

# ALAMEDA COUNTY HOUSING AND COMMUNITY DEVELOPMENT AGENCY

Michelle Starratt  
Department Director

224 West Winton Ave  
Room 110

Hayward, California  
94544-1215

phone  
510.670.5333  
fax  
510.670.6374

[www.achcd.org](http://www.achcd.org)

February 27, 2025

Dear Committee Members:

**SUBJECT: BERKELEY WAY MEASURE A1 CONTINGENCY COSTS**

**DISCUSSION/SUMMARY:**

Berkeley Way is a 100% affordable project developed by BRIDGE Housing Corporation which received its certificate of occupancy in September 2022. The project contains 54 units restricted at 50% of AMI and 34 units at 60% AMI. The project received \$12,172,804 in Measure A1 funds, 10.6% of its total project cost of \$113,955,944.

HCD staff has reviewed the contingency costs for the Measure A1 Berkeley Way affordable housing project. The original project budget included \$4,166,602 in budgeted funds for contingency costs. As the project moved forward, the contingency cost budget was adjusted downward to a final total of \$3,872,765. The \$293,837 difference was realized from the project's private debt upon conversion to permanent financing. This standard practice reduces the project's debt servicing costs, incrementally increasing its long-term financial sustainability.

Contingency funds are always included in project budgets and necessary due to the inevitability of unforeseen costs and generally escalating construction costs. Contingency funds went toward a variety of expenses including design revisions, scope gaps, and resulting permit/building inspector requirements.

The duties of the Committee are to annually review the expenditure of the proceeds of the bonds for the prior year and report to the Board of Supervisors whether the proceeds of the bonds were spent in accordance with the purposes set forth in the ballot measure, which are:

- Provide affordable local housing and prevent displacement of vulnerable populations, including low- and moderate-income households, veterans, seniors, and persons with disabilities;
- Provide supportive housing for people experiencing homelessness countywide; and
- Help low-and moderate- income households purchase homes and stay in their communities.

No Measure A1 funds were allocated towards the contingency costs line item in the budget. The terms of Measure A1 fund's use is described in the project's loan documents, which cap the developer's cash fee at \$3,176,917 and restrict rents on all

88 units in the building. The project, as built and occupied, is in compliance with these terms.

Sincerely,

DocuSigned by:  
  
AE2A5C1C609C4BC...

Dylan Sweeney, Policy and Programs  
Manager  
Housing and Community Development

**FIRST AMENDMENT TO  
COUNTY DEVELOPMENT LOAN AGREEMENT  
(BRIDGE Berkeley Way Affordable Apartments)**

**THIS FIRST AMENDMENT TO COUNTY DEVELOPMENT LOAN AGREEMENT (BRIDGE BERKELEY WAY AFFORDABLE APARTMENTS) ("Amendment")** is entered into as of May 15, 2023, ("**Effective Date**") by and between the COUNTY OF ALAMEDA, a political subdivision of the State of California ("**County**"), and BRIDGE BERKELEY WAY LP, a California limited partnership ("**Borrower**"). The County and Borrower are individually referred to herein as a "**Party**" and collectively as the "**Parties**."

**RECITALS**

A. Pursuant to that certain Ground Lease entered into between Borrower and the City of Berkeley dated July 2, 2020 and recorded on July 7, 2020 in the Official Records of the County of Alameda as Document no. 2020156928, Borrower owns a leasehold interest in that certain real property located in the City of Berkeley, County of Alameda, California, also known as Assessor's Parcel No. 057-2122-003, as described in the legal description attached hereto as Attachment No.1 and incorporated herein by this reference ("**Property**").

B. The County and Borrower entered into that certain County Development Loan Agreement (BRIDGE Berkeley Way Affordable Apartments) dated July 1, 2020 ("**Agreement**") to provide, among things, a loan in the amount of Twelve Million One Hundred Seventy Two Thousand Eight Hundred and Four Dollars (\$12,172,804) to pay a portion of the costs to develop eighty-nine (89) units of affordable multi-family housing and attendant site improvements on the Property, as more specifically discussed therein. All capitalized terms not defined in this Amendment will have the meaning ascribed to such terms in the Agreement.

