase of the Site subject to the disapproved Title Matters or to give the Authority written Notice that the Developer elects to terminate this Agreement and the Developer's failure to give timely written Notice shall be deemed as an election to terminate this Agreement. Fee simple title to the Site shall be delivered to Developer subject only to the Title Matters approved by the Developer as provided herein, together with (i) the Deeds of Trust and the Regulatory Agreement, and (ii) any liens or encumbrances created or caused by Developer (collectively referred to as the "**Approved Exceptions**"). The Developer shall have the right to approve or disapprove any further Title Matters reported by the Title Company or the surveyor after the Developer has approved the Approved Exceptions for the Site (which are not created by the Developer). The Authority shall not voluntarily create any new exceptions to title or title matters following the Effective Date.

4. Title Policies.

A. Owner's Title Policy. At the Close of Escrow, Escrow Agent shall furnish Developer with an ALTA extended owner's policy of title insurance for the Developer's interest, wherein the Title Company shall insure that title to the Site shall be vested in Developer, showing only the Approved Exceptions, with liability in the amount of the total of equity raised from the Tax Credits plus the principal amounts of all permanent financing obtained for the Project ("**Owner's Title Policy**"). The Title Policy shall include any available additional title insurance, extended coverage or endorsements that Developer may reasonably requested. The Owner's Title shall be paid by Developer, and may be paid from Hard Money Loan proceeds.

B. Authority Loan Policies. As of the Closing, the Escrow Agent shall furnish to the Authority two (2) ALTA loan policies ("**Authority Loan Policies**"): (i) insuring the Purchase Money Deed of Trust senior to the Hard Money Deed of Trust and only subject to such exceptions as reasonably approved by Authority, and any Senior Financing deeds of trust to which the Authority subordinates its Deeds of Trust; and (ii) insuring the Hard Money Deed of Trust subject to the exceptions as reasonably approved by Authority, the Purchase Money Deed of Trust, and any Senior Financing deeds of trust to which the Authority subordinates its Deeds of Trust. The Authority Loan Policies shall be paid by Developer and may be paid from proceeds of the Hard Money Loan.

(§310) Evidence of Financial Capability.

No later than thirty (30) days before Closing, Developer shall submit to Authority Executive Director for approval evidence reasonably satisfactory to the Executive Director that Developer has the financial capability necessary for the development of the Project on the Site pursuant to this Agreement. Such evidence of financial capability shall include all of the following:

1. Updated cost estimates for Developer's total cost of developing the Project (including both "hard" and "soft" costs).
2. An update on Construction Loan solicitations or commitments obtained by Developer to finance the development of the Project, or such other documentation reasonably satisfactory to the Authority Executive Director sufficient to demonstrate that Developer has adequate funds available and committed to finance the development of the Project.
3. Executed letters of intent with a Qualified Tax Credit Investor, and other funding sources identified in the Project Budget/Proforma, that demonstrate that Developer has adequate funds available and/or committed to cover the difference between the total development costs of the Project (subparagraph (1) above) and the proceeds of the Construction Loan commitment (subparagraph (2) above) and the Authority Loan.
4. A copy of the draft Construction Contract between Developer and its general contractor for Authority approval pursuant to Section 403, subsection 2.

Developer covenants and agrees to take all action, furnish all information, give all consents and pay all sums reasonably required to keep the Construction Loan commitment in full force and effect and shall comply in all material aspects with all conditions thereof, and shall promptly execute, acknowledge and deliver all applications, credit applications and data, financial statements, and documents in connection therewith. Notwithstanding the foregoing, if the Construction Loan is to record concurrently with the Closing, Authority shall cooperate as appropriately consistent with the approved financing commitment. Authority's approvals required under this Section shall not be unreasonably withheld, conditioned or delayed.

(§311) Condition of Site.

1. **Disclaimer of Warranties.** Upon the Close of Escrow, Developer shall acquire the Site in its "AS-IS" condition and shall be responsible for any defects in the Site, whether patent or latent, including, without limitation, the physical, and geotechnical condition of the Site. Authority and City make no representation or warranty concerning the physical, geotechnical or other condition of the Site, the suitability of the Site for the Project, or the present use of the Site, and specifically disclaims all representations or warranties of any nature concerning the Site made by Authority/City or its employees, agents and representatives. The foregoing disclaimer includes, without limitation, topography, climate, air, water rights, utilities, present and future zoning, soil, subsoil, the purpose for which the Site is suited, or drainage. Moreover, Authority and City make no representation or warranty concerning the compaction of soil upon the Site, nor of the suitability of the soil for construction. Developer assumes all liabilities that arise from post-Closing events or discoveries with respect to the Site.

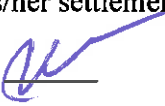
2. Right to Enter Site, Indemnification. After the Effective Date of this Agreement, Developer shall have the right to enter upon the Site to conduct soils, engineering, or other tests and studies, to perform preliminary work or Site investigation or for any other purposes to carry out the terms of this Agreement. The Developer shall have the right, at its sole cost and expense, to engage its own environmental consultant ("**Environmental Consultant**") and other consultants to make such investigations of the Site as the Developer deems necessary, including any soils, geotechnical and other testing of the Site. Developer shall indemnify, defend and hold Authority and City harmless from and against any claims, injuries or damages arising out of or involving any such entry or activity (including but not limited to any mechanic liens filed against the Site as result of Developer's entry onto the Site). Any such activity shall be undertaken only after securing any necessary permits from the appropriate governmental agencies and providing Authority with certificates of insurance evidencing the coverages required in Section 406. After any work on the Property, Developer shall leave the Site in a safe condition. The Developer shall reasonably approve or disapprove of the physical and environmental condition of the Site as described in Section 311, subsection 4, below.

Prior to exercising its right-of-entry to the Site pursuant to this Section, Developer shall execute a license agreement in a form reasonably acceptable to the Authority's Executive Director and City Attorney's office, which license agreement shall include the indemnities referenced in this Section, and a provision permitting the Authority to secure copies of all documents, studies and records obtained or prepared in the course of Developer's Site investigation. Notwithstanding anything to the contrary in this Agreement, Developer's indemnity obligations shall survive termination of this Agreement.

3. Hazardous Materials. Developer understands and agrees that in the event Developer incurs any loss or liability concerning Hazardous Materials (as hereinafter defined) and/or oil wells and/or underground storage tanks and/or pipelines whether attributable to events occurring prior to or following the Closing, then Developer may look to current or prior owners of the Site, but under no circumstances shall Developer look to Authority for any liability or indemnification regarding Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, except if such loss or liability is the result of Authority's failure to disclose the existence of any known Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines. Developer hereby waives, releases, remises, acquits and forever discharges Authority, and its directors, officers, employees, and agents, and its respective heirs, successors, personal representatives and assigns, of and from any and all Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs, as those terms are defined below, and from any and all actions, suits, legal or administrative orders or proceedings, demands, actual damages, punitive damages, loss, costs, liabilities and expenses, which concern or in any way relate to the physical or environmental conditions of the Site, the existence of any Hazardous Material thereon, or the release or threatened release of Hazardous Materials therefrom, whether existing prior to, at or after the Closing. It is the intention of the parties pursuant to this release that any and all responsibilities and obligations of Authority, and any and all rights, claims, rights of action, causes of action, demands or legal rights of any kind of Developer, its successors, assigns or any Affiliate of Developer, against the Authority, arising by virtue of the physical or environmental condition of the Site, the existence of any Hazardous Materials thereon, or any release or threatened release of Hazardous Material therefrom, whether existing prior to, at or after the Closing, are by this Release provision declared null and void and

of no present or future force and effect as to the parties; provided, however, that no parties other than the Indemnified Parties (defined below) shall be deemed third party beneficiaries of such release. **In connection therewith, Developer expressly agrees to waive any and all rights which said party may have under Section 1542 of the California Civil Code which provides as follows:**

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

DEVELOPER'S INITIALS: 

AUTHORITY'S INITIALS: 

Developer shall, from and after the Closing, defend, indemnify and hold harmless Authority and its officers, directors, employees, agents and representatives (collectively, the “**Indemnified Parties**”) from and against any and all Environmental Claims, Environmental Cleanup Liability, Environmental Compliance Costs, and any other claims, actions, suits, legal or administrative orders or proceedings, demands or other liabilities resulting at any time from the physical and/or environmental conditions of the Site, unless resulting from the Indemnified Parties' negligence or willful misconduct, and only to the extent such liability arises after the Closing or from the existence of any Hazardous Materials or the release or threatened release of any Hazardous Materials of any kind whatsoever, in, on or under the Site occurring after the Closing, including, but not limited to, all foreseeable and unforeseeable damages, fees, costs, losses and expenses, including any and all attorneys' fees and environmental consultant fees and investigation costs and expenses, directly or indirectly arising therefrom, and including fines and penalties of any nature whatsoever, assessed, levied or asserted against any Indemnified Parties to the extent that the fines and/or penalties are the result of a violation or an alleged violation of any Environmental Law. Developer further agrees that in the event Developer obtains, from former or present owners of the Site or any other persons or entities, releases from liability, indemnities, or other forms of hold harmless relating to the subject matter of this Section, Developer shall use its diligent efforts to obtain for Authority the same releases, indemnities and other comparable provisions.

For purposes of this Section, the following terms shall have the following meanings:

a. “**Environmental Claim**” means any claim for personal injury, death and/or property damage made, asserted or prosecuted by or on behalf of any third party, including, without limitation, any governmental entity, relating to the Site or its operations and arising or alleged to arise under any Environmental Law.

b. “**Environmental Cleanup Liability**” means any cost or expense of any nature whatsoever incurred to contain, remove, remedy, clean up, or abate any contamination or any Hazardous Materials on or under all or any part of the Site, including the ground water thereunder, including, without limitation, (A) any direct costs or expenses for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith and (B) any cost, expense, loss or damage incurred with

respect to the Site or its operation as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, treatment, cleanup or abatement.

c. **“Environmental Compliance Cost”** means any cost or expense of any nature whatsoever necessary to enable the Site to comply with all applicable Environmental Laws in effect. “Environmental Compliance Cost” shall include all costs necessary to demonstrate that the Site is capable of such compliance.

d. **“Environmental Law”** means any federal, state or local statute, ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions of permits, licenses and other operating authorizations relating to (A) pollution or protection of the environment, including natural resources, (B) exposure of persons, including employees, to Hazardous Materials or other products, raw materials, chemicals or other substances, (C) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities, or (D) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal.

e. **“Hazardous Material”** is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term **“Hazardous Material”** includes, without limitation, any material or substance which is: (A) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (B) defined as a “hazardous waste,” “extremely hazardous waste” or “restricted hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (C) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (D) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Sections 25501(j) and (k) and 25501.1 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (E) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (F) “used oil” as defined under Section 25250.1 of the California Health and Safety Code; (G) asbestos; (H) listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (I) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (J) designated as a “toxic pollutant” pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1317; (K) defined as a “hazardous waste” pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (42 U.S.C. § 6903); (L) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (42 U.S.C. § 9601); (M) defined as “Hazardous Material” pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 *et seq.*; or (N) defined as such or regulated by any “Superfund” or “Superlien” law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating

to, or imposing liability or standards of conduct concerning Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, as now, or at any time here-after, in effect.

Notwithstanding any other provision of this Agreement, Developer's release and indemnification as set forth in the provisions of this Section, as well as all provisions of this Section, shall survive the termination of this Agreement and shall continue in perpetuity.

4. Due Diligence. Starting from the Effective Date hereof and ending ninety (90) days following the Opening of Escrow ("**Due Diligence Period**"), Developer may inspect the Site in order to determine whether to approve the physical condition of the Site as described in Section 312, subsection 2, above. Authority shall cooperate and provide such information in Authority's possession reasonably necessary for Developer to conduct its due diligence review during the Due Diligence Period, including without limitation copies of all documents in the Authority's possession and control relating to the Site's physical and environmental condition ("**Due Diligence Documents**") for Developer's review during the Due Diligence Period. Developer's failure to deliver written Notice of its approval within such time limit shall be deemed disapproval of the physical and environmental condition of the Site and the Due Diligence Documents. In the event Developer does not approve of the condition of the Site by written notice to Authority prior to the expiration of the Due Diligence Period, this Agreement shall terminate, and, except as otherwise expressly stated in this Agreement, neither party shall have any further rights or obligations to the other party.

(§312) Matters Pertaining to Escrow.

1. Escrow Costs. On the Date of Closing, the Escrow Agent shall advise the Authority and the Developer in writing of the fees, charges, and costs necessary to clear title and close escrow, and of any documents which have not been provided by said party and which must be deposited in Escrow to permit timely Closing. On or before, but not later than 1:00 p.m. of the business day prior to the Date of Closing, Authority shall deposit into Escrow payment to Escrow Agent of Authority's share of costs as determined by the Escrow Agent and any balance of Hard Money Loan proceeds that have not already been paid to Developer. On or before, but not later than 1:00 p.m. of the Date of Closing, Developer shall execute and acknowledge as may be required and deposit into Escrow such payment to Escrow Agent of Developer's share of costs as determined by the Escrow Agent.

2. Recordation and Disbursement of Funds. Upon the completion by the Authority and Developer of the deliveries and actions specified in these Escrow instructions precedent to Closing, the Escrow Agent shall be authorized to buy, affix and cancel any documentary stamps and pay any transfer tax and recording fees, if required by law, and thereafter cause to be recorded in the appropriate records of San Bernardino County, California, the Grant Deed, the Regulatory Agreement, the Notice of Affordability Restrictions, the Deeds of Trust and any other appropriate instruments delivered through this Escrow, if necessary or proper to, and provided that the fee title interest can, vest in Developer in accordance with the terms and provisions herein. Concurrent with recordation, Escrow Agent shall deliver (i) the Owner's Title Policy to Developer insuring title and conforming to the requirements of Section 409, subsection 4; and (ii) the Authority Loan Policies to Authority insuring the Deeds of trust with respect to title and conforming to the requirements of Section 409, subsection 4. Following

recording, the Escrow Agent shall deliver copies of said documents to Developer and Authority.

3. Allocation of Costs. The Escrow Agent is authorized to allocate costs as follows: Authority shall pay the cost of the Owner's Title Policy as provided above while Developer shall pay premiums for any additional insurance, extended coverage or special endorsements. Developer shall pay the cost of the Authority Title Policies as provided above. Developer shall pay the documentary transfer tax as well as all recording fees. Developer and Authority shall each pay one-half (1/2) of all Escrow and similar fees, except that if one party defaults under this Agreement, the defaulting party shall pay all Escrow fees and charges. Each party shall pay its own attorneys' fees.

4. Proration and Adjustments. Ad valorem taxes and assessments on the Site for the current year shall be prorated by the Escrow Agent as of the date of Closing with the Authority responsible for those taxes, if any, imposed for the period of time prior to Closing and the Developer responsible for those taxes imposed for the period of time after Closing. If the actual taxes are not known at the date of Closing, the proration shall be based upon the most current tax figures. When the actual taxes for the year of Closing become known, Developer and Authority shall, within thirty (30) days thereafter, re-prorate the taxes between the parties with the appropriate payment made to the party entitled thereto. Insurance will not be assigned through Escrow; rather, Authority will cancel any existing insurance policy and Developer will provide new insurance.

5. Extraordinary Services of Escrow Agent. It is understood that Escrow fees and charges contemplated by this Agreement incorporate only the ordinary services of the Escrow Agent as listed in these instructions. In the event that the Escrow Agent renders any service not provided for in this Agreement or that there is any assignment of any interest in the subject matter of this Escrow or that any controversy arises hereunder, or that the Escrow Agent is made a party to, or reasonably intervenes in, any litigation pertaining to this Escrow or the subject matter thereof, then the Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs and expenses occasioned by such default, controversy or litigation.

6. Escrow Agent's Right to Retain Documents. Escrow Agent shall have the right to retain all documents and/or other things of value at any time held by it hereunder until such compensation, fees, costs and expenses shall be paid. The undersigned hereby jointly and severally promise to pay such sums upon demand.

7. Responsibilities in the Event of Controversies. If any controversy documented in writing arises between Developer and Authority or with any third party with respect to the subject matter of this Escrow or its terms or conditions, the Escrow Agent shall not be required to determine the same, to return any money, papers or documents, or take any action regarding the Site prior to settlement of the controversy by a final decision of a court of competent jurisdiction or written agreement of the parties to the controversy. The Escrow Agent shall be responsible for timely notifying Developer and Authority of the controversy. In the event of such a controversy, the Escrow Agent shall not be liable for interest or damage costs

resulting from failure to timely close escrow or take any other action unless such controversy has been caused by the failure of the Escrow Agent to perform its responsibilities hereunder.

8. Information Report. The “**Reporting Person**” within the meaning of Treasury Regulation Section 1.6045-4(e)(5) with respect to the transactions contemplated by this Agreement shall be Escrow Agent. The name and address of Escrow Agent is set forth on the first page of this Agreement. It is agreed that Escrow Agent is an eligible person under Section 1.6045-4(e)(5)(ii) of said Regulations. Escrow Agent hereby agrees to be responsible for complying with the reporting and other requirements of Internal Revenue Code Section 6045(e) and the income tax regulations promulgated thereunder. Pursuant to said regulations, the address for the transferor and transferee are as set forth for Authority and Developer respectively in Section 901 below, and the identifying information regarding the real estate transferred is the legal description for the Site or portion thereof being transferred. Escrow Agent agrees to file the form required by said regulations between the end of the calendar year in which the Close of Escrow occurs and February 28 of the following calendar year. Developer and Authority agree (i) to cooperate with Escrow Agent and with each other in completing any report and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including, without limitation, Internal Revenue Service Form 1099-S as such may be hereafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereafter promulgated by the Treasury Department with respect thereto; (ii) that Developer and Authority, their respective employees and attorneys, and Escrow Agent and its employees may disclose to the Internal Revenue Service, this Agreement or the transaction contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045(e); (iii) that neither Developer nor Authority shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information; and (iv) to retain this Agreement for at least four (4) years following the close of the calendar year in which the Close of Escrow occurs.

(§313) Termination of Escrow.

If Escrow fails to Close on or before the dates specified in Section 307, subsection 2, unless otherwise extended by the Executive Director, Escrow shall terminate automatically without further action by Escrow Agent or any party, and Escrow Agent is instructed to return all funds and documents then in Escrow to the respective depositor of the same with Escrow Agent; provided that any document which has been signed by a party who is not to receive the return of such document, shall be marked “void and of no force or effect” by Escrow Agent before it is delivered. Cancellation of Escrow, as provided herein, shall be without prejudice to whatever legal rights Developer or Authority may have against each other arising from the Escrow or this Agreement.

(§400) DEVELOPMENT OF THE SITE.

(§401) Scope of Development.

The Site shall be developed by Developer as provided in the Scope of Development, the Regulatory Agreement, and the plans and permits approved by Authority and City pursuant to Section 502.

(§402) Development Plans, Final Building Plans and Environmental Review.

1. Proposed Development's Consistency with Plan and Codes. Developer shall design, construct and maintain the Project in accordance with all environmental mitigation measures and requirements, if any, of the City's General Plan and Zoning Ordinance, and all permits and entitlements granted thereunder to Developer (the "Land Use Entitlements"). Further, all Developer's construction, operation, and use of the Site shall be undertaken as provided in this Agreement including, without limitation, the Scope of Development, subject only to those development approvals yet to be obtained, including site plan reviews and subdivision/parcel map approvals. It is expressly understood by the parties hereto that Authority makes no representations or warranties with respect to approvals required by any other governmental entity or with respect to approvals hereinafter required from Authority or City, Authority/City reserving full police power authority over the Project. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items, nor a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions.

2. Evolution of Development Plan. Concurrently with the approval of this Agreement, the Authority has approved the Developer's basic concept drawings and the Scope of Development attached hereto at Exhibit "B". No later than ninety (90) days after the Effective Date hereof, Developer shall submit to the Authority any further preliminary (if needed), and thereafter final, drawings and specifications for development of the Site in accordance with the Scope of Development, and all in accordance with the Authority's regulatory requirements (the "Preliminary Construction Documents"). The term preliminary drawings shall be deemed to include dimensioned site plans, dimensioned floorplans and elevations, and all plans required by TCAC to be deemed a completed application. Final drawings will be in sufficient detail to obtain a building permit, including without limitation grading plans, if applicable, schematic plans, landscaping plans and parking plans. Said plans, drawings and specifications shall be consistent with the Scope of Development and the various development approvals referenced hereinabove, except as such items may be amended by mutual consent of Authority and Developer (the "Final Construction Documents"). Plans (concept, preliminary and construction) shall be progressively more detailed and will be approved if a logical evolution of plans, drawings or specifications previously approved. Plans in sufficient detail to obtain all discretionary land use approvals, including for site plan approval, conditional use permit, and other actions requiring Planning Commission approval, shall be submitted and processed concurrently for the Site.

3. Developer Best Efforts to Obtain Approvals. Developer shall exercise its best efforts to timely submit all documents and information necessary to obtain all

development and building approvals from the City in a timely manner. Not by way of limitation of the foregoing, in developing and constructing the Project, Developer shall comply with all applicable development standards in City's Municipal Code and Development Code, and shall comply with all building code, landscaping, signage, and parking requirements, except as may be permitted through approved variances and modifications.

4. Authority Cooperation. Subject to Developer's compliance with (i) the applicable City development standards for the Site, and (ii) all applicable laws and regulations governing such matters as public hearings, site plan review and environmental review, Authority agrees to provide reasonable assistance to Developer, at no cost to Authority, in the processing of Developer's submittals required under this Section. Authority's failure to provide necessary approvals or permits within such time periods, after and despite Developer's reasonable efforts to submit the documents and information necessary to obtain the same, shall constitute an Enforced Delay.

5. Disapproval. The Authority shall approve or disapprove any submittal made by Developer pursuant to this Section within fifteen (15) days after such submittal. All submittals made by Developer will note the 15-day time limit, and specifically reference this Agreement and this Section. Any disapproval shall state in reasonable detail in writing the reason for the disapproval, and the changes which the Authority reasonably requests be made. Developer shall make the required changes and revisions and resubmit for approval as soon as is reasonably practicable but no more than fifteen (15) days after the date of disapproval. Thereafter, Authority shall have an additional fifteen (15) days for review of the resubmittal, but if the Authority disapproves the resubmittal, then the cycle shall repeat, until the Authority's approval has been obtained. The foregoing time periods may be amended by mutual written agreement of the parties.

6. Development Fees. Notwithstanding any assistance to be provided by the Authority under this Agreement, Developer shall be solely responsible for payment of all Development Fees. However, as set forth in this Agreement, Developer may request disbursement of such amounts under the Hard Money Loan.

7. Environmental. Developer specifically acknowledges and agrees that the Developer shall satisfy all conditions necessary to ensure that the Project conforms to all applicable CEQA and NEPA (if applicable) requirements, including all mitigation measures and requirements of CEQA and other applicable Environmental Laws. The Developer agrees to supply information and otherwise assist Authority, upon Authority's request, to determine the environmental impact of the proposed development and to allow Authority to prepare and process such environmental documents, if any, as may need to be completed for the development pursuant to the requirements of CEQA, NEPA (if applicable) and other applicable Environmental Laws. Approval of the Project under CEQA and NEPA by the Authority shall be a condition to the Close of Escrow.

In addition, during construction of the Project, Developer shall water the ground as reasonably required by Authority, and take such other actions as Authority shall reasonably require to minimize the impact of construction and airborne debris on nearby property.

8. No Exemption from Taxes. This Agreement shall not exempt, and shall not be interpreted as exempting, Developer, Holder, or any person claiming through either of them, from the payment of, or from being subject to the levy of: (i) ad valorem property taxes imposed on the Site under Article XIII A of the California Constitution; (ii) special taxes imposed on the Site; (iii) special assessments imposed on the Site; (iii) any taxes payable under the California Bradley-Burns Uniform Local Sales & Use Tax Law, Revenue and Taxation Code §7200, *et seq.*; or (iv) any other taxes, assessments, fees, exactions, or charges any portion of which are allocated to, or received by, the Authority and which are imposed due to the ownership, use, or possession of the Site or interest therein or due to the construction or operation of the Project. This Agreement shall not exempt, and shall not be interpreted as exempting, Developer, Holder, or any person claiming through either of them, from inclusion in any maintenance district, assessment district, community facilities district, other special district, or other method of public financing as may be allowed under the laws of the State of California or of the United States. The Authority acknowledges that Developer intends to obtain a Property Tax Exemption pursuant to Revenue and Taxation Code § 214(g). Nothing in this Agreement shall prohibit the Developer from obtaining a Property Tax Exemption and until such time as such exemption has been obtained, Developer shall pay all Property Taxes levied on the Site following the Close of Escrow.

9. Ownership of Plans. All development plans, construction drawings, construction plans, architect's plans and other plans and drawings relating to the development of the Project shall be and remain the sole property of Developer, except as provided in the Assignment of Work and as otherwise specified herein.

(§403) Developer Responsibilities During Project Construction.

1. Regulatory Requirements During Project Construction. The Developer shall be solely responsible for all actions necessary for the development of the Project and cause all construction of the Project to be performed in accordance with this Agreement, the Scope of Development and the Project Budget/Proforma, as modified from time to time, as well as in accordance with all other applicable provisions of this Agreement and the Related Agreements and all applicable laws and regulations. The cost of constructing all of the improvements required to be constructed for the Project shall be borne by Developer.

2. Construction Contract. Developer shall enter into a construction contract ("**Construction Contract**") in a form which is reasonably acceptable to Authority with National Community Renaissance of California, a California nonprofit public benefit corporation ("**NCRC**"). As general contractor NCRC will be obligated to seek three qualified, competitive bids for each trade. The approved Construction Contract shall comply with all provisions in this Section 403. The Construction Contract shall be reasonably acceptable to Authority. Authority's approval of the Construction Contract shall not be unreasonably withheld, conditioned or delayed. Developer shall provide Authority copies of the Construction Contract no later than thirty (30) days prior to the Closing, and such Construction Contract shall be reviewed and either approved or disapproved (based on conformity with the requirements of this Agreement) by Authority within fifteen (15) days of receiving such Construction Contract and all relevant supporting documentation as described above. In the event that changes, deletions or additions occur to the Construction Contract, Developer shall provide any and all revisions

thereto to Authority and Authority shall review and either approve or reject such revisions within fifteen (15) days after receipt thereof. The Construction Contract shall include information regarding the engineers and architects the Developer proposes to use for the Project, including the identity and qualifications of such architects and engineers; Authority's approval of the Construction Contract shall include approval of the engineers and architects identified therein. In the event Developer intends to change the engineers and/or architects to be employed on the Project, Developer shall first provide no fewer than thirty (30) days written notice of such intention, including information regarding the identity and qualifications of the architects and/or engineers Developer intends to use instead of the approved architects or engineers, and Authority shall, within fifteen (15) days of such notice, approve or reject such proposed substitutions.

3. Change Orders. Developer shall submit all proposed change orders (including change orders proposed by the Developer and any contractor) to Authority; however, Developer shall not be required to obtain Authority approval of a change order or other revisions or modifications to the Construction Contract if such change order, revision, or modification is consistent with the approved Scope of Development, unless such change order results in an adjustment of One Hundred Fifty Thousand Dollars (\$150,000) or more in the contract price under the Construction Contract or, collectively with all change orders previously approved, the amount of the five percent (5%) contingency or more, whichever amount is less. Developer may re-allocate costs savings among line items shown in the Project Budget/Proforma.

5. Cost of the Project. All of the funds necessary to complete the Project shall be obtained by Developer, in accordance with the Project Budget/Proforma approved by Authority hereunder. Developer shall submit an estimate of all anticipated construction costs to Authority at least forty-five (45) days before the Closing.

6. Timing of Project Construction. Developer hereby covenants and agrees to commence the construction of the Project within the time set forth in the Schedule of Performance, which is attached hereto as Exhibit "D". Not later than forty-five (45) days prior to Closing, Developer may submit modifications of the schedule of the work to complete the construction of the Project for the approval of the Executive Director of the Authority.

7. Prevailing Wages. Because the Authority Loans to Developer qualify as public funding in the form of a below-market interest rate loan for a project with occupancy of at least 40% low-income housing units for the 55-year term of the Regulatory Agreement, the parties do not believe that the Project would be considered to be a "public work" "paid for in whole or in part out of public funds," as described in California Labor Code Section 1720 *et seq.*, ("**Prevailing Wage Law**"). Further, the parties hereto believe that the Site is being conveyed to the Developer at fair market value and that no financial assistance or public monies are being provided to Developer with respect to the Project such that the Project is not subject to the Prevailing Wage Law. Notwithstanding the foregoing, Developer fully accepts the risk that construction or development of the Site may qualify as a "public work" "paid for in whole or in part out of public funds," such that it would cause Developer to be required to pay prevailing wages for any aspect of the development. Developer fully bears any and all risk that Prevailing Wage Laws may be found to apply to the Project. To this end, Developer acknowledges and agrees that should any third party, including but not limited to the Director of the Department of Industrial Relations ("**DIR**"), require Developer or any of its contractors or subcontractors to pay

the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the DIR under Prevailing Wage Law for all or any of the assistance provided hereunder, then Developer shall indemnify, defend, and hold Authority and City harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature) or other proceedings, and shall assume all obligations and liabilities for the payment of such wages to the extent required by law and for compliance with the provisions of the Prevailing Wage Law.

The Authority makes no representation that any construction completed by Developer is or is not subject to Prevailing Wage Law; provided, however, the Authority hereby represents, warrants and covenants to Partnership that the sources of all funds used by Authority to acquire the Property, and make the Authority Loan have been and will at all times continue to be (i) the "Low and Moderate Income Housing Fund" established and maintained pursuant to Section 33334.2 of the California Health & Safety Code, and (ii) the Tax Allocation Housing Bonds 2008 Series B (Taxable Bonds), and no funds from any other source have been used by Authority with respect to the Property and/or the Project.

(§404) Continual Performance; Progress Reports.

Once construction is commenced, it shall be diligently pursued to completion, and shall not be abandoned for more than thirty (30) consecutive days, except when due to an Enforced Delay. Developer shall keep the Authority informed of the progress of construction and shall submit monthly written reports of the progress of the construction to the Authority in the form required by the Authority.

(§405) Indemnification During Construction.

During the periods of construction on the Site and until such time as the Authority or City has issued a Release of Construction Covenants with respect to the construction of the improvements thereon, the Developer agrees to and shall indemnify and hold the Authority and City harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person which shall occur on the Site and which shall be directly or indirectly caused by any acts done thereon by, or any errors or omissions of, the Developer or its agents, servants, employees, or contractors. The Developer shall not be responsible for (and such indemnity shall not apply to) any sole negligence or willful misconduct of the Authority, City, or its agents, servants, employees, or contractors. The provisions of this Section shall survive the termination or expiration of this Agreement.

(§406) Insurance.

Except as provided in this Section, prior to the entry by Developer on the Site pursuant to Section 411, subsection 4, and prior to the commencement of any construction by Developer on the Project, Developer shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to Authority, during the entire term of such entry or construction (unless otherwise required for a longer period hereunder), the following policies of insurance:

1. Developer's Casualty Insurance. Developer shall, at its sole expense, obtain and shall keep in force on all buildings and improvements constructed as part of the Project until the expiration of this Agreement, and all time frames required hereunder, including all time frames contained within the Regulatory Agreement, a policy of standard "all risk" fire and extended coverage insurance, with vandalism and malicious mischief endorsements, to the extent of one hundred percent (100%) of full replacement value against "all risks of physical loss" including without limitation a guaranteed replacement cost and code compliance coverage endorsement (excluding earthquake coverage, boiler and machinery insurance coverage, heating, air conditioning equipment, and other equipment of such nature), and insurance against loss or damage to personal property of the Developer located on the Site by fire and other hazards covered by such insurance (with a deductible clause approved in writing by the Authority in its reasonable discretion). All such insurance shall be payable to Authority. Such insurance policy and each portion thereof shall be in the broadest and most comprehensive form available in the market at the time such policy is issued or amended. Such policy shall, if required by the Authority, contain an agreed value clause sufficient (as determined by Authority) to eliminate any risk of Authority's coinsurance.

2. Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for the Developer and the Authority against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Developer in the course of carrying out the work or services contemplated in this Agreement.

3. Automobile Insurance. A policy of automobile liability insurance written on a per occurrence basis in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per accident for bodily injury and property damage covering owned, leased, hired, and non-owned vehicles.

4. Builder's Risk Insurance. A policy of "Builder's Risk" insurance covering the full replacement value of all of the improvements to be constructed by Developer pursuant to this Agreement plus Developer's personal property and equipment. Developer shall procure the builder's risk insurance policy prior to commencing construction.

All of the above policies of insurance, except the Builder's Risk Insurance, shall be primary insurance and shall name the Authority and its officers, employees, and agents as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against Authority and its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be cancelled without providing thirty (30) days prior written notice to Authority. In the event any of said policies of insurance are cancelled, Developer shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the Authority's Executive Director. No work or services under this Agreement shall commence until the Developer has provided Authority with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by Authority. Developer shall provide the Authority with reasonable notice of any amendments to the insurance policies required hereunder.

The policies of insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the Authority ("**Risk Manager**") due to unique circumstances.

Developer shall provide in all contracts with contractors, subcontractors, architects, and engineers that said contractor, subcontractor, architect, or engineer shall maintain the same policies of insurance required to be maintained by Developer pursuant to this Section, unless waived or modified by the Risk Manager.

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

5. Developer's Liability Insurance. Developer shall, at its sole expense, obtain and keep in force until the expiration of the Regulatory Agreement, a policy of commercial general liability insurance in an occurrence form providing for broad form property damage coverage, broad form contractual coverage, personal injury, bodily injury, and advertising injury coverage with employee exclusion as to each named insured deleted, and products and complete operations coverage, insuring Developer, and naming Authority, its officials, employees and agents, as additional named insureds, against any liability arising out of or in connection with Developer's possession of the Site and the use of the Site and all improvements thereon by any person, Authority's activities in connection with the Project, or any other claim arising out of or relating to the Project or work on the Site, or the maintenance of the Project after completion of construction. Such insurance policies shall have (a) a combined single limit for both bodily injury or death in an amount not less than Three Million Dollars (\$3,000,000.00) and (b) a limit for both bodily injury or death in one accident or occurrence or for property damage in an amount not less than Two Million Dollars (\$2,000,000.00), which amounts shall be increased from time to time as reasonably required by the Authority. (Umbrella policies may be used to satisfy Developer's coverage obligations.) Such insurance policy and each portion thereof shall be in the broadest and most comprehensive form available in the market at the time such policy is issued or amended. The insurance to be provided by Developer may provide for a deductible or self-insured retention of not more than Twenty-Five Thousand Dollars (\$25,000), with such maximum amount to increase at the same rate as the periodic increases in the minimum amount of total insurance coverage set forth above. The policy shall insure performance by Developer of indemnity provisions of Section 405 of this Agreement. The limits of said insurance shall not limit the liability of Developer hereunder.

6. Insurance Policies. All of Developer's insurance shall be primary insurance written in a form satisfactory to Authority by companies licensed in California, or otherwise acceptable to and approved by Authority (which must be Class IX A- or better as rated by Best's Insurance Reports) and shall specifically provide that such policies shall not be subject to cancellation or other change except after at least thirty (30) days prior written notice of Authority. Copies of the policies, together with satisfactory evidence of payment of premiums shall be deposited with Authority on or prior to the date hereof, and upon each renewal of such

policies, which shall be effected not less than thirty (30) days prior to the expiration date of the term of such coverage.

7. **Other Insurance Provisions.** Said policy or policies, as applicable, shall combine aggregate limits for Bodily Injury, Property Damages, Personal Injury, and Advertising Injury, in the amounts specified above, that apply specifically to and can only be exhausted in connection with claims arising out of or relating to the Property. If any claim, event, or loss occurs during the policy period which will or may decrease the aggregate amount of insurance coverage available under the policy, Developer shall immediately secure additional coverage sufficient to provide total aggregate limits at least equal to the amounts set forth above on a going forward basis. Should any part of the coverage required above be provided by "excess" or "umbrella" policies, those policies shall specifically provide that the coverage under those policies shall "drop down" as to both defense and indemnity obligations in the event of insolvency of the primary or underlying carrier. Such "excess" or "umbrella" policies shall also contain all the other provisions required by this Agreement.

(§407) Authority/City and Other Governmental Agency Permits.

Before commencement of construction or development of any buildings, structures, or other works of improvement upon the Site which are Developer's responsibility under the applicable Scope of Development, Developer shall at its own expense secure or cause to be secured any and all permits which may be required by Authority or any other governmental agency affected by such construction, development or work. Developer shall not be obligated to construct if any permit is not issued despite good faith effort by Developer. If there is delay beyond the usual time for obtaining any such permits due to no fault of Developer, the time for obtaining permits shall be extended to the extent such delay prevents any action which could not legally or would not in accordance with good business practices be expected to occur before such permit was obtained. Developer shall pay all normal and customary fees and charges applicable to such permits and any fees or charges hereafter imposed by the City that are standard for and uniformly applied to similar projects in the City.

(§408) Rights of Access.

Representatives of the Authority shall have the reasonable right to access the Site without charges or fees, at any time during normal construction hours during the period of construction and upon reasonable notice to Developer, for the purpose of assuring compliance with this Agreement, including but not limited to the inspection of the construction work being performed by or on behalf of Developer. Such representatives of Authority shall be those who are so identified in writing by the Authority Executive Director. Each such representative of Authority shall identify himself or herself at the job site office upon his or her entrance to the Site, and shall provide Developer, or the construction superintendent or similar person in charge on the Site, a reasonable opportunity to have a representative accompany him or her during the inspection. Authority shall indemnify, defend, and hold Developer harmless from any injury or property damage caused or liability arising out of Authority's exercise of this right of access.

(§409) Applicable Laws.

Developer shall carry out the construction of the improvements to be constructed by Developer in conformity with all applicable laws, including all applicable federal and state labor laws.

(§410) Nondiscrimination During Construction.

Developer, for himself and his successors and assigns, agrees that in the construction of the improvements to be constructed by Developer, it shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, ancestry or national origin.

(§411) Taxes, Assessments, Encumbrances and Liens.

Developer shall pay, prior to delinquency, all real estate taxes and assessments assessed or levied on the Site subsequent to conveyance of title. Until the date Developer is entitled to the issuance by Authority of a Release of Construction Covenants, Developer shall not place or allow to be placed thereon any mortgage, trust deed, encumbrance or lien (except mechanic's liens prior to suit to foreclose the same being filed) prohibited by this Agreement. Developer shall remove or have removed any levy or attachment made on the Site, or assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, or to limit the remedies available to Developer in respect thereto.

(§412) Rights of Holders of Approved Security Interests in Site.

1. **Definitions.** As used in this Section, the term “**mortgage**” shall include any mortgage, whether a leasehold mortgage or otherwise, deed of trust, or other security interest, or sale and lease-back, or any other form of conveyance for financing. The term “**holder**” shall include the holder of any such mortgage, deed of trust, or other security interest, or the lessor under a lease-back, or the grantee under any other conveyance for financing.

2. **No Encumbrances Except Mortgages to Finance The Project.** Notwithstanding the restrictions on transfer in Section 303, mortgages required for any reasonable method of financing of the construction of the improvements (including, but not limited to the Senior Financing in both the construction and permanent phases) are permitted before issuance of a Release of Construction Covenants but only for the purpose of securing loans of funds used or to be used for financing the acquisition of the Site, for the construction of Project improvements thereon, and for any other expenditures necessary and appropriate to develop the Site under this Agreement, or for restructuring or refinancing any for same, so long as the refinancing does not exceed the then outstanding balance of the existing financing, including any additional costs for completion of construction, whether direct or indirect, based upon the estimates of architects and/or contractors. The Developer (or any entity permitted to acquire title under this Section) shall notify the Authority in advance of any mortgage, if the Developer or such entity proposes to enter into the same before issuance of the Release of Construction Covenants. The Developer or such entity shall not enter into any such conveyance

for financing without the prior written approval of the Authority, which shall not be unreasonably withheld, conditioned or delayed. Any lender approved by the Authority shall not be bound by any amendment, implementation, or modification to this Agreement subsequent to its approval without such lender giving its prior written consent thereto. In any event, the Developer shall promptly notify the Authority of any mortgage, encumbrance, or lien that has been created or attached thereto prior to issuance of a Release of Construction Covenants, whether by voluntary act of the Developer or otherwise.

3. Developer's Breach Not to Defeat Mortgage Lien. Developer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage made in good faith and for value as to the Site, or any part thereof or interest therein, but unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against the holder of any such mortgage of the Site whose interest is acquired by foreclosure, trustee's sale or otherwise.

4. Holder Not Obligated to Construct or Complete Improvements. The holder of any mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Site or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

5. Notice of Default to Mortgages, Deed of Trust or other Security Interest Holders. Whenever Authority shall deliver any notice or demand to Developer with respect to any breach or default by Developer hereunder, Authority shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage who has previously made a written request to Authority therefor, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the holder unless such notice is given.