C. Recital E. in the Agreement inadvertently provides an incorrect reference to the County resolution approving the portion of the County loan derived from the Measure A1 Affordable Housing Bond funds.

D. The County and Borrower desire to amend Recital E. of the Agreement to replace reference to Resolution Number R 2019-72 with the correct reference to Resolution Number R 2019-40.

E. The Parties also desire to modify certain unit information set forth in the Approved Development Budget and certain amounts related to the developer fee.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. **Recitals**. The Recitals and attachments referenced above are incorporated in this Amendment by this reference and adopted by the Parties to be true and correct.

2. Amendments.

a. Recital G of Agreement. Recital E. of the Agreement is hereby amended in its entirety to delete all references to "Resolution Number R 2019-72" and replace with "Resolution Number R 2019-40."

b. Section 3.20 of Agreement. The second sentence of Section 3.20 of the Agreement is hereby deleted in its entirety and replaced with the following: "The County approves a developer fee in the maximum amount of Five Million Six Hundred Thousand Dollars (\$5,600,000); provided, however, prior to the County's disbursement of all the County Loan proceeds or the Permanent Closing, whichever occurs first, the general partner of Borrower shall contribute no less than the GP Capital Contribution in the amount of \$2,423,083 directly back to the Development such that the maximum total net cash fee paid to Borrower shall not exceed the maximum total amount of \$3,176,917."

c. Exhibit C of Agreement. Exhibit C of the Agreement sets forth the Approved Development Budget. The unit mix shown on the second page of the Approved Development Budget is hereby modified to change one (1) studio unit restricted to 60% Area Median Income to instead be a one-bedroom unit restricted to 60% Area Median Income, for a total of thirty-three (33) studio units and thirty-six (36) one-bedroom units. All other unit information remains unmodified.

3. Miscellaneous.

a. Further Cooperation. The Parties agree to execute such other instruments, agreements, and amendments to documents as may be necessary or appropriate to effectuate the Agreement as amended by this Amendment.

b. Interpretation. This Amendment, when combined with the Agreement, sets forth and contains the entire understanding and agreement of the Parties. There are no oral or written representations, understandings, or ancillary covenants, undertakings, or agreements, which are not contained or expressly referred to within this Amendment or the Agreement.

c. Attachments. Each of the attachments and exhibits attached or to be attached to this Amendment are incorporated in this Amendment by this reference.

d. Effectiveness of Agreement. Except as modified and amended by this Amendment, all other terms and conditions of the Agreement remain unmodified and in full force and effect.

e. Counterparts. This Amendment may be signed by the Parties in counterparts, each of which will be an original but all of which together will constitute one and the same Agreement.

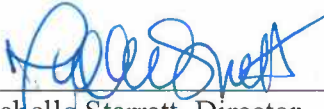
**REMAINDER OF PAGE INTENTIONALLY BLANK**  
**SIGNATURES ON FOLLOWING PAGE**

**IN WITNESS WHEREOF**, County and Borrower have executed this Amendment as of the Effective Date.

**COUNTY:**

**COUNTY OF ALAMEDA**, a political subdivision of the State of California

By:



\_\_\_\_\_  
Michelle Starratt, Director  
Housing and Community Development Department

**BORROWER:**

**BRIDGE BERKELEY WAY LP**,  
a California limited partnership

By: BRIDGE BERKELEY WAY LLC,  
a California limited liability company  
its managing general partner

By: BRIDGE HOUSING CORPORATION,  
a California nonprofit public benefit corporation,  
its sole member and manager

By:

\_\_\_\_\_  
Smitha Seshadri,  
Executive Vice President

**IN WITNESS WHEREOF**, County and Borrower have executed this Amendment as of the Effective Date.

**COUNTY:**

**COUNTY OF ALAMEDA**, a political subdivision of the State of California

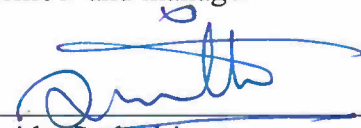
By: \_\_\_\_\_  
Michelle Starratt, Director  
Housing and Community Development Department

**BORROWER:**

**BRIDGE BERKELEY WAY LP**,  
a California limited partnership

By: BRIDGE BERKELEY WAY LLC,  
a California limited liability company  
its managing general partner

By: BRIDGE HOUSING CORPORATION,  
a California nonprofit public benefit corporation,  
its sole member and manager

By:   
\_\_\_\_\_  
Smitha Seshadri,  
Executive Vice President

ATTACHMENT NO. 1

LEGAL DESCRIPTION

The land referred to is situated in the County of Alameda, City of Berkeley, State of California, and is described as follows:

PARCEL ONE:

Parcel C, as shown on the Parcel Map 11051, filed March 20, 2020, in Book 346 of Parcel Maps, Pages 1 through 11, inclusive, Alameda County Records.

PARCEL TWO:

Easements for construction, maintenance, utilities, structural support and encroachment, set forth in that certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way, dated July 2, 2020, executed by the City of Berkeley and BRIDGE Berkeley Way LP and BFHP Hope.Center LP, and recorded in Alameda County Records on July 7, 2020, as Instrument No. 2020156925.

APN: 057-2122-003

7

Recorded at the Request of  
Old Republic Title Company -  
Oakland  
117026141  
NO FEE DOCUMENT

2023062387

06/01/2023 12:25 PM

6 PGS

OFFICIAL RECORDS OF ALAMEDA COUNTY  
MELISSA WILK, CLERK-RECORDER  
RECORDING FEES: \$0.00



RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:



Alameda County  
Housing and Community Development Department  
224 W. Winton Avenue, Room 108  
Hayward, CA 94544  
Attn: Housing Director

No fee for recording pursuant to  
Government Code Section 27383 and 27388.1

**FIRST AMENDMENT TO  
REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**  
(Alameda County A1 Bond-BRIDGE Berkeley Way Affordable Apartments)

THIS FIRST AMENDMENT TO REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS (the "First Amendment") is dated as of  
May 1, 2023, and is between the County of Alameda, a political subdivision of the State of  
California (the "County"), and BRIDGE Berkeley Way LP, a California limited partnership (the  
"Owner").

RECITALS

A. Owner owns a leasehold interest in that certain improved real property located in  
the City of Berkeley, County of Alameda, State of California, as more particularly described on  
Exhibit A attached hereto and incorporated herein by this reference (the "Property"). The  
Property is improved with eighty-eight (88) units of housing affordable to very low and low  
income households, one (1) manager's unit and attendant site improvements (the  
"Improvements") affordable to extremely low-income households. The Property and the  
Improvements are collectively referred to as the "Housing Development".

B. The County and Owner entered into a Regulatory Agreement and Declaration of  
Restrictive Covenants, dated July 1, 2020 and recorded against the Property on July 7, 2020 as  
Document No. 2020156929 in the Alameda County Official Records (the "Declaration").

C. Recital C. in the Declaration inadvertently provides an incorrect reference to the  
County resolution approving the portion of the County loan derived from the Measure A1  
Affordable Housing Bond funds.



D. Due to an administrative error and late changes to the design process by Borrower, the actual unit mix of the completed 60% Units in the Housing Development does not align with the unit mix contained in the Declaration.

D. The County and Borrower desire to (i) amend Recital C. of the Declaration to replace reference to Resolution Number R 2019-72 with the correct reference to Resolution Number R 2019-40, and (ii) amend the unit mix in Section 2.1. (d) of the Declaration to reflect the correct distribution of 60% Units. All capitalized terms used but not defined in this Declaration have the meanings set forth in the Declaration.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, it is hereby declared, understood and agreed as follows:

1. Amendment to Recitals. Recital C. of the Declaration is hereby amended in its entirety to delete all references to “Resolution Number R 2019-72” and replace with “Resolution Number R 2019-40.”