6. Right to Cure. Each holder (insofar as the rights of Authority are concerned) shall have the right, at its option, within ninety (90) days after the receipt of the notice, to:

A. obtain possession, if necessary, and to commence and diligently pursue said cure until the same is completed, and

B. add the cost of said cure to the security interest debt and the lien or obligation on its security interest; provided that in the case of a default which cannot with diligence be remedied or cured within such ninety (90) day period, such holder shall have additional time as reasonably necessary to remedy or cure such default.

In the event there is more than one such holder, the right to cure or remedy a breach or default of Developer under this Section shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of Developer under this Section.

No holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first having expressly assumed Developer's obligations to Authority by written agreement satisfactory to Authority with respect to the Site or any portion thereof in which the holder has an interest. The holder must agree to complete, in the manner required by this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the Authority that it has the qualifications and financial responsibility necessary to perform such obligations. Any holder properly completing such improvements shall be entitled, upon written request made to Authority, to a Release of Construction Covenants from Authority.

7. Authority's Rights upon Failure of Holder to Complete Improvements. In any case where one hundred eighty (180) days after default by Developer in completion of construction of improvements under this Agreement, the holder of any mortgage creating a lien or encumbrance upon the Site or improvements thereon has not exercised the option to construct afforded in this Section or if it has exercised such option and has not proceeded diligently with construction, Authority may, after ninety (90) days' notice to such holder and if such holder has not exercised such option to construct within said ninety (90) day period, purchase the mortgage, upon payment to the holder of an amount equal to the sum of the following:

- A. The unpaid mortgage debt plus any accrued and unpaid interest (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any);
- B. All expenses incurred by the holder with respect to foreclosure, if any;
- C. The net expenses (exclusive of general overhead), incurred by the holder as a direct result of the ownership or management of the Site, such as insurance premiums or real estate taxes, if any;
- D. The costs of any improvements made by such holder, if any; and
- E. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence to the date of payment by the Authority.

In the event that the holder does not exercise its option to construct afforded in this Section, and Authority elects not to purchase the mortgage of holder, upon written request by the holder to Authority, Authority agrees to use reasonable efforts to assist the holder selling the holder's interest to a qualified and responsible party or parties (as determined by Authority), who shall assume the obligations of making or completing the improvements required to be constructed by Developer, or such other improvements in their stead as shall be satisfactory to Authority. The proceeds of such a sale shall be applied first to the holder of those items specified in subparagraphs A through E hereinabove, and any balance remaining thereafter shall be applied as follows:

(i) First, to reimburse Authority, on its own behalf and on behalf of the Authority, for all costs and expenses actually and reasonably incurred by Authority, including but not limited to payroll expenses, management expenses, legal expenses, and others.

(ii) Second, to reimburse Authority, on its own behalf and on behalf of the Authority, for all payments made by Authority to discharge any other encumbrances or liens on the Site or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees.

(iii) Third, to reimburse Authority, on its own behalf and on behalf of the Authority, for all costs and expenses actually and reasonably incurred by Authority, in connection with its efforts assisting the holder in selling the holder's interest in accordance with this Section.

(iv) Fourth, any balance remaining thereafter shall be paid to Developer.

8. Right of Authority to Cure Mortgage, Deed of Trust or Other Security Interest Default. In the event of a default or breach by Developer (or entity permitted to acquire title under this Section) of a mortgage prior to the issuance by Authority of a Release of Construction Covenants for the Site or portions thereof covered by said mortgage, and the holder of any such mortgage has not exercised its option to complete the development, Authority may cure the default prior to completion of any foreclosure. In such event, Authority shall be entitled to reimbursement from Developer or other entity of all costs and expenses incurred by Authority in curing the default, to the extent permitted by law, as if such holder initiated such claim for reimbursement, including legal costs and attorneys' fees, which right of reimbursement shall be secured by a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subject to:

A. Any mortgage for financing permitted by this Agreement; and

B. Any rights or interests provided in this Agreement for the protection of the holders of such mortgages for financing; provided that nothing herein shall be deemed to impose upon Authority any affirmative obligations (by the payment of money, construction or otherwise) with respect to the Site in the event of its enforcement of its lien.

9. Right of Authority to Satisfy Other Liens on the Site After Conveyance of Title. After the conveyance of title and prior to the recordation of a Release of Construction Covenants for construction and development, and after the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Site or any portion thereof, the Authority shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site or any portion thereof to forfeiture or sale.

(§413) Release of Construction Covenants.

Upon the completion of construction of the Project as evidenced by receipt of a Certificate of Occupancy, Authority shall furnish Developer with a Release of Construction Covenants for the Site upon written request therefor by Developer. The Release of Construction Covenants shall contain the date that the Certificate of Occupancy was issued and shall be executed and notarized so as to permit it to be recorded in the office of the Recorder of San Bernardino County. A Release of Construction Covenants shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of the construction and development of the improvements required by this Agreement upon the Site and of full compliance with the terms of this Agreement with respect thereto. A partial Release of Construction Covenants applicable to less than the entire Site shall not be permitted.

After the issuance of a Release of Construction Covenants, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease, or acquisition) incur any obligation or liability under this Agreement with respect to the Site, except that such party shall be bound by the covenants, encumbrances, and easements contained in the Deed and the Regulatory Agreement. After issuance of a Release of Construction Covenants, the Authority shall not have any rights or remedies under this Agreement with respect to the Site, except as otherwise set forth or incorporated in the Deed or the Regulatory Agreement.

Authority shall not unreasonably withhold a Release of Construction Covenants. If Authority refuses or fails to furnish a Release of Construction Covenants within thirty (30) days after written request from Developer or any entity entitled thereto, Authority shall provide a written statement of the reasons Authority refused or failed to furnish a Release of Construction Covenants. The statement shall also contain Authority's opinion of the action Developer must take to obtain a Release of Construction Covenants. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, or other minor so-called "punch list" items, Authority will issue its Release of Construction Covenants upon the posting of a bond in an amount representing one hundred fifty percent (150%) of the fair value of the work not yet completed or other assurance reasonably satisfactory to Authority.

A Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Release of Construction Covenants is not notice of completion as referred to in the California Civil Code Section 3093. Nothing herein shall prevent or affect Developer's right to obtain a Certificate of Occupancy from the Authority before the Release of Construction Covenants is issued.

(§414) Estoppels.

No later than thirty (30) days after the request of Developer or any holder of a mortgage or deed of trust, Authority shall, from time to time and upon the request of such holder, execute and deliver to Developer or such holder a written statement of Authority that no default or breach exists (or would exist with the passage of time, or giving of notice or both) by Developer under this Agreement, if such be the determination of the Authority, and certifying as to whether or not

Developer has at the date of such certification complied with any obligation of Developer hereunder as to which such holder may inquire. The form of any estoppel letter shall be prepared by the holder or Developer and shall be at no cost to Authority.

(§500) USES AND MAINTENANCE OF THE SITE

(§501) Uses of the Site.

The Developer covenants and agrees for itself, its successors and assigns, which covenants shall run with the land and bind every successor or assign in interest of Developer, that during development of the Site pursuant to this Agreement and thereafter, neither the Site nor the improvements, nor any portion thereof, shall be improved, used or occupied in violation of any applicable governmental restrictions or the restrictions of this Agreement. Furthermore, Developer and its successors and assigns shall not initiate, maintain, commit, or permit the maintenance or commission on the Site or in the improvements, or any portion thereof, of any nuisance, public or private, as now or hereafter defined by any statutory or decisional law applicable to the Site or the improvements, or any portion thereof. Developer further covenants and agrees on behalf of itself and its successors and assigns to devote, use, operate and maintain the Site in accordance with this Agreement, the Deeds of Trust, the Notice of Affordability Restrictions, the Regulatory Agreement, the Guaranty and the other documents recorded against the Residential Units pursuant to the provisions of this Agreement.

Notwithstanding anything to the contrary or that appears to be to the contrary in this Agreement, Developer hereby covenants, on behalf of itself, and its successors and assigns, which covenants shall run with the land and bind every successor and assign in interest of Developer, that Developer and such successors and assigns shall use the Site solely for the purpose of constructing, maintaining and operating a project meeting the requirements and restrictions of this Agreement, including, without limitations, restriction of the rental and occupancy of the Residential Units only to Qualified Tenants for a rent not in excess of an Affordable Rent for the period specified herein.

1. **Ceremonies.** Developer shall reasonably cooperate with Authority staff in the organization of any Project-related groundbreakings, grand openings or any such inaugural events or ceremonies sponsored by Developer to celebrate the development which is the subject of this Agreement. Additionally, Developer shall allow Authority to place appropriate signage reflecting Authority's participation in the Project on Site. Said signage shall be placed on the Site upon approval of this Agreement and shall remain onsite until the commencement of the operation of the Project

(§502) Affordable Housing.

1. **Construction of Affordable Housing.** The Developer covenants and agrees to construct approximately sixty-four (64) Residential Units (which includes (1) Manager's Unit), in conformity with the Scope of Development. All of the Residential Units, other than the Manager's Unit, shall be restricted to rental at an Affordable Rent and for occupation by Qualified Tenants, as described herein. The location, size and specifications of the Residential Units shall be as set forth in the Scope of Development and as further designated

by the Authority. All Residential Units, other than the Manager's Unit, shall be subject to and shall be leased in compliance with the tenant selection criteria described in the Regulatory Agreement in the form attached hereto as Exhibit "J".

During the term of this Agreement, and to the extent allowed under applicable local, State and Federal laws, and Tax Credit and/or AHSC Program restrictions, Developer shall use its best efforts to lease vacant Residential Units reserved for Eligible Tenants in the following order of priority: (i) displaced persons entitled to a preference pursuant to California Health and Safety Code Section 33411.3 or successor statute, with highest priority in this category to residents of the City of Rialto or, on equal standing with residents, veterans of active military action, and (ii) other persons meeting the eligibility requirements of this Agreement. Developer shall and Authority may maintain a list of persons who have filed a complete application with Developer to rent a Residential Unit in the Project and who have incomes that would qualify them as an Eligible Tenant, and Developer shall offer to rent Residential Units on the above-referenced priority basis. Should multiple tenants be equally eligible and qualified to rent a Residential Unit, Developer shall rent available Residential Units to Eligible Tenants on a first-come, first-serve basis.

2. Residential Unit Requirements & Priorities. All Residential Units (excluding the Manager's Unit) constructed pursuant to this Agreement shall be occupied at all times only by the household of the Qualified Tenant who has rented that Residential Unit. Developer covenants to cooperate with Authority in taking all steps necessary to implement this requirement with respect to all Qualified Tenants. The restrictions upon rental and use of each Residential Unit shall continue for a period of fifty-five (55) years from the recordation of the Certificate of Occupancy issuance.

3. Leasing of Residences by Developer.

A. Marketing Program. Prior to issuance of building permits for any portion of the Project, Developer shall prepare and obtain Authority's approval (which shall not be unreasonably withheld) of a marketing and leasing program ("**Approved Marketing Program**") for the selection of tenants for the Residential Units at the Project. The Residential Units shall thereafter be marketed in accordance with the Approved Marketing Program as the same may be amended by Developer from time to time with Authority's prior written approval, which shall not be unreasonably withheld. Quarterly during the initial lease-up period, and annually thereafter, Developer shall provide Authority with a report with respect to Residential Units under lease, leases in default, the status of implementation of the Approved Marketing Program, and such other information as Authority may reasonably request. Authority agrees to exercise reasonable efforts to assist Developer in connection with implementation of the Approved Marketing Program; provided, Authority shall not be under any obligation to incur any out-of-pocket expenses in connection therewith.

B. Restricted Residences. As set forth above, each of the Residential Units (excluding the Manager's Unit) shall be rented to a Qualified Tenant for a rental rate which does not exceed an Affordable Rent for the applicable Residential Unit.

C. **Annual Tenancy Report.** Developer shall provide Authority annually, by March 1, with a report on Project occupancy for each Residential Unit, including information concerning the number of months during which each Residential Unit was occupied and the income category of each tenant household occupying a Residential Unit. The annual report and Developer's records related to each tenancy shall be subject to inspection and audit upon Authority's written request.

4. **Management of the Project.**

A. **Qualified Manager.** Developer shall manage or cause the Project, and all appurtenances thereto, to be managed in a prudent and business-like manner, consistent with good property management standards for other comparable first quality, well-managed affordable rental housing projects in the County. Developer may contract with a property management company or property manager, to operate and maintain the Project in accordance with the terms of this Agreement. NCRC is hereby approved by Authority, with Authority's approval of this Agreement, as the initial Qualified Manager for the Project. The hiring of a different Qualified Manager (and each successor or assignee), is and shall be subject to prior written approval of Authority's Executive Director (or designee) in his sole and reasonable discretion and a single Qualified Manager shall be contracted for the entire Project.

The Qualified Manager shall manage the Project in accordance with the definitions of Affordable Rent and Qualified Tenant. Any fee paid to the Qualified Manager for social services provided to the tenants shall be exclusive of the fee paid to the Qualified Manager relating to the management of the Project. Developer shall conduct due diligence and background evaluation of any potential third-party property manager or property management company to evaluate experience, references, credit worthiness, and related qualifications as a Qualified Manager. Any proposed Qualified Manager shall have significant and relevant prior experience with affordable housing projects and properties comparable to the Project and the references and credit record of such Qualified Manager/company shall be investigated (or caused to be investigated) by Developer prior to submitting the name and qualifications of such proposed Qualified Manager to the Executive Director for review and approval. A complete and true copy of the results of such background evaluation shall be provided to the Executive Director. Approval of a Qualified Manager by Authority's Executive Director shall be written and not be unreasonably delayed, but shall be in his sole, reasonable discretion, and Authority's Executive Director shall use good faith efforts to respond as promptly as practicable in order to facilitate effective and ongoing property management of the Project by one Qualified Manager.

B. **Management Plan.** Prior to and as to Section 408 for Conditions to Close of Escrow, Developer shall prepare and submit to the Authority's Executive Director for review and approval, which approval shall not be unreasonably withheld, a management plan which includes a detailed plan and strategy for long-term marketing, operation, maintenance, repair, security, and crime prevention at the Project, and the method of selection of tenants, rules and regulations for tenants, and other rental policies for the Project ("**Management Plan**"). The Executive Director approval of the Management Plan shall not be unreasonably withheld or delayed. Subsequent to approval of the Management Plan by the Executive Director the ongoing management and operation of the Project shall be in compliance with the approved Management Plan. During the period of the Regulatory Agreement, Developer and its Qualified Manager may from time to time submit to the Executive Director proposed amendments to the Management Plan, the implementation

of which shall also be subject to the prior written approval of the Executive Director, which approval shall not be unreasonably withheld.

C. **Gross Mismanagement.** During the period of the Regulatory Agreement, and in the event of Gross Mismanagement (as defined below) of the Project, Executive Director shall have and retain the authority to direct and require any condition(s), acts, or inactions of Gross Mismanagement to cease and/or be corrected immediately, and further to direct and require the immediate removal of the Qualified Manager and replacement with a new qualified and approved Qualified Manager, if such condition(s) is/are not ceased and/or corrected after expiration of thirty (30) days from the date of written notice from Executive Director. If Developer or Qualified Manager has commenced to cure such Gross Mismanagement condition(s) on or before the 20th day from the date of written notice (with evidence of such submitted to the Executive Director), but has failed to complete such cure by the 30th day (or such longer period if the cure cannot reasonably be accomplished in thirty (30) days as reasonably determined by the non-defaulting party), then Developer and its Qualified Manager shall have an additional 10 days to complete the cure of Gross Mismanagement condition(s). In no event shall any condition of Gross Mismanagement continue uncured for a period exceeding forty-five (45) days from the date of the initial written notice of such condition(s). If such condition(s) do persist beyond such period, Executive Director shall have the absolute right to immediately and without further notice to Developer (or to Qualified Manager or any other person/entity) to remove the Qualified Manager. If Developer takes steps to select a new Qualified Manager that selection is subject to the requirements set forth above for selection of a Qualified Manager.

For purposes of this Agreement, the term “**Gross Mismanagement**” shall mean management of the Project in a manner which violates the terms and/or intention of this Agreement to operate a high quality affordable housing complex, and shall include, but is not limited to, any one or more of the following:

- i. Habitually leasing to tenants who exceed the prescribed income levels;
- ii. Habitually allowing tenants to exceed the prescribed occupancy levels without taking immediate action to stop such overcrowding;
- iii. Under-funding required reserve accounts if annual Project revenue is sufficient to maintain such reserve accounts;
- iv. Failing to timely maintain the Project in accordance with the Management Plan and the maintenance standards set forth in Section 505;
- v. Fraud or embezzlement of Project funds, including without limitation funds in the reserve accounts;
- vi. Failing to fully cooperate with the Rialto Police Department or other local law enforcement agency(ies) with jurisdiction over the Project, in maintaining a crime-free environment within the Project;
- vii. Failing to fully cooperate with the Rialto Fire Department or other local public safety agency(ies) with jurisdiction over the Project, in maintaining a safe and accessible environment within the Project;

viii. Failing to fully cooperate with the City Planning & Building Department, including the Code Enforcement Division, or other local health and safety enforcement agency(ies) with jurisdiction over the Project, in maintaining a decent, safe and sanitary environment within the Project; and

ix. Failing to enforce the terms of the approved leases entered into between Landlord and tenants of each Residential Unit or failing to enter into such approved leases with such tenants; and

x. Spending funds from the Capital Replacement Reserve account for items that are not defined as eligible costs, including eligible capital and/or replacement.

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

5. Capital Reserve Requirements. Commencing upon completion of the Project, Developer shall, or shall cause the Qualified Manager to, annually set aside a minimum amount of Two Hundred and Fifty Even Dollars (\$250) per Residential Unit, from the gross rents received from the Project, into a separate interest-bearing trust account ("**Capital Replacement Reserve**"). Such amount shall be increased annually by an amount equal to the percentage increase in AMI. Funds in the Capital Replacement Reserve shall be used for capital replacements to the Project fixtures and equipment which are normally capitalized under generally accepted accounting principles. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve Developer of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Project in the manner prescribed herein. Not less than once per year, Developer, at its expense, shall submit to Housing Authority an accounting for the Capital Replacement Reserve. Capital repairs to and replacement of the Project shall include only those items with a long useful life, including without limitation the following: appliance replacement; exterior painting, including exterior trim; hot water heater replacement; plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, seal coating and restriping; roofing repair and replacement; landscape tree replacement; irrigation pipe and controls replacement; gas line pipe replacement; elevator replacement and upgrade work; miscellaneous motors and blowers; common area furniture replacement; and common area repainting. Developer shall, not less than once per year, submit to Authority evidence reasonably satisfactory to Authority of compliance herewith.

6. Operating Budget and Reserve. Developer shall submit to Housing Authority on not less than an annual basis an operating budget for the Project ("**Operating Budget**"), which Budget shall be subject to the written approval of Authority Executive Director or designee, which approval shall not be unreasonably withheld or delayed. The Operating Budget shall establish an operating reserve of \$104,000 or such amount as required by Senior Financing lenders, whichever amount is greater; the foregoing initial operating reserve balance may not be altered without prior written approval of the Authority's Executive Director.

Developer shall, or shall cause the Qualified Manager to, comply with the requirements imposed by the senior lender and/or Tax Credit investor for the Project with respect to funding and replenishing a reserve account to cover shortfalls between Project income and actual operating expenses and emergency expenses (such as uninsured casualties), which reserve funds shall in no event be used to pay for capital items properly payable from the Capital Replacement Reserve. Developer shall, not less than once per year, submit to Authority evidence reasonably satisfactory to Authority of compliance herewith.

7. Social Services. Commencing within six (6) months of initial occupancy, the Developer shall contract with Hope Through Housing to operate at the Site all social services programs required under Developer's application for tax credits to TCAC. The types of social services to be provided may be revised with the prior approval of the Authority, which approval shall not be unreasonably withheld. Developer shall budget, allocate and utilize a minimum of Three Hundred Dollars (\$300) per Unit annually (\$19,200 per year) towards the provision of on-site social services, including without limitation "Hope Through Housing Foundation" for senior, afterschool, case management and preschool services.

8. Monitoring and Recordkeeping. Throughout the Regulatory Agreement period, the Developer shall comply with all applicable recordkeeping and monitoring requirements set forth in Health and Safety Code Section 33418 and shall annually complete and submit to Housing Authority a Certification of Continuing Program Compliance in substantially the form attached hereto as Exhibit "L". Representatives of Authority shall be entitled to enter the Project, upon at least twenty-four (24) hours' notice, to monitor compliance with this Agreement, to inspect the records of the Project, and to conduct an independent audit or inspection of such records. Developer agrees to cooperate with Housing Authority in making the Project available for such inspection or audit. Developer agrees to maintain records in a businesslike manner, and to maintain such records for the Regulatory Agreement period.

9. Developer Provide Authority Audit and Operating Budget. The Developer shall by May 1st of each year provide the Authority a certified financial audit of the Project for the prior fiscal year and the Project's current fiscal year operating budget.

(§503) Nondiscrimination in Employment.

The Developer covenants and agrees for itself, its successors and assigns and any successor-in-interest to the Site or part thereof, that all persons employed by or applying for employment by it, its Affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by Developer without regard to race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, age, pregnancy, childbirth, or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. §200, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. §206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. §621, *et seq.*, the Immigration Discrimination in Employment Act of 1967, 29 U.S.C. §621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324b, *et seq.*, 42 U.S.C. §1981, the California Fair Employment and Housing Act, California Government Code §12900, *et seq.*, the California Equal Pay Law, California Labor Code §1197.5, California Government Code §11135, the Americans with Disabilities Act,

42 U.S.C. §12101, *et seq.*, and all other anti-discrimination laws and regulations for the United States and the State of California as they now exist or may hereafter be amended.

(§504) Obligation to Refrain from Discrimination.

Developer shall refrain from restricting the rental, sale, lease, sublease, transfer, use, development, occupancy, tenure, or enjoyment of the Site (or any part thereof) on the basis of race, color, creed, religion, sex, sexual orientation, gender identity, marital status, ancestry, national origin, familial status, physical disability, mental disability, or medical condition (including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), the Human Immune Deficiency Virus (HIV), or condition related thereto), of any person or group of persons, and shall comply with the applicable anti-discrimination provisions of the Americans with Disabilities Act (42 U.S.C. §12101, *et seq.*) and the California Fair Employment and Housing Act (Cal. Government Code §12900, *et seq.*) as they exist on the date of this Agreement or as they may thereafter be amended, repealed and reenacted, or otherwise modified. They shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed.

(§505) Maintenance of Improvements.

1. Developer to Maintain Project. Developer covenants and agrees for itself, its successors and assigns, and every successor in interest to the Site or any part thereof, that, after Authority's issuance of its Release of Construction Covenants the Developer shall be responsible for maintenance of all improvements that may exist on the Site from time to time, including without limitation buildings, parking lots, lighting, signs, and walls, in reasonable condition and repair (subject to reasonable wear and tear), and shall keep the Site free from any accumulation of debris or waste materials. The Developer shall also maintain all landscaping required pursuant to Developer's approved landscaping plan in a healthy condition, including replacement of any dead or diseased plants. The foregoing maintenance obligations shall run with the land in accordance with and for the term of the Regulatory Agreement. Developer's further obligations to maintain the Site, and Authority's remedies in the event of Developer's default in performing such obligations, are set forth in the Regulatory Agreement. Developer hereby waives any notice, public hearing, and other requirements of the public nuisance laws and ordinances of the Authority that would otherwise apply, except as specified in said Regulatory Agreements. Upon the sale of any portion of the Site, Developer (but not Developer's successor) shall be released from the requirements imposed by this Section, and the financial liability therefor, as to the portion of the Site conveyed.

2. Authority to Notify Developer of Maintenance Issues. Authority agrees to notify Developer in writing if the condition of the Site does not meet with the maintenance standards described above and to specify the deficiencies and the actions required to be taken by Developer to cure the deficiencies. Upon notification of any maintenance deficiency, Developer shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety, then Developer shall have seventy two (72) hours to rectify the problem. In the event Developer does not maintain the Site in the manner set forth herein and in accordance with the above maintenance standards, Authority shall have, in

addition to any other rights and remedies hereunder, the right to maintain the Site, or to contract for the correction of such deficiencies, after written notice to Developer, and Developer shall be responsible for the payment of all such costs incurred by Authority.

3. Developer to Allow Authority and City to Inspect Project. Developer acknowledges and agrees that Authority, City and their employees and authorized agents shall have the right to conduct code compliance and/or code enforcement inspections of the Project and the individual Residential Units of the Project, both exterior and interior, at reasonable times and upon reasonable notice (not less than twenty-four (24) hours prior notice, except in an emergency, and in accordance with the terms of the lease of the individual Residential Units) to Developer and/or an individual tenant. If such notice is provided by Authority or City to Developer, then Developer (or its Qualified Manager) shall immediately and directly advise any affected tenant of such upcoming inspection and cause access to the area(s) and/or Residential Unit at the Project to be made available and open for inspection. Developer shall include express advisement of such inspection rights within the lease/rental agreements for each Residential Unit in the Project in order for each and every tenant and tenant household to be aware of this inspection right, and such inspection(s) shall not unreasonably interfere with use and enjoyment of the site.

(§506) Notice of Affordability Restrictions.

Prior to, and as a condition of, Closing of Escrow upon the Site, the Developer shall submit for recordation upon the Site a “**Notice of Affordability Restrictions**” drafted to provide notice to prospective occupants or owners of the Site that this Agreement and the Related Agreements affect title to the Property such that the Site is restricted to Qualified Tenants of Low, Very Low or Extremely Low Income. Reference should be made to the Regulatory Agreement for a more detailed description of all matters described in the Notice. The Notice of Affordability Restrictions shall be in a form approved by the Authority Attorney, which approval shall not be unreasonably withheld, delayed or conditioned.

(§507) Regulatory Agreements and Declaration of Restrictive Covenants.

The Regulatory Agreement shall be recorded against the Site prior to any occupancy by a Qualified Tenant. The Regulatory Agreement shall run with title to the Site, shall be binding upon the Developer, its successors and its assigns, and shall be in a form substantially similar in all material respects to the form of the Regulatory Agreement set forth in Exhibit “J”. It is understood by the parties that lenders of Senior Financing will require that any other regulatory agreement or deed of trust issued and recorded pursuant to LIHTC financing, or other Senior Financing shall all be recorded against the Site and that Authority’s Regulatory Agreement will be subordinate to said Senior Financing regulatory agreements and any Senior Financing deeds of trust recorded upon the Site. To this end, the Authority will agree to execute one or more subordination agreement(s), subject to the reasonable review and acceptance thereof by the Authority’s legal counsel, in order to effectuate subordination of the Authority’s interests to the Senior Financing, all as further described in Article 600 hereof.

(§600) SENIOR FINANCING; TCAC/LIHTC

(§601) Compliance with LIHTC/TCAC Requirements.

If reasonable changes to this Agreement or estoppels are required by the entities providing LIHTC funding, the parties agree to effectuate such changes and/or provide such estoppels in order to be in compliance with the requirements. The Authority Executive Director is authorized, without further approval of the Authority Board, to (i) make changes to this Agreement and the Related Agreements as required to satisfy the requirements of the Qualified Tax Credit Investor, LIHTC or TCAC; provided that changes to this Agreement that increase the Authority's potential legal liabilities or financial obligations hereunder in an amount potentially exceeding Twenty-Five Thousand Dollars (\$25,000) shall require Authority Board approval, and (2) execute estoppels relating to the status of this Agreement.

Subject to the conditions in Section 604 and to the extent required by TCAC or LIHTC regulations, the Authority's Deeds of Trust and other Related Agreements shall be subordinated to LIHTC instruments recorded upon the Site, including, but not limited to, the Extended Use Agreement in conjunction with the Project, which LIHTC instruments are deemed to be part of the Senior Financing.

(§602) Construction & Permanent Loans as Senior Financing.

In accordance with the timeframes set forth in the Schedule of Performance, Developer agrees to deliver to Authority and obtain the approval of Authority of written commitments from financial institutions licensed to do business in California and acceptable to the Authority agreeing to make a Construction Loan and a Permanent Loan to Developer and secured by deed(s) of trust recorded upon the Site. The amount of the commitment shall not be less than the amount of the construction contract, plus all consultant and loan fees, "points," commissions, charges, furnishings, fixtures, taxes, interest start-up and other costs and expenses of developing the Site, less the amount of Developer's equity contribution, if any, to the cost of construction. The construction commitment shall be on the usual and customary commercial terms and conditions of the lender providing the Construction and/or Permanent Loan(s).

Subject to the conditions in Section 603, the Authority agrees that this Agreement, the Note, the Deeds of Trust, and the Regulatory Agreement shall be made junior and subordinate to liens given in connection with the Senior Financing obtained by the Developer, including any refinancing thereof established and obtained pursuant to and in compliance with the provisions of this Agreement and the TCAC requirements.

In addition to the foregoing, the Developer may apply for a loan from an institutional lender contracting with the Federal Home Loan Bank ("FHLB") pursuant to its Affordable Housing Program ("AHP Loan"). If the Partnership successfully obtains the AHP Loan, the AHP Loan shall thereafter become part of the Project Budget/Proforma. The Developer and Authority shall mutually determine the use for and AHP Loan proceeds.

(§603) Authority Instruments Junior to Senior Financing.

A. General. The Authority agrees that this Agreement, the Notes, the Deeds of Trust, the Regulatory Agreement, shall be made junior and subordinate to liens given in connection with the Senior Financing, including any refinancing thereof established and obtained pursuant to, and in compliance with, the provisions of this Agreement. The Authority's Executive Director is hereby authorized and directed to execute such subordination agreements, inter-creditor agreements, stand-still agreements, modifications to this Agreement, the Note, the Deeds of Trust, and the Regulatory Agreement and/or other documents as may be requested by the Senior Lender(s) to evidence subordination to the Senior Financing or accommodation with requirements of the TCAC Programs, without further authorization from the Authority Board, provided that such agreements contain written provisions that the Authority Executive Director and Authority Attorney find are consistent with the standard requirements imposed by the Senior Financing, the Qualified Tax Credit Investor, and the subordination requirements contained in this Agreement. The Parties acknowledge that the Deeds of Trust and Regulatory Agreement shall only be subordinate to the Senior Financing instruments. With respect to lien priority, the Deeds of Trust shall be recorded upon the Site in a position of (i) not lower than second lien position for the Purchase Money Deed of Trust following Senior Financing, and (ii) not lower than third lien position for the Hard Money Deed of Trust following the Senior Financing and the Purchase Money Deed of Trust.

B. Subordination of Affordability Covenants. It is the intent of the Authority that those affordability restrictions contained in the Regulatory Agreement be preserved to the greatest extent possible while still permitting Developer to secure, maintain and comply with the requirements of Senior Financing in an economically feasible manner. In the event that the Authority finds that economically feasible methods of financing for the construction and operation of the Project without the subordination of the Regulatory Agreement's affordability restrictions are not reasonably available, the Authority shall make such affordability restrictions subordinate to Senior Financing. This determination of "economically feasible methods" shall be made in the reasonable discretion of the Executive Director, and Executive Director shall cooperate reasonably with Developer in making such determination. Any subordination agreement entered by the Authority shall contain written commitments that the Authority finds are reasonably designed to protect the Authority's investment and affordability restrictions in the event of default, including without limitation (i) a right of Authority to cure a default prior to foreclosure, (ii) a right of Authority to negotiate with Senior Financing lenders after notice of default and prior to a foreclosure, and (iii) such other commercially reasonable terms for subordination consistent with Section 603, subsection A.

If the Regulatory Agreement is not subordinated to the Senior Financing pursuant to this Section, Authority agrees that the Regulatory Agreement will include a provision that upon the earlier to occur of recordation of the transfer of title pursuant to a foreclosure sale or a deed in lieu of foreclosure of a Senior Deed of Trust, Authority agrees that (i) all Residential Units reserved for Low Income Households may be leased to Qualified Tenants whose income levels are at or below eighty percent (80%) of AMI, and (ii) all Residential Units reserved for Low Income Households may be leased for a monthly Affordable Rent not to exceed the product of 1/12th of 30% times 80% of the AMI adjusted for family size appropriate for the Unit. In other words, if the Authority does not subordinate the Regulatory Agreement and a foreclosure

ensues, the definition of “Low Income Household” shall mean a household earning no more than eighty percent (80%) of the AMI for purposes of calculating Affordable Rent for Low Income units. For those households with gross incomes that exceed 60% of the AMI adjusted for family size, Affordable Rent shall not to exceed 30% of the gross income of the household.

C. Subordination to Construction Loan. Authority shall only be required to subordinate the Authority Deeds of Trust, the Regulatory Agreement (if applicable pursuant to Section 603.B) and the applicable covenants in the Related Agreements to a Construction Loan provided the following requirements are satisfied:

- a. Developer is not in default under any obligations to the Authority including, but not limited to, the Authority Notes, Deeds of Trust, the Regulatory Agreement and this Agreement.
- b. The senior lien shall be a Construction Loan with the proceeds to be used solely for construction of the Project with no land draw permitted. The Construction Loan Agreement shall mandate a construction disbursement control system providing for periodic disbursements based upon submission of mechanic lien releases and inspection reports confirming the completion of the work. The construction loan budget shall be subject to the reasonable review and approval of Authority, which approval shall not be unreasonably delayed, conditioned or withheld.
- c. Interest rate and other terms shall be commercially reasonable for similar projects in San Bernardino County.
- d. Authority will execute a subordination agreement for recordation as reasonably required by a title company to provide title insurance for the Construction Loan.
- e. A request for special notice and a request for notice of delinquency shall be recorded concurrently with the subordination agreement.
- f. The senior lender agrees to provide Authority with any notice of default which is provided by the senior lender to Developer and provide Authority with the right (but not the obligation) to cure any default and extend the time for such cure provided Authority is diligently processing the cure of such default.
- g. Concurrently with the recordation of the subordination agreement, the Authority’s Title Policies shall be updated as required by Authority at Developer’s cost and expense insuring the Deeds of Trust are junior only to the specified Construction Loan.
- h. Authority shall be provided complete executed copies of the Construction Loan documents.

D. Subordination to Permanent Loan. Authority shall only be required to subordinate the Deeds of Trust, the Regulatory Agreement (if applicable pursuant to Section 603.B) and the applicable covenants in the Related Agreements to a Permanent Loan provided the following requirements are satisfied:

- a. Developer is not in default under any obligations to the Authority including, but not limited to, the Notes, Deeds of Trust, the Regulatory Agreement and this Agreement.

- b. The senior loan amount shall not exceed the greater of (i) current balance of the Construction Loan plus the reasonable costs to be secure such loan, or (ii) eighty percent (80%) of the value of the Project.
- c. The monthly payments under the senior loan shall be amortized over not less than twenty-five (25) years.
- d. Developer shall provide reasonable evidence to Authority that the proceeds from the Project shall be sufficient to pay the payments under the Permanent Loan.
- e. Interest rate and other terms shall be commercially reasonable for similar projects in San Bernardino County.
- f. Authority will execute a subordination agreement for recordation as reasonably required by a title company to provide title insurance for the Permanent Loan.
- g. A request for special notice and a request for notice of delinquency shall be recorded concurrently with the subordination agreement.
- h. Concurrently with the recordation of the subordination agreement, the Authority Title Policies shall be updated as required by Authority at Developer's cost and expense insuring the Deeds of Trust are junior only to the specified Permanent Loan.
- i. Authority shall be provided complete executed copies of the Permanent Loan documents.

NOTE: If the Senior Loan is a Construction Loan with a right to convert to a Permanent Loan which loan terms comply with the foregoing requirements for both the Construction Loan and the Permanent Loan ("**Construction/Permanent Loan**"), Authority's approval and subordination to the Construction/Permanent Loan shall be deemed compliance with these requirements and the conversion will occur automatically without Authority being required to execute a new subordination agreement.

(§700) DEFAULTS, REMEDIES AND TERMINATION

(§701) Defaults, Right to Cure and Waivers.

Subject to any Enforced Delay, failure or delay by either party to timely perform any covenant of this Agreement constitutes a default under this Agreement, but only if the party who so fails or delays does not commence to cure, correct or remedy such failure or delay within thirty (30) days after receipt of a written notice specifying such failure or delay, and does not thereafter prosecute such cure, correction or remedy with diligence to completion.

The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice, unless the default cannot be reasonably cured within such thirty days in which case the defaulting party shall have a reasonable time to effect such cure so long as the defaulting party is diligently acting to do so in as timely a fashion as is reasonable. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

Developer and/or the Qualified Tax Credit Investor shall have the right but not the obligation to cure any default of Developer under this Agreement and Authority agrees to accept any cure tendered by Developer or the Qualified Tax Credit Investor within the cure periods stated in this section.

Except as otherwise provided in this Agreement, waiver by either party of the performance of any covenant, condition or promise, shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by either party of the time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right as to any default shall not operate as a waiver of any default or of any rights or remedies or to deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

(§702) No Waiver.

Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

(§703) Legal Actions.

1. Institution of Legal Actions. In addition to any other rights or remedies, and subject to the requirements of Section 801, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Legal actions must be instituted and maintained in the Superior Court of the County of San Bernardino, State of California, in any other appropriate court in that county, or in the Federal District Court in the Central District of California.

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

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

In the event that any legal action is commenced by Authority against Developer, service of process on Developer shall be made in such manner as may be provided by law and shall be valid whether made within or outside of the State of California.

(§704) Rights and Remedies are Cumulative.

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

(§705) Specific Performance.

In addition to any other remedies permitted by this Agreement, if either party defaults hereunder by failing to perform any of its obligations herein, each party agrees that the other shall be entitled to the judicial remedy of specific performance, and each party agrees (subject to its reserved right to contest whether in fact a default does exist) not to challenge or contest the appropriateness of such remedy. In this regard, Developer specifically acknowledges that Authority is entering into this Agreement for the purpose of assisting in the development of the Site and not for the purpose of enabling Developer to speculate with land.

(§707) Attorneys' Fees.

If either party to this Agreement is required to initiate or defend any action or proceeding in any way arising out of the parties' agreement to, or performance of, this Agreement, or is made a party to any such action or proceeding by the Escrow Agent or other third party, such that the parties hereto are adversarial, the prevailing party, as between the Developer and Authority only, in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees from the other. As used herein, the "prevailing party" shall be the party determined as such by a court of law, pursuant to the definition Code of Civil Procedure Section 1032(a)(4), as it may be subsequently amended. Attorneys' fees shall include attorneys' fees on any appeal, and in addition a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

(§708) Termination After Closing.

A. Termination By Authority. The Authority may terminate this Agreement upon the occurrence of any of the following events:

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

(ii) Developer (or any successor in interest) becoming insolvent or Developer (or any successor in interest) voluntarily making an assignment or transfer for the benefit of creditors other than the Authority, commencement of an involuntary case under applicable federal bankruptcy laws which has not been vacated or discharged within ninety (90) days and/or the voluntary or involuntary appointment of a receiver, custodian, liquidator or trustee of Developer's property and/or the Site with such appointment remaining unstayed for a period of ninety (90) days;

(iii) Developer is in default of this Agreement and fails to cure such default within the time set forth in Section 701.

If, after the occurrence of any of the above-entitled events, the Authority elects, in its sole discretion, to terminate this Agreement, then all rights of Developer and any person or entity claiming by or through Developer arising under this Agreement or with regard to the Site as may arise under this Agreement shall immediately cease and be terminated, except that any obligations of the Developer hereunder to indemnify or reimburse the Authority shall continue in full force and effect and the Authority shall have all of the remedies to enforce a breach or a Default of this Agreement as may be provided hereunder and under the law.

B. Termination by Developer. In the event that the Developer is not in default under this Agreement, Developer may terminate this Agreement upon the occurrence of any of the following:

(i) Authority is in Default of any material provision of this Agreement and fails to cure such default within the time set forth in Section 701; or

(ii) Authority fails to fund the Authority Loan (or what remains as outstanding payable to Developer) at the time and in the amounts required by this Agreement; or

(iii) Developer is unable to secure LIHTC Tax Credits or other funding sources identified in the Project in the Project Budget/Proforma within the timeframes set forth in Article 300 of this Agreement.

If, after the occurrence of any of the above-entitled events, the Developer elects, in its sole discretion, to terminate this Agreement, then all rights of Authority arising under this Agreement shall immediately cease and be terminated, except that any obligations of the Authority hereunder to indemnify or reimburse the Developer shall continue in full force and effect and the Developer shall have all of the remedies to enforce a breach or a Default of this Agreement as may be provided hereunder and under the law.

C. Limitations Imposed by Senior Financing. Notwithstanding anything to the contrary contained in this Agreement or in the Related Agreements, the rights of the parties to declare defaults hereunder and exercise their respective rights and remedies described herein or in the Related Agreements shall be subject in all cases to the conditions and limitations imposed thereon by the Senior Financing. In the event of any conflict between the rights and remedies of the parties provided under this Agreement or the Related Agreements and the limitations on such rights and remedies under any subordination or intercreditor agreement entered into in connection with the Senior Financing documents, the limitations of the Senior Financing shall be deemed controlling.

(§800) GENERAL PROVISIONS

(§801) Notices, Demands and Communications Between the Parties.

Except as expressly provided to the contrary herein, any notice, consent, report, demand, document or other such item to be given, delivered, furnished or received hereunder shall be

deemed given, delivered, furnished, and received when given in writing and personally delivered to an authorized agent of the applicable party, or upon delivery by the United States Postal Service, first-class registered or certified mail, postage prepaid, return receipt requested, or by a national "overnight courier" such as Federal Express, at the time of delivery shown upon such receipt; or by facsimile, if such facsimile is followed by a notice sent out the same day by mail; in any case, delivered to the address, addresses and persons as each party may from time to time by written notice designate to the other and who initially are:

Authority: Rialto Housing Authority
150 Palm Avenue
Rialto, CA 92376
Attn: Authority Executive Director

Copy to: Aleshire & Wynder, LLP
18881 Von Karman Avenue, Suite 1700
Irvine, CA 92612
Attn: Fred Galante, Authority Attorney

Developer: Rialto Metrolink South Housing Partners, L.P.
18201 Von Karman Ave. Suite 900,
Irvine, CA 92612
Attn: Frank Cardone

Copy to: National Community Renaissance
9421 Haven Avenue
Rancho Cucamonga, CA 91730
Attn: Chief Financial Officer

Copy to: LaBarge Industries
LaBarge Industries, Inc.
3105 East Guasti Road, Suite 100
Ontario, California 91761

Copy to: HPI Rialto, LLC
c/o Housing Partners I, Incorporation
715 East Brier Drive
San Bernardino, CA 92408
Attn: Anthony Perez

Copy to: Bocarsly Emden Cowan Esmail & Arndt LLP
633 W. 5th Street, 64th Floor
Los Angeles, CA 90071
Attn: Lance Bocarsly

Copy to: Gresham Savage LLP
550 E. Hospitality Lane, Suite 300
San Bernardino, CA 92408
Attn: Robert R. Ritter

Copy to: Qualified Tax Credit Investor at address to be supplied thereby.

(§802) Nonliability of Authority/City and Authority/City Officials and Employees; Conflicts of Interest; Commissions.

1. **Personal Liability.** No member, official, employee, agent or contractor of Authority or City shall be personally liable to Developer in the event of any default or breach by Authority or City for any amount which may become due to Developer or on any obligations under the terms of the Agreement; provided, it is understood that nothing in this Section 902 is intended to limit Authority/City's liability.

2. **Financial Interest.** No member, official, employee or agent of Authority or City shall have any financial interest, direct or indirect, in this Agreement, nor participate in any decision relating to this Agreement which is prohibited by law.

3. **Commissions.** Neither the Authority, City nor the Developer has retained any broker or finder or has paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement. No party shall be liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Agreement, and each party agrees to hold the other harmless from any claim by any broker, agent, or finder retained by such party.

4. **Nonliability of Partners of Developer.** Other than as required by the Guaranty, no partner of Developer, or member, shareholder, partner, officer, director, employee, agent, or attorney of any partner of Developer shall be personally liable to Authority or City in the event of any default or breach by Authority or for any amount which may become due to Authority/City or on any obligations under the terms of the Agreement.

(§803) Enforced Delay: Extension of Times of Performance.

Time is of the essence in the performance of this Agreement. Notwithstanding the foregoing, in addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots, systemic failure of the financial markets, floods; earthquakes; fires; casualties; supernatural causes; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; subsurface conditions on the Site and unknown soils conditions; governmental restrictions or priority litigation; unusually severe weather; acts of the other party; acts or the failure to act of a public or governmental agency or entity (except that acts or the failure to act of Authority shall not excuse performance by Authority unless the act or failure is caused by the acts or omissions of Developer); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. In the event of such a delay (herein "**Enforced Delay**"), the party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the Enforced Delay, and shall commence to run from the time of the commencement of the cause, provided notice by the party claiming such extension is sent to the other party within ten (10) days of the commencement of the cause.

The following shall not be considered as events or causes beyond the control of Developer, and shall not entitle Developer to an extension of time to perform: (i) Developer's failure to obtain financing for the Project (except as provided in Section 401), (ii) Developer's failure to negotiate agreements with prospective Qualified Tenants or management for the Project, or (iii) changes in economic conditions.

Times of performance under this Agreement may also be extended by mutual written agreement by Authority and Developer. The Authority Executive Director shall have the power on behalf of Authority to approve extensions of time not to exceed a cumulative total of one hundred eighty (180) days with respect to the development of the Site.

(§804) Books and Records.

1. **Developer to Keep Records.** Developer shall prepare and maintain all books, records and reports necessary to substantiate Developer's compliance with the terms of this Agreement or reasonably required by the Authority.

2. **Right to Inspect.** Either party shall have the right, upon not less than seventy-two (72) hours' notice, at all reasonable times, to inspect the books and records of the other party pertaining to the Site as pertinent to the purposes of this Agreement.

3. **Ownership of Documents.** Copies of all drawings, specifications, reports, records, documents and other materials prepared by Developer, its employees, agents and subcontractors, in the performance of this Agreement, which documents are in the possession of Developer and are not confidential shall be delivered to Authority upon request in the event of a termination of this Agreement, however, Developer shall be entitled to reimbursement from Authority for the cost to prepare any drawings, specifications, reports, records, documents and other materials prepared by Developer's subcontractors as a result of the exercise by Authority of its rights hereunder. Any drawings, specifications, reports, records, documents and other materials prepared by Developer's subcontractors shall be delivered without representation or warranty by Developer. The Authority shall have an unrestricted right to use such documents and materials as if it were in all respects the owner of the same. Developer makes no warranty or representation regarding the accuracy or sufficiency of such documents for any future use by Authority, and Developer shall have no liability therefor.

The foregoing requirements shall not apply to, and Authority shall have the right to retain and use (without payment of any additional sums to Developer), all items that have been assigned to the Authority under the Assignment of Work Product in accordance with the terms thereof.

(§805) Assurances to Act in Good Faith.

Authority and Developer agree to execute all documents and instruments and to take all action, including making a deposit of funds in addition to such funds as may be specifically provided for herein, and as may be required in order to consummate conveyance and development of the Site as herein contemplated, and shall use their best efforts, to accomplish the closing and subsequent development of the Site in accordance with the provisions hereof.

Authority and Developer shall each diligently and in good faith pursue the satisfaction of any conditions or contingencies subject to their approval.

(§806) Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement. This Agreement includes all exhibits attached hereto.

(§807) Entire Agreement, Waivers and Amendments.

This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and this Agreement supersedes all negotiations and previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement, unless specified otherwise herein, must be in writing and signed by the appropriate authorities of Authority or Developer, as applicable, and all amendments hereto must be in writing and signed by the appropriate authorities of Authority and Developer.

(§808) Severability.

In the event any term, covenant, condition, provision or agreement contained herein is held to be invalid, void or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the validity or enforceability of any term, covenant, condition, provision or agreement contained herein.

(§809) Time for Acceptance of Agreement by Authority.

This Agreement, when executed by Developer and delivered to Authority, must be authorized, executed and delivered by Authority, after consideration at a public hearing. After execution by Developer, this Agreement shall be considered an irrevocable offer until such time as Authority is authorized to execute and deliver the Agreement.

(§810) Execution.

1. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

2. Authority represents and warrants that: (i) it is a general law Authority duly organized and existing under the laws of the State of California; (ii) by proper action of Authority, Authority has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and (iii) the entering into this Agreement by Authority does not violate any provision of any other agreement to which Authority is a party.

3. Developer represents and warrants that: (i) it is duly organized and existing under the laws of the State of California; (ii) by proper action of Developer, Developer has been duly authorized to execute and deliver this Agreement, acting by and through its duly

authorized officers; and (iii) the entering into this Agreement by Developer does not violate any provision of any other agreement to which Developer is a party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of execution by the Authority.

AUTHORITY

Dated: 6/28, 2016

RIALTO HOUSING AUTHORITY,
a California public body, corporate and politic

ATTEST:

Barbara R. McFarlane
Authority Clerk

By: [Signature], Authority Chair

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By: [Signature]
Fred Galante, Authority Attorney

Signatures Continue Next Page

DEVELOPER

**RIALTO METROLINK SOUTH HOUSING PARTNERS
L.P., a California Limited Partnership,**

**By: RELATED/RIALTO METROLINK SOUTH
DEVELOPMENT CO., LLC,
a California limited liability company
Administrative General Partner**

By: Frank Cardone
Frank Cardone, President

**By: CORE RIALTO METRO SOUTH MGP, LLC,
a California limited liability company,
Managing General Partner**

**By: National Community Renaissance of California,
a California nonprofit public benefit corporation, its
sole member and manager**

By: William Owen
Executive VP

**By: HPI RIALTO, LLC,
a California limited liability company,
Co-General Partner**

**By: HOUSING PARTNERS I, INC.,
a California nonprofit public benefit corporation,
Sole Member**

By: _____

**By: LABARGE INDUSTRIES, INC.,
a California corporation
Co-General Partner**

By: Joshua LaBarge
Joshua LaBarge, President

[End of Signatures]

DEVELOPER

**RIALTO METROLINK SOUTH HOUSING PARTNERS
L.P., a California Limited Partnership,**

**By: RELATED/RIALTO METROLINK SOUTH
DEVELOPMENT CO., LLC,
a California limited liability company
Administrative General Partner**

By: _____
Frank Cardone, President

**By: CORE RIALTO METRO SOUTH MGP, LLC,
a California limited liability company,
Managing General Partner**

**By: National Community Renaissance of California,
a California nonprofit public benefit corporation, its
sole member and manager**

By: _____

**By: HPI RIALTO, LLC,
a California limited liability company,
Co-General Partner**

**By: HOUSING PARTNERS I, INC.,
a California nonprofit public benefit corporation,
Sole Member**

By: Mania RAB
Secretary / Treasurer

**By: LABARGE INDUSTRIES, INC.,
a California corporation
Co-General Partner**

By: _____
Joshua LaBarge, President

[End of Signatures]

EXHIBIT A
Legal Description of Site

EXHIBIT "A"

SITE DESCRIPTION OF CURRENT USE OF SUBJECT PROPERTY

The Project site is approximately 2.566 acres of vacant land in the City of Rialto. The current address is has not been assigned an address. The address will only be assigned upon approval upon an award by TCAC for credits.

The AP#'s for the 2 parcels are referred to as Parcel 2 and Parcel 3. The respective Assessor Parcel Numbers are:

- (2) APN: 0131-021-40-0-000
- (3) APN: 0131-021-33-0-000

These parcels have been joined per Tentative Parcel Map No. 19674, which was approved by the City of Rialto on June 8, 2106.

The current status of the site is vacant land.

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF RIALTO, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

TENTATIVE MAP NO. T/F IS A SUBDIVISION OF THE LAND DESCRIBED AS FOLLOWS:

PARCELS 2 AND 3 OF PARCEL MAP NO. 8173, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN [BOOK 88 OF PARCEL MAPS, PAGES 67 AND 68](#), RECORDS OF SAID COUNTY.

EXCEPT THEREFROM ALL MINERALS CONTAINED IN THE ABOVE DESCRIBED LAND, INCLUDING, WITHOUT LIMITING THE GENERALITY THEREOF, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS WELL AS METALLIC OR OTHER SOLID MINERALS, PROVIDED THAT SANTA FE SHALL NOT HAVE THE RIGHT TO GO UPON OR USE THE SURFACE OF SAID LAND, OR ANY PART THEREOF, FOR THE PURPOSE OF DRILLING FOR, MINING, OR OTHERWISE REMOVING, ANY OF SAID MINERALS, SANTA FE MAY, HOWEVER, AND HEREBY RESERVES THE RIGHT TO, REMOVE ANY OF SAID MINERALS FROM SAID LAND BY MEANS OF WELLS, SHAFTS, TUNNELS, OR OTHER MEANS OF ACCESS TO SAID MINERALS WHICH MAY BE CONSTRUCTED, DRILLED OR DUG FROM OTHER LAND, PROVIDED THAT THE EXERCISE OF SUCH RIGHTS BY SANTA FE SHALL IN NO WAY INTERFERE WITH OR IMPAIR THE USE OF THE SURFACE OF THE LAND HEREBY CONVEYED OR OF ANY IMPROVEMENTS THEREON, AS RESERVED AND EXCEPTED IN THE DEED FROM THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, A CORPORATION RECORDED [MAY 10, 1982 AS INSTRUMENT NO. 82-090875 OFFICIAL RECORDS](#).

APN: 0131-021-33-0-000 (PARCEL 3); 0131-021-40-0-000 (PARCEL 2)

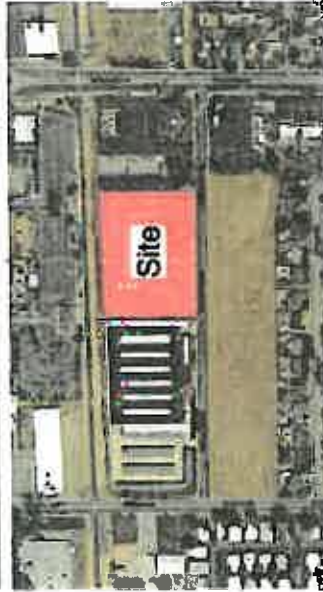
EXHIBIT B
Scope of Development

Rialto Metrolink South



Architect: Smith, Hinchman & Grylls Associates, Inc.

Aerial View



Unit Areas

Unit	Area	Volume
1	10,000	10,000
2	10,000	10,000
3	10,000	10,000
4	10,000	10,000
5	10,000	10,000
6	10,000	10,000
7	10,000	10,000
8	10,000	10,000
9	10,000	10,000
10	10,000	10,000

Building Areas

Area	Area	Volume
1	10,000	10,000
2	10,000	10,000
3	10,000	10,000
4	10,000	10,000
5	10,000	10,000
6	10,000	10,000
7	10,000	10,000
8	10,000	10,000
9	10,000	10,000
10	10,000	10,000

Weekly Map



Project Team

Role	Name
Owner	Metrolink
Architect	Smith, Hinchman & Grylls Associates, Inc.
Engineer	Wentz & Associates, Inc.
Interior Designer	Wentz & Associates, Inc.
Construction Manager	Wentz & Associates, Inc.
General Contractor	Wentz & Associates, Inc.

Project Data

Item	Description	Quantity
1	Station Building	10,000
2	Platform	10,000
3	Track	10,000
4	Signal	10,000
5	Lighting	10,000
6	Security	10,000
7	Accessibility	10,000
8	Signage	10,000
9	Artwork	10,000
10	Landscaping	10,000

Project Notes

Item	Description
1	Station Building
2	Platform
3	Track
4	Signal
5	Lighting
6	Security
7	Accessibility
8	Signage
9	Artwork
10	Landscaping

4/16/10
JG



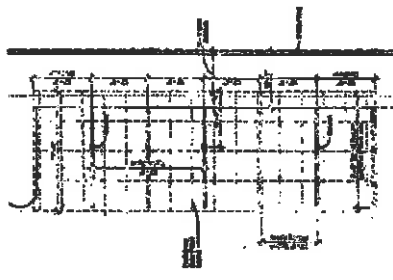
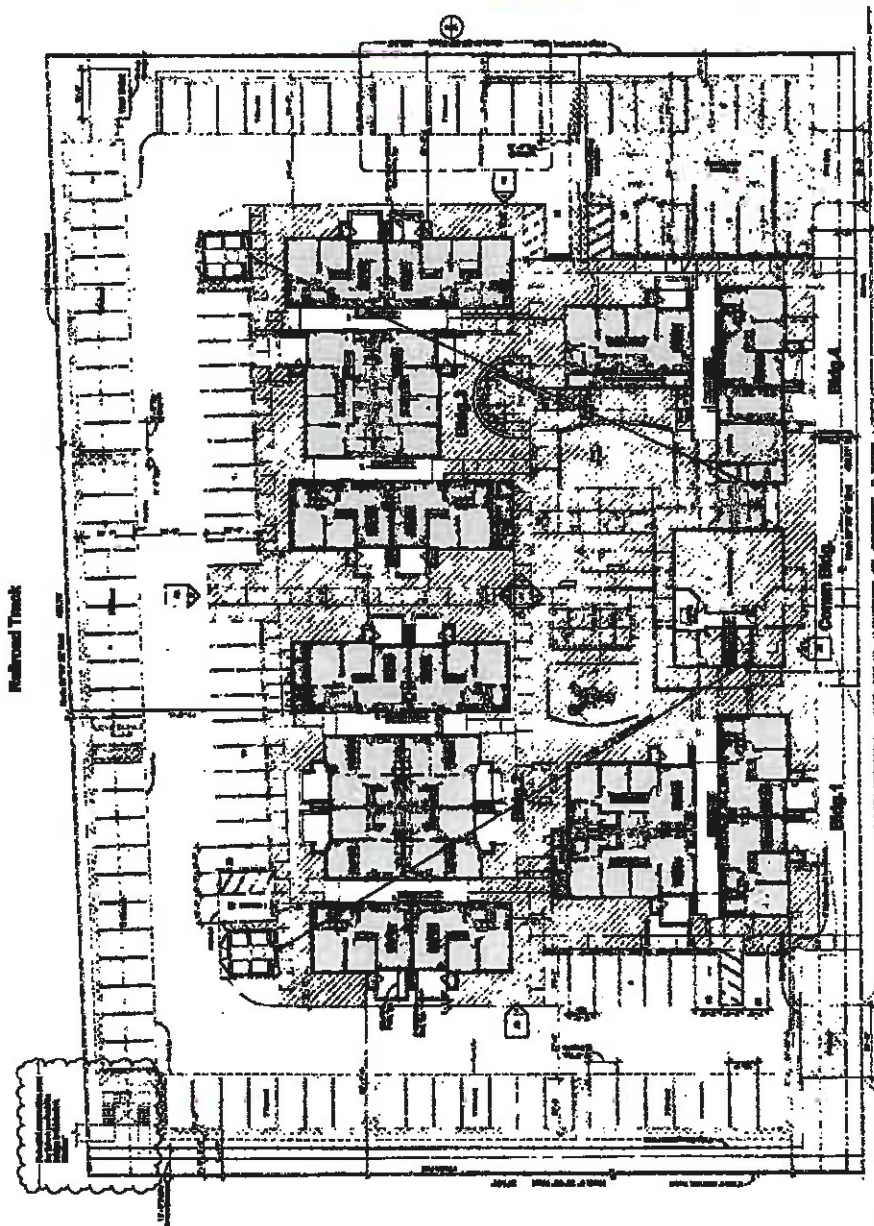
U.S. Green Building
Certification
Leadership in Energy
and Environmental
Design

Rialto Metrolink South
W. Bonnie View Drive, Rialto, CA 92576

Cover Sheet

A0

04.03.2010



Inset - Regional Context Map



Before/After Photographs

1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF RALIS PLANNING DEPARTMENT'S STANDARDS AND SPECIFICATIONS FOR DEVELOPMENT.

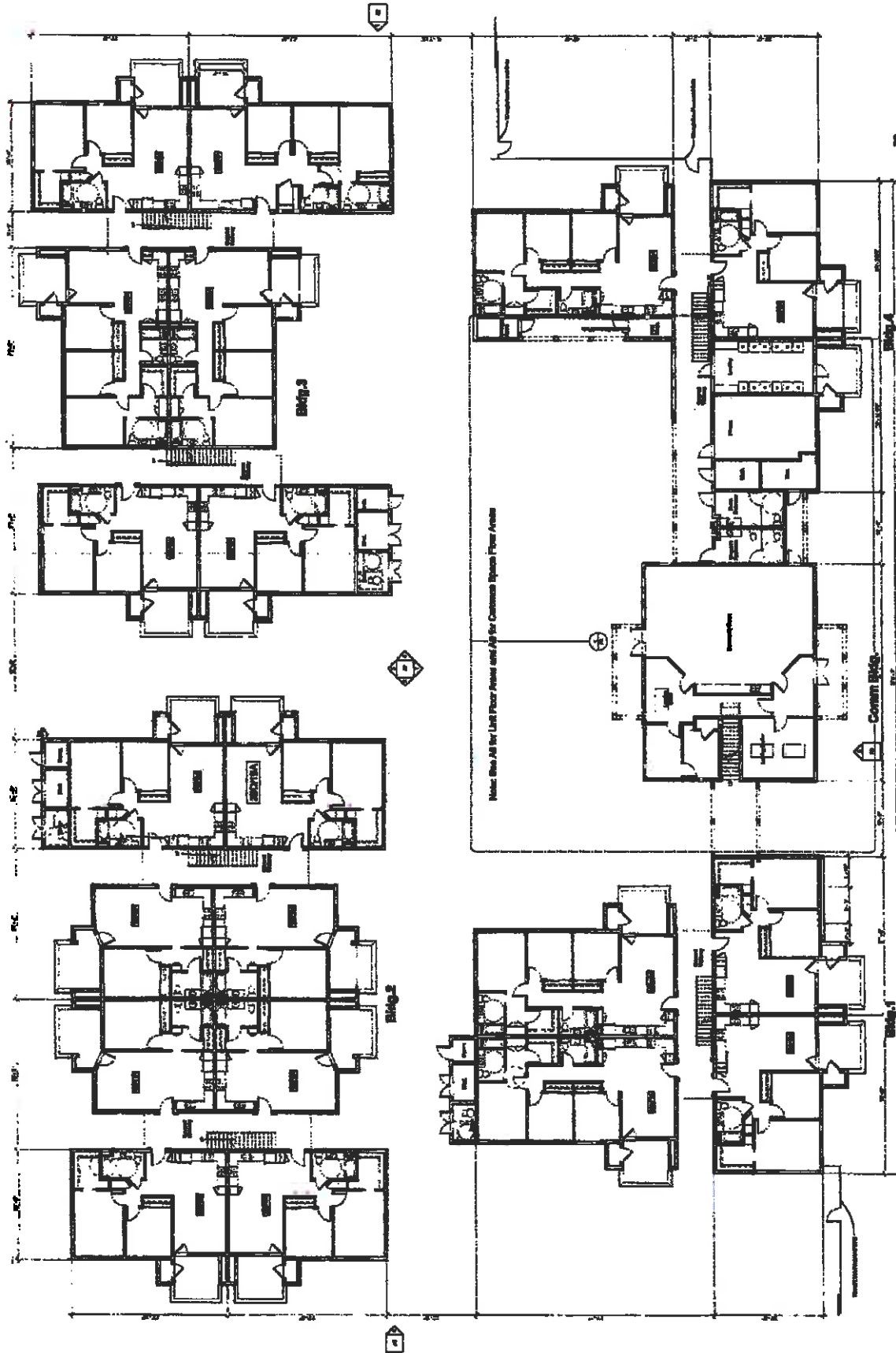


City of Ralis
 Planning Department



Rialto Metrolink South
 W. Bonanza View Drive, Rialto, CA 92376

Site Plan



Level 1



W. Bortolone & Son
Architects
San Francisco, CA

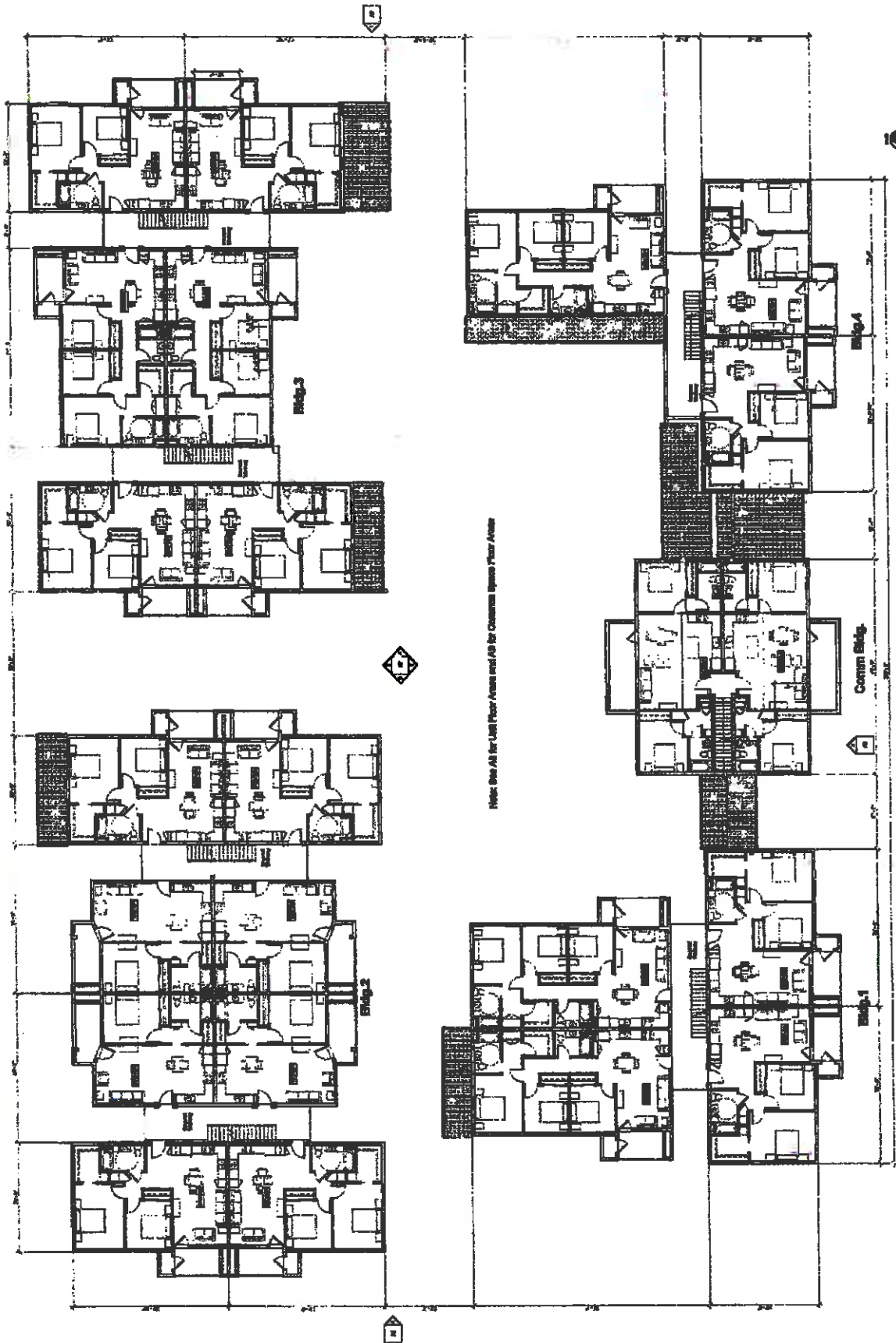


Risko MetroLink South
W. Bortolone & Son, Architects, San Francisco, CA 94103

Level 1 Floor Plan

A2

01/15/99



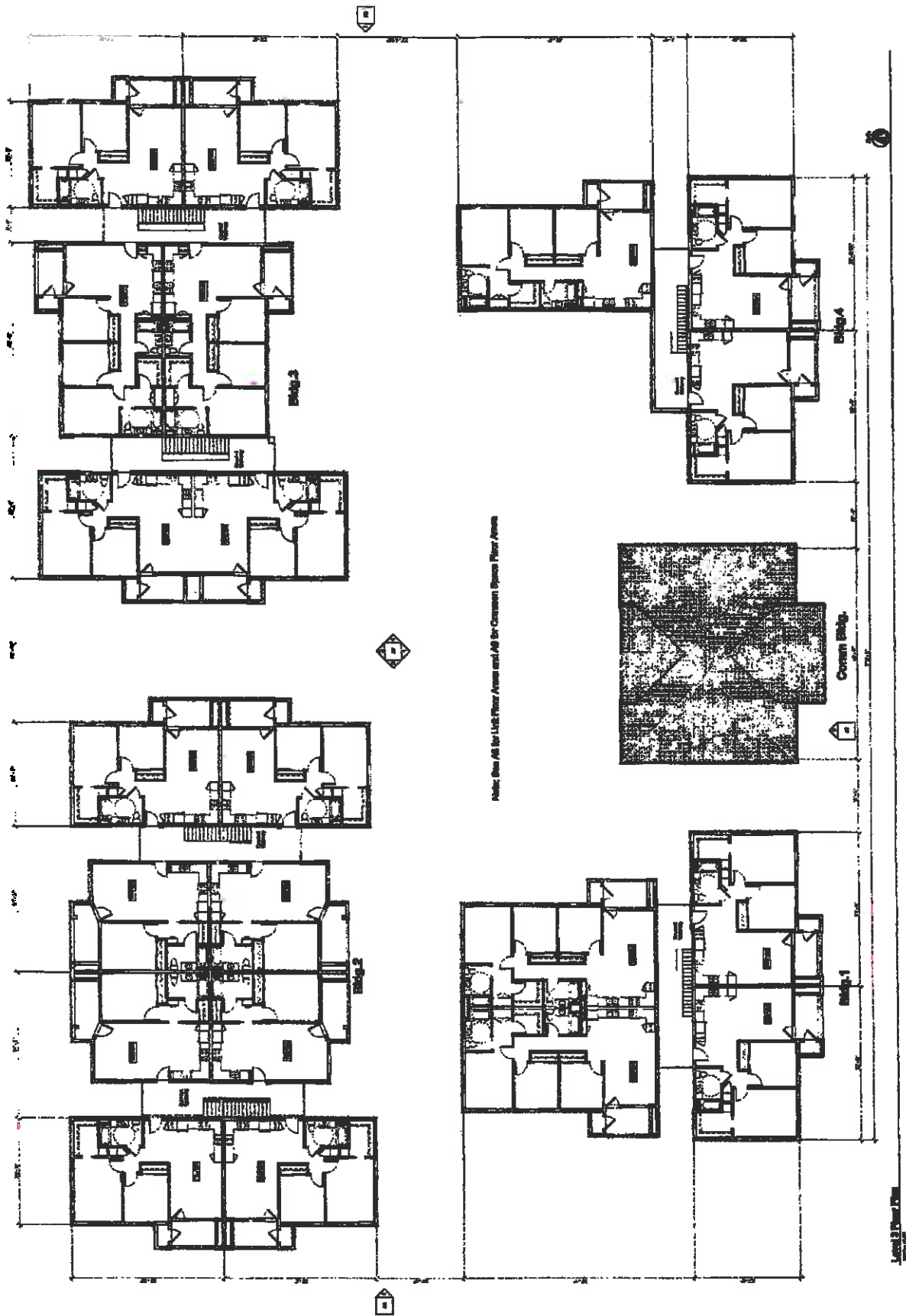
1000 S. Main
 Los Angeles, CA 90015
 Tel: (213) 621-1000
 Fax: (213) 621-1001



Rialto MetroLink South
 W. Bonnie View Drive, Rialto, CA 92576

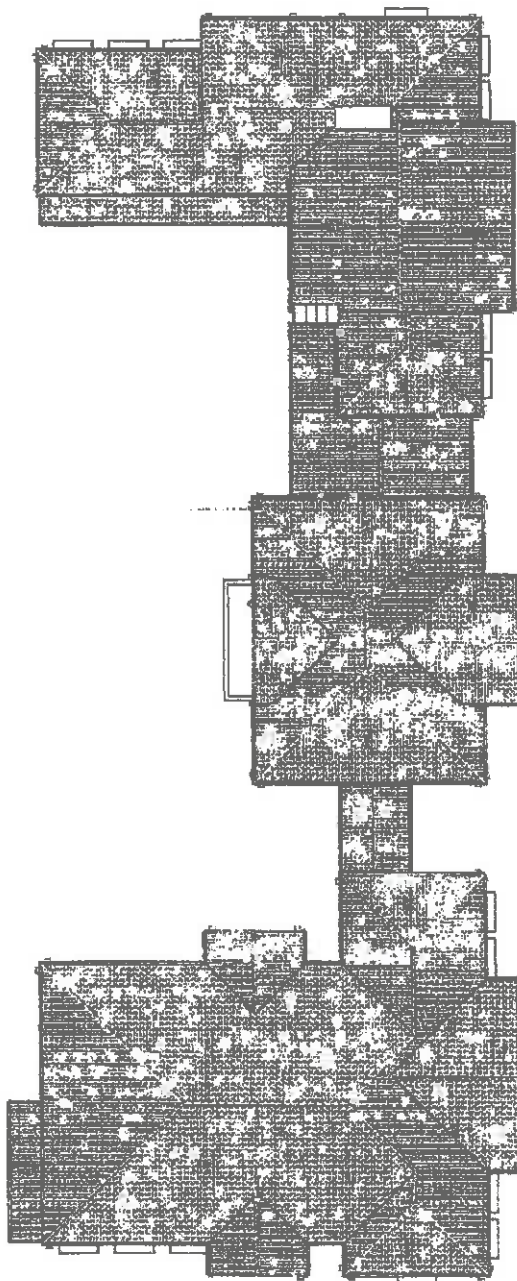
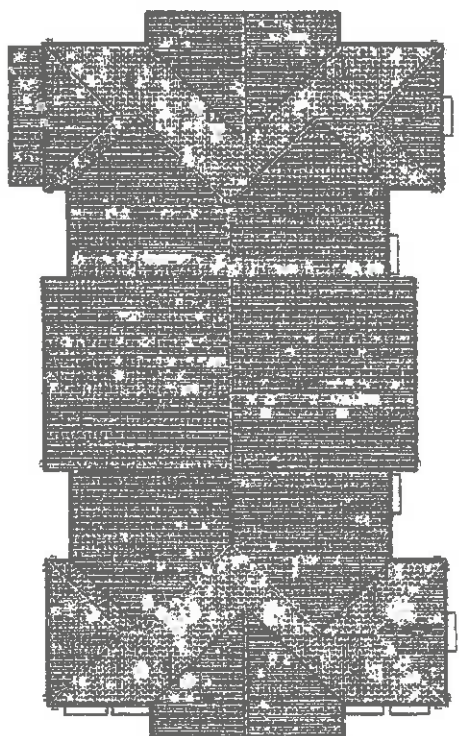
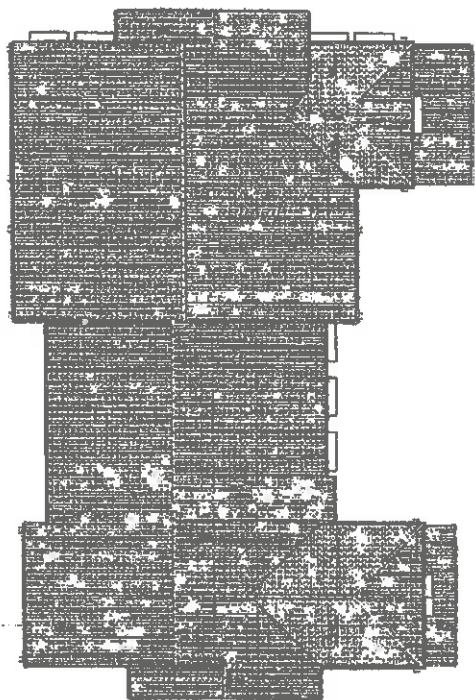
Level 2 Floor Plan

A3



U.S. Department of Transportation
 Federal Transit Administration
 California High-Speed Rail Authority



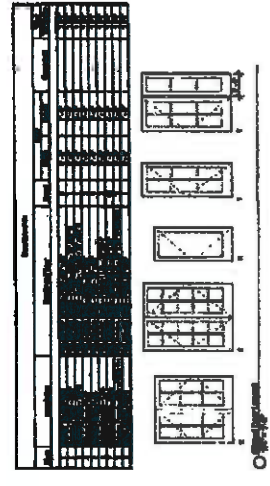
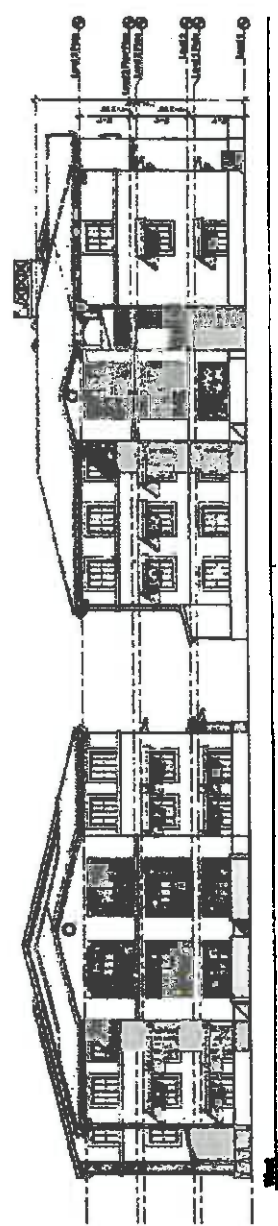
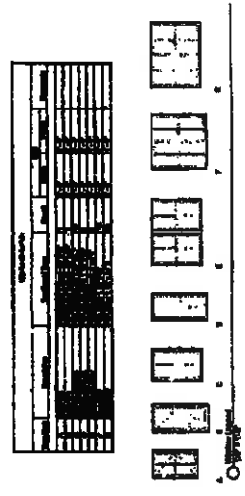
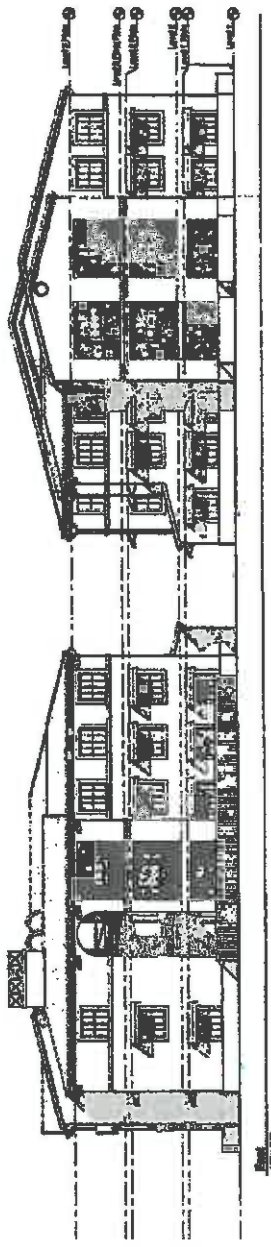
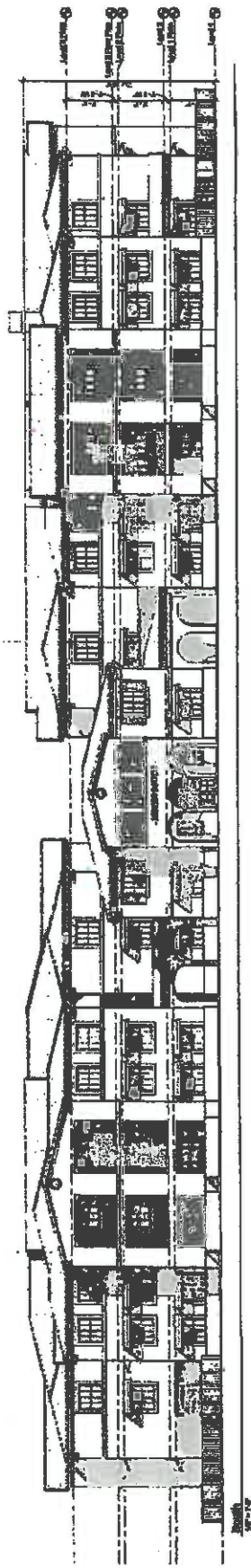
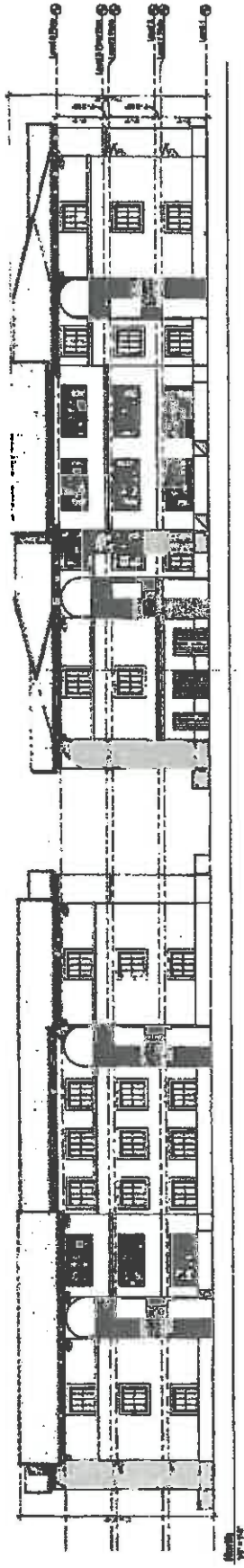


陳永發、陳冠中小說與香港文學研究

Relatio Metrolink South
W. Monte View Drive, Pomona, CA 92558

Roof Plan

A5

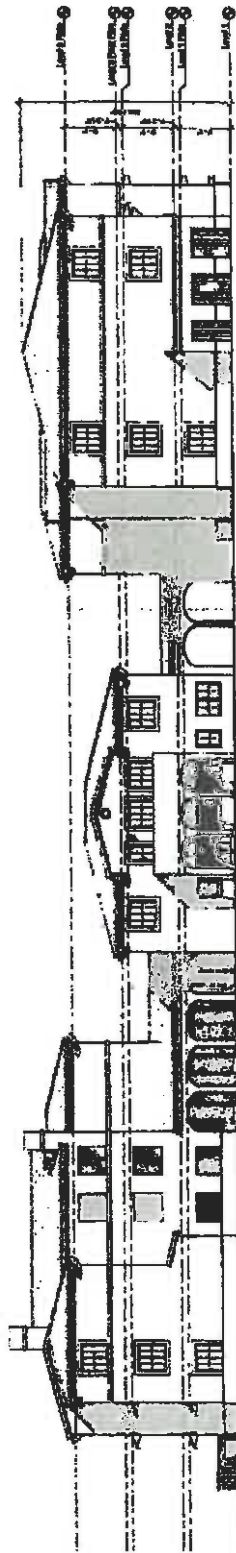


1000 West 10th Street
 Los Angeles, CA 90015
 (213) 462-1000

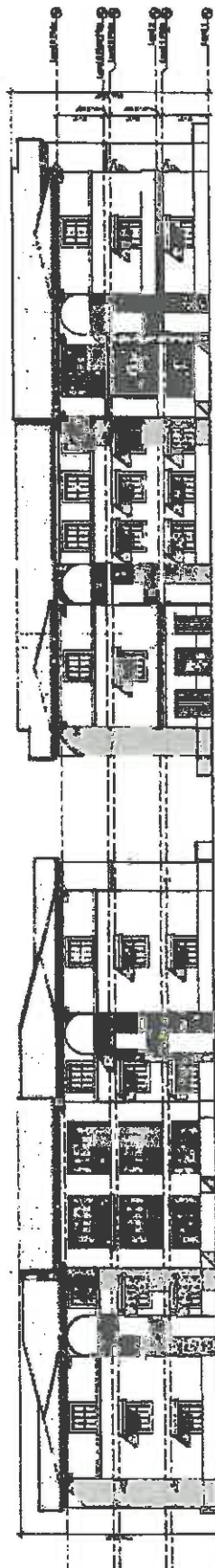


Rialto Metrolink South
 W. Bonnie View Drive, Rialto, CA 92576

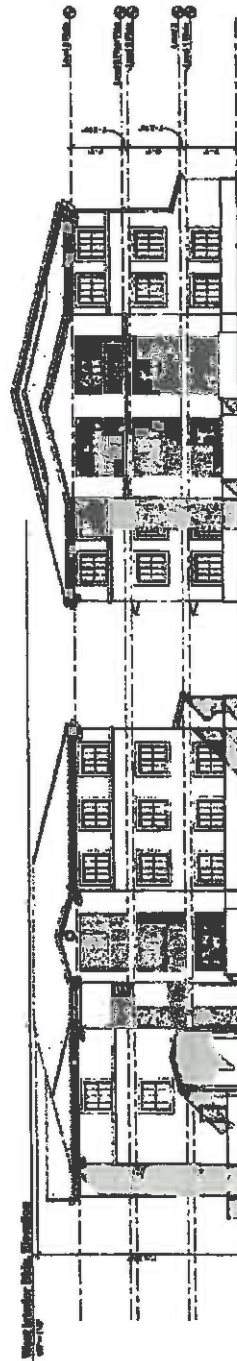
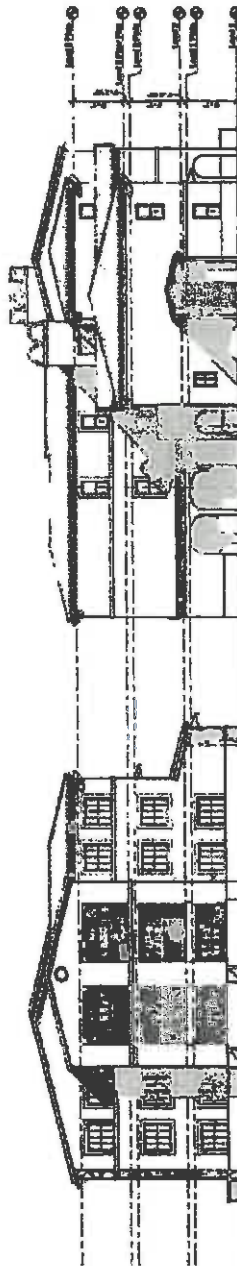
Bldg. Elevations



North Station Bldg. Elevation
09-10



South Station Bldg. Elevation
09-11



South Station Bldg. Elevation
09-12



UNIVERSITY OF MARYLAND
SYSTEM

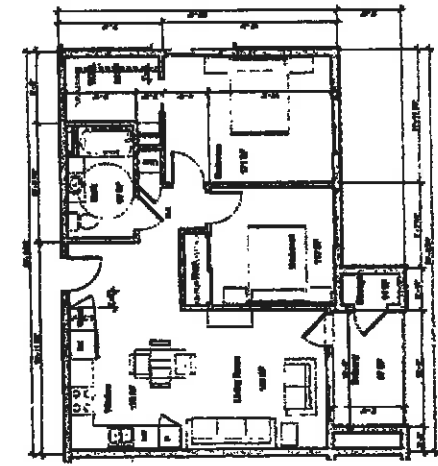


Rialto Metrolink South
W. Bernal View Drive, Rialto, CA 92376

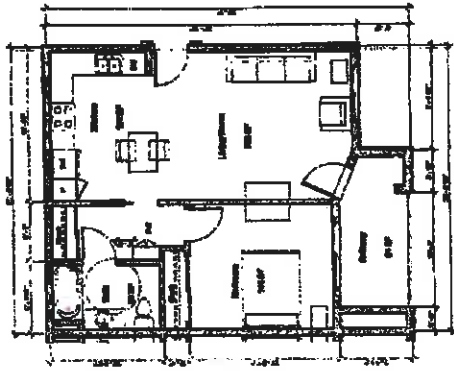
Bldg. Elevation

A7

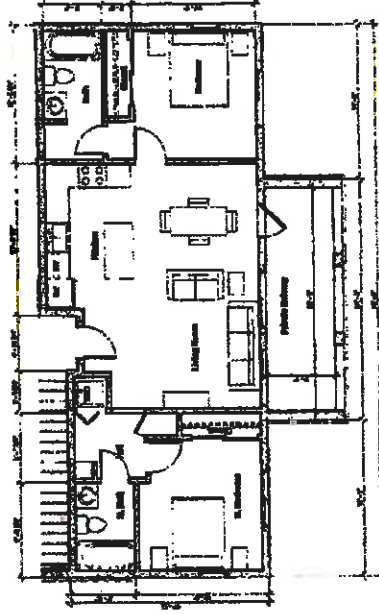
08.03.2010



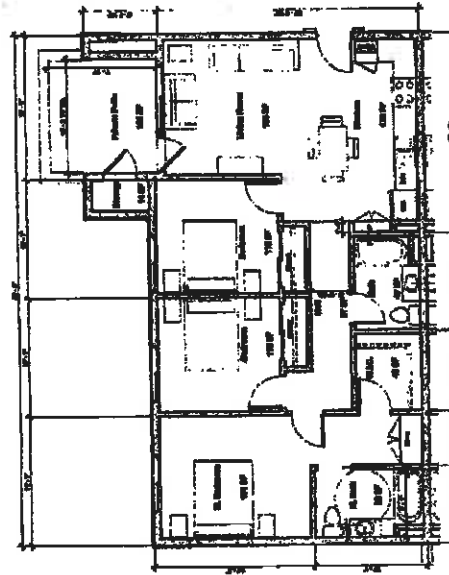
Unit 100 (1000 sq. ft.)



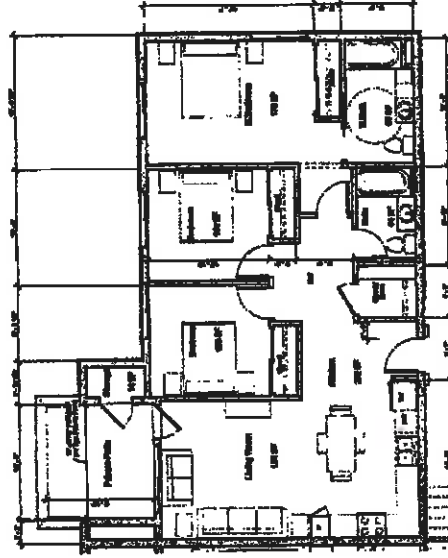
Unit 101 (1000 sq. ft.)



Unit 102 (1000 sq. ft.)



Unit 103 (1000 sq. ft.)



Unit 104 (1000 sq. ft.)



Rialto Metrolink South
1000 West Main Street
Rialto, CA 92376



Rialto Metrolink South
1000 West Main Street
Rialto, CA 92376

Typical Unit Plans



**Roofing: Eagle 'Capistrano'
El Morado Blend**

Stucco:
**Main Color: La Habra Stucco
X-53 Pure Ivory**



Stucco:
**Base Color: La Habra
Stucco X-72 Adobe**



Awning: Sunbrella 'Ivy'



**Trellis: Alumawood
Shade Structure,
Brown Finish**



Stucco:
**Banding Color: Omega
415, Onionskin Tan**



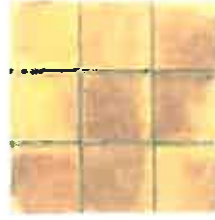
**Light Fixture: Handelman
Studios Builder's Line
Emerson, Brown Rust**



**Windows: Milgard Montecito
Series with Tan Finish**



**Doors: Fiberglass with
Wood Tones**



**Ceramic Tile Accents
Selected Locations:
Terracotta**



**Railing: Flat Steel,
Black Finish**

Metrolink South Multi-Family
Rialto, California
Exterior Colors & Materials



**10 E. Figueroa Street, Suite 1
Santa Barbara, CA 93101
Phone 805 963 8283**

1

June 06, 2016



ESTABLISHED 1917	NEW BRANCHES
Our history is written in the lives of our members.	



EXHIBIT C
Project Budget/Proforma

PROJECT SUMMARY

RIALTO METROLINK SOUTH SITE
Development Proforma 2011 V1.2 - ILP
Related Companies of California
Printed on 6/3/16 at 5:38 PM

Project Data

Project Type	Family
County	San Bernardino
Total Units	64
Parking Spaces	64
Land Area	2.60 Acres
Net Residential Area	56,332 SF
Construction Months	12 Months

Operating Economic Assumptions

Residential Vacancy Rate	5.0%
Retail Vacancy Rate	10.0%
Income Inflation	2.5%
Expense Inflation	3.5%
Property Tax Inflation	2.0%
Replacement Reserve Inflation	0.0%
CPI	3.0%

Stabilized Cash Flow

	Year 1
Gross Scheduled Rent	\$433,008
Laundry Income	3,840
Other Income	0
Vacancy & Collection	@ 5.00% (21,842)
PBSB Overhang, gross	90,960
Vacancy - PBSB	@ 5.00% (4,548)
Effective Gross Income	501,418
Operating Expenses	(384,699)
Net Operating Income	116,719
Debt Service (includes PBSB Loan)	\$ (96,822)
Cash Flow	\$ 20,897
DCR	1.22 %
Minimum Required DCR	1.30 %

Basis Calculations

Total Eligible Basis	\$18,435,612
Adjusted Threshold Basis Limit	\$17,378,933
Total Eligible Basis as a % of Threshold Basis Limit	106.08%

Permanent Sources	Amount	Debt Service
Tax Credit Equity	14,302,513	n/a
Permanent Financing	\$415,000	\$29,858
Residual Receipt Loan	5,500,000	n/a
Project Based Section 8 Loan	919,639	66,164
Land Donation	1,738,800	n/a
Total	\$22,875,154	\$96,022

Sources and Uses

Total Permanent Sources	\$22,875,154
Total Development Cost	22,875,154
Over/(Under)	\$0

UNIT DISTRIBUTION

RIALTO METROLINK SOUTH SITE
 Development Programs 2011 V1.2 - ILP
 Related Companies of California
 Printed on 6/3/16 at 3:38 PM

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Number Of Units	Income Category	SF	Gross Rent	Utility Allowance	Net Rent	Net Rent Per Sq Ft	Monthly Rent	Annual Rent	Unit %	Total Square Footage			
Studio													
0	30% TC	0	\$0	\$0	0	n/a	\$0	\$0	0%	0			
0	35% TC	0	\$0	\$0	0	n/a	\$0	\$0	0%	0			
0	40% TC	0	\$0	\$0	0	n/a	\$0	\$0	0%	0			
0	45% TC	0	\$0	\$0	0	n/a	\$0	\$0	0%	0			
0	50% TC	0	\$0	\$0	0	n/a	\$0	\$0	0%	0			
0	60% TC	0	\$0	\$0	0	n/a	\$0	\$0	0%	0			
0	Market	0	\$0	\$0	0	n/a	\$0	\$0	0%	0			
0	Manager	0	\$0	\$0	0	n/a	\$0	\$0	0%	0			
0													
1 Bedroom													
4	30% TC	684	\$360	\$37	\$303	\$0.44	\$1,212	\$14,544	6%	2,736			
0	35% TC	684	\$0	\$37	0	n/a	\$0	\$0	0%	0			
2	40% TC	684	\$480	\$37	\$423	\$0.62	\$946	\$10,152	3%	1,368			
0	45% TC	684	\$0	\$37	0	n/a	\$0	\$0	0%	0			
4	50% TC	684	\$600	\$37	\$543	\$0.79	\$3,238	\$39,096	9%	4,104			
0	60% TC	684	\$0	\$37	0	n/a	\$0	\$0	0%	0			
0	Market	684	\$0	\$0	0	n/a	\$0	\$0	0%	0			
0	Manager	684	\$0	\$0	0	n/a	\$0	\$0	0%	0			
12													
2 Bedrooms													
11	30% TC	835	\$432	\$89	\$343	\$0.40	\$3,773	\$45,276	17%	9,405			
0	35% TC	835	\$0	\$89	0	n/a	\$0	\$0	0%	0			
3	40% TC	835	\$576	\$89	\$487	\$0.57	\$2,435	\$29,220	8%	4,275			
0	45% TC	835	\$0	\$89	0	n/a	\$0	\$0	0%	0			
12	50% TC	835	\$720	\$89	\$631	\$0.74	\$7,572	\$90,864	19%	10,260			
7	60% TC	835	\$864	\$89	\$775	\$0.91	\$3,425	\$65,100	11%	5,985			
0	Market	835	\$0	\$0	0	n/a	\$0	\$0	0%	0			
1	Manager	835	\$0	\$0	0	n/a	\$0	\$0	2%	835			
36													
3 Bedrooms													
5	30% TC	1,084	\$498	\$108	\$390	\$0.36	\$1,950	\$23,400	8%	5,420			
0	35% TC	1,084	\$0	\$108	0	n/a	\$0	\$0	0%	0			
0	40% TC	1,084	\$665	\$108	\$557	\$0.51	\$0	\$0	0%	0			
0	45% TC	1,084	\$0	\$108	0	n/a	\$0	\$0	0%	0			
1	50% TC	1,084	\$831	\$108	\$723	\$0.67	\$723	\$8,676	2%	1,084			
10	60% TC	1,084	\$997	\$108	\$889	\$0.82	\$8,900	\$106,680	16%	10,840			
0	Market	1,084	\$0	\$0	0	n/a	\$0	\$0	0%	0			
0	Manager	1,084	\$0	\$0	0	n/a	\$0	\$0	0%	0			
16													
4 Bedrooms													
0	30% TC	0	\$0	\$0	0	n/a	\$0	\$0	0%	0			
0	35% TC	0	\$0	\$0	0	n/a	\$0	\$0	0%	0			
0	40% TC	0	\$0	\$0	0	n/a	\$0	\$0	0%	0			
0	45% TC	0	\$0	\$0	0	n/a	\$0	\$0	0%	0			
0	50% TC	0	\$0	\$0	0	n/a	\$0	\$0	0%	0			
0	60% TC	0	\$0	\$0	0	n/a	\$0	\$0	0%	0			
0	Market	0	\$0	\$0	0	n/a	\$0	\$0	0%	0			
0	Manager	0	\$0	\$0	0	n/a	\$0	\$0	0%	0			
0													
Units Distribution Summary													
Summary			Income			Units	Total %	Unit Size			Units	Total %	
Total SF	56,332		30% TC	20		31.7%		Studio	0		0.0%		
Avg. Unit SF	800		35% TC	0		0.0%		1 Bedroom	12		18.8%		
Monthly Rent	\$36,084		40% TC	7		11.1%		2 Bedrooms	36		56.3%		
Annual Rent	\$433,008		45% TC	0		0.0%		3 Bedrooms	16		25.0%		
Avg. Rent (excl. manager's)	\$573		50% TC	19		30.2%		4 Bedrooms	0		0.0%		
Avg. Rent PEF (excl. manager's)	\$0.63		60% TC	17		27.0%		Total	64		100.0%		
Bedrooms	132		Market	0		0.0%		23% 3-Bedroom Check					OK
			Subtotal	63		100.0%		Affordability Distribution Check					OK
			Manager	1									
			Total	64									

ANNUAL OPERATING EXPENSE BUDGET**RIALTO METROLINK SOUTH SITE
Related Companies of California**

	Project Budget (64 units)
RENTING	
Advertising	\$800
Misc. Renting	<u>3,600</u>
TOTAL RENTING	4,400
ADMINISTRATION	
Office	2,640
Legal	750
Audit	11,450
Telephone/Computer	9,239
Tenant Relations	1,000
Misc. Administrative	<u>11,170</u>
TOTAL ADMINISTRATION	36,249
MANAGEMENT FEE	
Contract Management	<u>40,704</u>
TOTAL MANAGEMENT	40,704
OPERATING	
Electricity	16,690
Water	9,000
Gas	2,500
Sewer	30,000
Exterminating	3,352
Rubbish Removal	22,975
Misc. Operating	<u>1,560</u>
TOTAL OPERATING	86,077
MAINTENANCE	
Security	
Grounds	15,500
Repairs	17,000
Elevator	0
Unit Turns	7,920
Misc. Maintenance	<u>25,750</u>
TOTAL MAINTENANCE	67,470
SALARIES AND BENEFITS	
Office Salaries	35,000
Maintenance Salaries	27,040
Payroll Taxes and Benefits	<u>25,559</u>
TOTAL SALARIES AND BENEFITS	87,599
TAXES AND INSURANCE	
Real Estate Taxes	1,200
Business Taxes and Licenses	800
Insurance	25,000
Misc. Taxes and Insurance	<u>0</u>
TOTAL TAXES AND INSURANCE	27,000
RESERVES AND OTHER EXPENSES	
Replacement Reserves	16,000
Operating Reserves	0
Social Programs	<u>19,200</u>
TOTAL RESERVES AND OTHER COSTS	35,200
TOTAL OPERATING EXPENSES	<u>\$384,699</u>

DEVELOPMENT COSTS & ELIGIBLE BASIS DETERMINATION

RIALTO METROLINK SOUTH SITE
Related Companies of California

	64 units Budget	TCAC % Eligible	TCAC Eligible Basis
ACQUISITION COSTS			
Purchase Price	990,000	0%	0
Other Acquisition Costs	1,783,000	0%	0
TOTAL ACQUISITION COSTS	2,773,000	0%	0
PROFESSIONAL FEES			
Architecture & Engineering	1,300,000	100%	1,300,000
Other Professional / Consulting	75,000	100%	75,000
TOTAL PROFESSIONAL FEES	1,375,000	0%	1,375,000
FEES AND PERMITS			
City/County Fees and Permits	1,555,994	100%	1,555,994
Utility Fees/Costs	458,633	100%	458,633
TOTAL FEES AND PERMITS	2,014,627	0%	2,014,627
CONSTRUCTION COSTS			
Demolition	0	0%	0
Office Improvements	232,430	23%	132,315
Non-Residential Structures	0	0%	0
Site Improvements	1,663,611	100%	1,663,611
Parking Facilities (asphalt)	108,800	100%	108,800
Landscaping / Common Areas	633,086	100%	633,086
Residential Structures	7,041,900	100%	7,041,900
Other Construction	1,132,938	100%	1,132,938
Retail Case + Shell	0	0%	0
General Conditions	649,944	100%	649,944
Contractor Overhead	344,470	100%	344,470
Contractor Profit	574,117	100%	574,117
Contractor Insurance	134,000	100%	134,000
Construction Bond Premiums	0	100%	0
Construction Contingency	626,247	100%	626,247
Residential Structures - Non GC	0	100%	0
Predevelopment Onsite Construction Work	0	100%	0
TOTAL CONSTRUCTION COSTS	13,151,189	0%	13,041,047
FINANCING COSTS			
Acquisition Loan Costs	0	0%	0
Gap Loan Costs	25,000	100%	25,000
Construction Loan Costs	78,000	0%	4,688
Construction Loan Fees	132,000	0%	8,230
Construction Period Interest	172,000	100%	172,000
Post-Construction Interest	188,000	0%	0
Permanent Loan Costs	0	0%	0
Permanent Loan Fees	5,000	0%	0
Bond Issuance Costs	0	0%	0
TCAC Fees	110,707	0%	0
Misc. Finance Costs	50,000	0%	0
TOTAL FINANCING COSTS	757,707	0%	209,938
OTHER COSTS			
Furnishings, Fixtures & Equipment	250,000	100%	250,000
Marketing Costs	135,000	0%	0
Legal Fees	150,000	10%	15,000
Property Taxes	0	100%	0
Soft Cost Contingency	100,000	100%	100,000
Relocation Expenses	0	0%	0
Accounting / Audit / Insurance	325,000	71%	230,750
Developer Overhead	1,000,000	70%	700,000
Developer Fees	1,000,000	70%	700,000
Other Costs / Reserves	103,638	0%	0
TOTAL OTHER COSTS	3,063,638	0%	1,995,000
TOTAL DEVELOPMENT COSTS	622,875,154		518,434,642
/ TOTAL ELIGIBLE BASIS			
TOTAL BASIS REDUCTION (Amount over Adjusted Threshold Basis Limit or Voluntary Exclusion)			(7,809,822)
TOTAL REQUESTED UNADJUSTED ELIGIBLE BASIS			11,425,789
High Cost Area Adjustment			120%
TOTAL ADJUSTED ELIGIBLE BASIS			14,833,526
Applicable Fraction			100%
TOTAL QUALIFIED BASIS			14,833,526
Total Credit Reduction	0%		0
TOTAL ADJUSTED QUALIFIED BASIS			14,833,526

TAX CREDIT CALCULATION

REALTO METROLINK SOUTH SITE
Development Program 2011 VL2 - ILP
Related Companies of California
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Total Project Cost		\$22,875,154
Total Permanent Sources		<u>(8,572,639)</u>
Funding Shortfall		\$14,302,515
Total Qualified Basis		\$14,853,526
Annual Federal Credits - Calculated	(Federal Tax Credit % = 9.00%)	\$1,336,817
Annual Federal Credits - Awarded		\$0
Total Federal Credits (10 Years)		\$13,368,174
Federal Tax Credit Price		\$1.070
Federal Tax Credit Investor Equity	(Syndication % = 99.99%)	\$14,302,515
Total Requested Unadjusted Basis		\$11,425,789
Total 4-Year State Credits - Calculated	(State Tax Credit % = 0.00%)	\$0
Total 4-Year State Credits - Awarded		\$0
State Tax Credit Price		\$0.000
State Tax Credit Investor Equity	(Syndication % = 99.99%)	\$0
Calculated Acquisition Basis	(10 Yr. Rule = 0%) (Improv. % = 0%)	\$0
Available Acquisition Basis		\$0
Annual Acquisition Credits - Calculated	(Acq. Tax Credit % = 0.00%)	\$0
Annual Acquisition Credits - Awarded		\$0
Total Acquisition Credits (10 Years)		\$0
Acquisition Tax Credit Price		\$0.000
Acquisition Tax Credit Investor Equity	(Syndication % = 99.99%)	\$0
Total Tax Credit Investor Equity (Federal + State+ Acquisition)		\$14,302,515

Threshold Basis Limits	(Year 2016)	Units	Limit	Total
Efficiency		0	165,082	0
1 Bedroom		12	190,338	2,284,056
2 Bedrooms		36	229,600	8,265,600
3 Bedrooms		16	293,888	4,702,208
4 Bedrooms		0	327,410	0
		64		15,251,864
Special Features Threshold Basis Limit Increases				
10% Increase: 95% of the project's upper floor units are serviced by an elevator				0
20% Increase: State or Federal Prevailing Wage Requirement				0
7% Increase: New Construction with Parking beneath Residential Units				0
2% Increase: Day Care Center				0
2% Increase: Special Needs Populations				0
Total Percentage Increase to Unadjusted Eligible Basis (Combined not to exceed 39%)				0
15% Over 2013 Title 24				610,075
Seismic Upgrading or Environmental Mitigation (15% unadj. eligible basis max.)				0
Development Impact Fees				1,516,994
Bond Deals				
1% Increase: Every 1% of the project's units between 35% and 50% AMI				0
2% Increase: Every 1% of the project's units at or below 35% AMI				0
Adjusted Threshold Basis Limit				<u>\$17,378,933</u>
Total Eligible Basis				\$18,435,612
Over/(Under) Basis Limit				\$1,056,679

SOURCES AND USES OF FUNDS**RIALTO METROLINK SOUTH SITE**

Development Proforma 2011 V1.2 - ILP

Related Companies of California

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Construction Sources and Uses

Construction Sources		
Construction Loan	13,103,265	
Residual Receipt Loan	5,500,000	
Tax Credit Equity	1,430,252	10% of tax credit equity
City of Rialto Land	0	
Project Based Section 8 Loan	0	
Land Donation	1,738,000	
Deferred Developer Fee	1,000,000	
Deferred Permanent Financing Fee	0	
Deferred Operating Deficit Guaranty	103,638	
Deferred Cost #4	0	
Total Construction Sources	22,875,155	
Construction Uses		
Total Development Cost	22,875,154	
Amount Over/(Under)	0	

Permanent Sources and Uses

Sources		
Tax Credit Equity	14,302,515	
Permanent Financing	415,000	
Residual Receipt Loan	5,500,000	
City of Rialto Land	0	
Project Based Section 8 Loan	919,639	
Land Donation	1,738,000	
Deferred Developer Fee	0	
Deferred Permanent Financing Fee	0	
Deferred Operating Deficit Guaranty	0	
Deferred Cost #4	0	
Total Permanent Sources	22,875,154	
Uses		
Total Development Cost	22,875,154	
Amount Over/(Under)	0	

STABILIZED CASH FLOW ANALYSIS

REALTY METROLINK SOUTH SITE Related Companies of California

Year	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
INCOME															
Gross Rental Income	433,892	440,320	454,529	466,582	477,989	489,589	502,157	514,716	527,378	540,748	554,287	568,144	582,346	596,986	611,829
Landlord Income	3,040	3,504	4,024	4,525	4,939	5,345	5,753	6,163	6,574	6,986	7,400	7,816	8,234	8,654	9,076
Project Based Rental Income	98,490	99,256	99,503	99,564	99,465	99,241	98,986	98,698	98,376	98,021	97,645	97,249	96,834	96,400	95,948
Operating @ 1.0%	(23,399)	(23,020)	(22,728)	(22,420)	(22,100)	(21,769)	(21,427)	(21,074)	(20,711)	(20,338)	(19,955)	(19,563)	(19,162)	(18,753)	(18,337)
EFFECTIVE GROSS INCOME	508,118	517,950	528,801	539,672	550,478	561,208	571,889	582,508	593,069	603,582	614,057	624,491	634,884	645,236	655,556
EXPENSES															
Administrative	(64,509)	(67,318)	(70,311)	(73,499)	(76,782)	(80,160)	(83,633)	(87,201)	(90,864)	(94,621)	(98,472)	(102,418)	(106,460)	(110,598)	(114,832)
Management Fee @ 1.1%	(40,704)	(42,129)	(43,681)	(45,369)	(47,099)	(48,872)	(50,687)	(52,544)	(54,443)	(56,385)	(58,370)	(60,398)	(62,469)	(64,583)	(66,740)
Operating	(86,077)	(89,096)	(92,369)	(95,805)	(99,413)	(103,194)	(107,157)	(111,303)	(115,632)	(120,145)	(124,843)	(129,726)	(134,794)	(140,047)	(145,495)
Maintenance	(87,178)	(88,881)	(90,652)	(92,493)	(94,404)	(96,385)	(98,437)	(100,560)	(102,754)	(105,019)	(107,355)	(109,762)	(112,241)	(114,792)	(117,416)
Sublet	(87,299)	(88,881)	(90,652)	(92,493)	(94,404)	(96,385)	(98,437)	(100,560)	(102,754)	(105,019)	(107,355)	(109,762)	(112,241)	(114,792)	(117,416)
Taxes (assessed at 2.40%)	(2,009)	(2,049)	(2,091)	(2,132)	(2,173)	(2,214)	(2,255)	(2,296)	(2,337)	(2,378)	(2,419)	(2,460)	(2,501)	(2,542)	(2,583)
Insurance	(23,000)	(23,379)	(23,759)	(24,139)	(24,519)	(24,899)	(25,279)	(25,659)	(26,039)	(26,419)	(26,799)	(27,179)	(27,559)	(27,939)	(28,319)
Reserve	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)
Build Progress	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)
Replacement Reserve	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)
TOTAL OPERATING EXPENSES	(294,699)	(297,274)	(300,096)	(303,088)	(306,241)	(309,564)	(313,067)	(316,750)	(320,513)	(324,356)	(328,279)	(332,282)	(336,365)	(340,528)	(344,771)
NET OPERATING INCOME	163,419	167,676	170,705	173,584	176,237	179,644	183,822	187,758	191,556	195,227	198,780	202,209	205,519	208,708	211,785
DEBT SERVICE															
Interest	(64,144)	(66,144)	(68,144)	(70,144)	(72,144)	(74,144)	(76,144)	(78,144)	(80,144)	(82,144)	(84,144)	(86,144)	(88,144)	(90,144)	(92,144)
Principal Payment	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)
Cash Flow After Debt Service	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000
BLP Fee	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)
Performance Incentive Fee	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)
Cash Flow After Fee	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
Developer Fee Amount Remaining	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Interest (APR = 4.5%)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Loan Payment From Available Cash Flow	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Developer Fee Amount Remaining	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Net Cash Flow After Developer Fee Disbursement	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
Cash Flow to Subsidy Provider (50%)	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500
Residual Budget Loan Requirement	5,000,000	5,100,000	5,200,000	5,300,000	5,400,000	5,500,000	5,600,000	5,700,000	5,800,000	5,900,000	6,000,000	6,100,000	6,200,000	6,300,000	6,400,000
Beginning Loan Balance	13,750	13,750	13,750	13,750	13,750	13,750	13,750	13,750	13,750	13,750	13,750	13,750	13,750	13,750	13,750
Accrued Interest at 10%	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)
Cash Flow Payment	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000
Ending Loan Balance	13,750	13,750	13,750	13,750	13,750	13,750	13,750	13,750	13,750	13,750	13,750	13,750	13,750	13,750	13,750
Cash Flow to Partnership (50%)	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500
Committed Cash Flow to Partnership	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250
DCR	1.22	1.21	1.21	1.21	1.21	1.21	1.21	1.21	1.21	1.21	1.21	1.21	1.21	1.21	1.21

POST-CONSTRUCTION INTEREST ANALYSIS & TAX CREDIT DELIVERY

REALTO METROLINE SOUTH SITE
Development: Tract 2011 V1.3 - ILP
Related Companies of Columbia
Printed on 02/16 at 5:28 PM

Last Changed on: 1/17/2015 9:42 AM

Month	END QUARTY										
	1	2	3	4	5	6	7	8	9	10	11
Month	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15
Monthly No. of Units Rented (incl. 180's units)	0	20	20	20	20	20	20	20	20	20	20
Cumulative No. of Units Rented (incl. 180's units)	0	20	40	60	80	100	120	140	160	180	200
Revenue	0	5,728	17,180	28,632	35,225	36,084	36,084	36,084	36,084	36,084	36,084
Green Rent	0	50	150	250	300	315	315	315	315	315	315
Monthly Laundry Income (per unit per mo.)	0	0	0	0	0	0	0	0	0	0	0
Other Monthly Income (per unit per mo.)	0	0	0	0	0	0	0	0	0	0	0
Vacancy	0	0	0	0	0	0	0	0	0	0	0
Total Green Revenue	0	5,778	17,333	28,882	35,525	36,399	36,399	36,399	36,399	36,399	36,399
Expenses											
Operating Expenses - Fixed (20%)	(25,647)	(25,647)	(25,647)	(25,647)	(25,647)	(25,647)	(25,647)	(25,647)	(25,647)	(25,647)	(25,647)
Operating Expenses - Variable (20%)	0	(2,035)	(4,071)	(6,106)	(8,142)	(10,178)	(12,213)	(14,249)	(16,284)	(18,320)	(20,356)
Total Operating Expenses	(25,647)	(27,682)	(29,717)	(31,752)	(33,787)	(35,822)	(37,857)	(39,892)	(41,927)	(43,962)	(46,000)
Net Operating Income	(25,647)	(21,904)	(12,384)	(2,869)	1,877	2,581	2,581	2,581	2,581	2,581	2,581
Daily Service	0	(35,488)	(35,488)	(35,488)	(35,488)	(35,488)	(35,488)	(35,488)	(35,488)	(35,488)	(35,488)
Cashflow After Daily Service	(25,647)	(37,392)	(47,872)	(58,352)	(69,832)	(81,312)	(92,792)	(104,272)	(115,752)	(127,232)	(138,712)
Cumulative Cashflow After Daily Service	(25,647)	(63,039)	(109,912)	(167,792)	(225,672)	(283,552)	(341,432)	(399,312)	(457,192)	(515,072)	(572,952)

Month	END QUARTY										
	1	2	3	4	5	6	7	8	9	10	11
Month	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15
Monthly No. of Units Rented	0	20	20	20	20	20	20	20	20	20	20
Cumulative No. of Units Rented	0	20	40	60	80	100	120	140	160	180	200
Tax Credits	0	34,813	69,626	104,439	139,252	174,065	208,878	243,691	278,504	313,317	348,130
Federal	0	0	0	0	0	0	0	0	0	0	0
State	0	34,813	69,626	104,439	139,252	174,065	208,878	243,691	278,504	313,317	348,130
Monthly	0	34,813	69,626	104,439	139,252	174,065	208,878	243,691	278,504	313,317	348,130
Cumulative	0	34,813	104,439	208,878	348,130	522,195	721,260	919,951	1,118,455	1,431,772	1,780,902

Rent EIS Assumptions		Tax Credit Delivery Assumptions	
Professional	20	Tax Credit Units	64
Monthly Management	20	Annual Federal Credit	\$1,204,817
Avg. Rent (incl. manager's)	\$373	Monthly Per Unit Credit	\$1,741
Monthly Laundry Income (per unit per mo.)	\$2.00	Annual State Credit	0
Other Monthly Income (per unit per mo.)	\$0.00		
Vacancy	5.0%		
Monthly Operating Expenses (Fixed @ 20%)	\$401 per unit		
Monthly Operating Expenses (Variable @ 20%)	\$100 per unit		

EXHIBIT D
Schedule of Performance

SCHEDULE OF PERFORMANCE

<u>Task/Event</u>	<u>Time for Performance</u>
1. <u>Land Use Entitlements.</u> Per Section 402, Partnership shall cause the Land Use Entitlements to be obtained.	Not later than June 28, 2016.
2. <u>Developer to execute and deliver to Authority</u> - 3 executed copies of Agreement, 1 executed Unsecured Note and 1 executed Assignment of Work Product	Not later than June 29, 2016
3. <u>Written Commitments for Financing.</u> Per Section 602, Developer to deliver draft written commitment for the Construction Loan and Permanent Loan to Authority	No later than thirty (30) days prior to Closing.
4. <u>Evidence of Financial Capability.</u> Per Section 310, Developer shall submit to Authority Executive Director for review and approval:	
310(1) - Updated cost estimates	310(1) - No later than thirty (30) days after Developer receives notice that it has secured a bona fide award of LIHTC.
310(2) - Update on construction loan solicitations and commitments	310(2) - No later than thirty (30) days after Developer receives notice that it has secured a bona fide award of LIHTC.
310(3) - Executed Letters of Intent with a Qualified Tax Credit Investor, and other sources of financing other than the Construction Loan and the Permanent Loan (if applicable)	310(3) - No later than thirty (30) days following the Effective Date.
5. <u>Authority delivers Preliminary Title Report and Survey to Developer.</u> Per Section 309(3), Authority shall deliver an ALTA survey of the Site and a preliminary title report for the Site, together with legible copies of the documents underlying the exceptions.	No later than thirty (30) days following the Effective Date.
6. <u>Developer approves or disapproves title exceptions.</u> Section 309(3)	Developer has sixty (60) days from its receipt of the Title Diligence.
7. <u>Authority delivers notice to Developer as to whether it will cure disapproved exceptions.</u> Section 309(3)	Within thirty (30) days after receiving Developer's notice of any Disapproved Title Matters.

8. **Partnership/Submission of Preliminary (if needed) Construction Documents.** Per Section 402(2), Partnership shall submit to the Authority the Preliminary Construction Documents for the Project.

Not later than 90 days after the Effective Date of the Agreement.

The Authority shall approve or disapprove any submittal in accordance with Section 402(5).

Within fifteen (15) days after each submittal.

9. **Partnership Submits TCAC 9% Credits Application**

June 29, 2016, Round 1 2017 (if necessary), Round 2, 2017 (if necessary), Round 1 2018 (if necessary)

All times listed in this Schedule of Performance shall be extended to the extent necessary to provide for subsequent applications to TCAC if credits are not awarded in the June 29, 2016 application (Second Round 2016).

10. **TCAC Notification of 2nd Round 2016 Funding Awards.**

September 21, 2016

11. **Parties open Escrow.** Per Section 307, the parties will open escrow with the Escrow Agent.

Within twenty (20) days after Developer receives notice that it has secured a bona fide award of LIHTC.

12. **Developer submits Marketing Program to Authority.** Section 502(3)

Prior to issuance of building permits for any portion of the Project.

13. **Partnership Submits Initial Architectural and Engineering Plans Into Plan Check**

Not later than 120 days after receipt by Partnership from TCAC of a reservation of Tax Credits for the Project.

14. **Partnership/Final Construction Documents.** Per Section 402(2), Partnership shall submit to the Authority the Final Construction Documents.

Not later than 90 days after the Authority's approval of the Preliminary Construction Documents, if applicable, if not applicable, then no later than 180 days after the Effective Date of this Agreement.

The Authority shall approve or disapprove any submittal in accordance with Section 402(5).

Within fifteen (15) days after each submittal.

15. **Construction Contract.** Per Section 403(2), Developer shall submit a draft construction contract to the Authority for review and approval.

No later than thirty (30) days prior to Closing.

Authority shall review and approve or disapprove such contract.

Within fifteen (15) days of receipt thereof.

16. **Escrow Agent gives notice of fees, charges and costs to close Escrow.** Per Section 312(1) the Escrow Agent shall advise the Authority and the Developer in writing of fees, charges and costs necessary to clear title and close escrow.

On the Date of Closing.

17. **Developer's Conditions to Close of Escrow.** Developer's conditions to close of escrow are contained in Section 308(2).

All conditions must be met within the timeframes stated in Section 307(2).

18. **Deposits into Escrow by Developer** Authority's conditions to close of escrow are contained in Section 308(1).

All conditions must be met within the timeframes stated in Section 307(2).

19. **Partnership/Satisfaction of Final Conditions.** Partnership shall cause the conditions set forth in Section 308 to be satisfied.

Not later than one (1) day prior to the TCAC Readiness to Proceed deadline.

20. **Building Permits.** Partnership secures Building Permits from City of Rialto.

Not later than 180 days from TCAC Notification of 2nd Round Funding Award

21. **Close of Escrow for the Site, recordation and delivery of documents.** Section 307(2).

On the business day following fulfillments of all conditions and deposits to Escrow required under Section 308, but in no event later than 180 days from the TCAC Award or by December 31, 2018, unless extended under Section 307(2).

22. **Partnership/Commencement of Construction of Project.** Per Section 403(6), Partnership shall commence construction of the Project.

Within 5 business days of Closing.

23. **Developer Completes construction of improvements on the Site.** Section 403(6)

Within eighteen (18) months of commencement of construction.

24. **Authority issues Release of Construction Covenants for the Site.** Section 413

Upon completion of construction of the Project as evidenced by receipt of a Certificate of Occupancy and written request therefor by Developer.

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

If Partnership fails to satisfy any obligation by the deadline set forth above, Partnership shall not be in default under this Agreement unless Partnership has first been given written notice of such failure and an opportunity to cure pursuant to Section 701. Any cure by Partnership within the period set forth

by Section 701 shall constitute a full and complete cure of the failure, notwithstanding the fact that the deadline established herein was not first met by Partnership.

The time periods set forth in this Schedule of Performance may be altered or amended only by written agreement signed by both Developer and Authority. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The Executive Director of the Authority shall have authority to approve extensions of time without [Authority Commission] action.