2. Occupancy Requirements. Section 2.1 (d) of the Declaration is hereby deleted in its entirety and replaced with the following:

“(d) Intermingling of Units. Borrower shall cause the County-Assisted Units to be intermingled throughout the Development and be of comparable quality to all other Units. Tenants in all Units shall have equal access to and enjoyment of all common facilities in the Development. The County-Assisted Units must be of the bedroom size set forth in the following chart:

	<b>50% Units</b>	<b>60% Units</b>	<b>Total Units</b>
<b>Studio</b>	17	16	33
<b>One- Bd.</b>	18	18	36
<b>Two- Bed.</b>	19	-	19
<b>Total</b>	54	34	88

”

3. Full Force and Effect. Except as set forth in this First Amendment, the Declaration remains unmodified and in full force and effect.

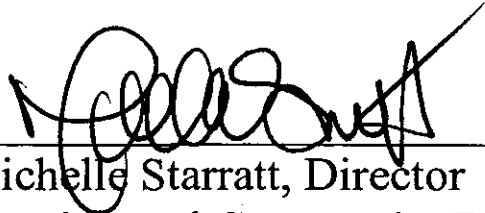
4. Successors and Assigns. This First Amendment is binding on and inures to the benefit of the legal representatives, heirs, successors and assigns of the parties.

5. Counterparts. This First Amendment may be signed by the different parties hereto in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

WHEREAS, this Agreement has been entered into by the undersigned as of the date first written above.

**COUNTY:**

**COUNTY OF ALAMEDA**, a political subdivision of the State of California

By:   
\_\_\_\_\_  
Michelle Starratt, Director  
Housing and Community Development Department

**BORROWER:**

**BRIDGE BERKELEY WAY LP**,  
a California limited partnership

By: BRIDGE BERKELEY WAY LLC,  
a California limited liability company  
its managing general partner

By: BRIDGE HOUSING CORPORATION,  
a California nonprofit public benefit corporation,  
its sole member and manager

By: **Signed in Counterpart**  
\_\_\_\_\_  
Smitha Seshadri,  
Executive Vice President

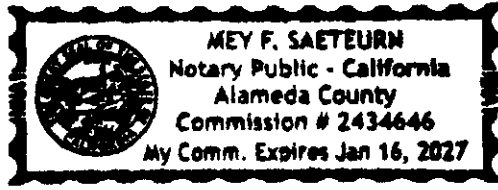
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF Alameda )

On May 17, 2023, before me, Mey F. Saeteurn, Notary Public, personally appeared Nichelle Starraff, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Mey F.  
Name: Mey F. Saeteurn  
Notary Public

\*  
Mey F. Saeteurn  
Notary Public – California  
Alameda County  
Commission # 2434646  
My Comm. Expires Jan. 16, 2027

WHEREAS, this Agreement has been entered into by the undersigned as of the date first written above.

**COUNTY:**

**COUNTY OF ALAMEDA**, a political subdivision of the State of California

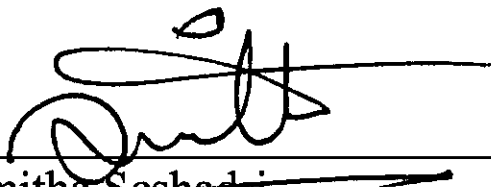
Signed in Counterpart  
By: \_\_\_\_\_  
Michelle Starratt, Director  
Housing and Community Development Department

**BORROWER:**

**BRIDGE BERKELEY WAY LP**,  
a California limited partnership

By: **BRIDGE BERKELEY WAY LLC**,  
a California limited liability company  
its managing general partner

By: **BRIDGE HOUSING CORPORATION**,  
a California nonprofit public benefit corporation,  
its sole member and manager

By:   
\_\_\_\_\_  
Smitha Seshadri,  
Executive Vice President

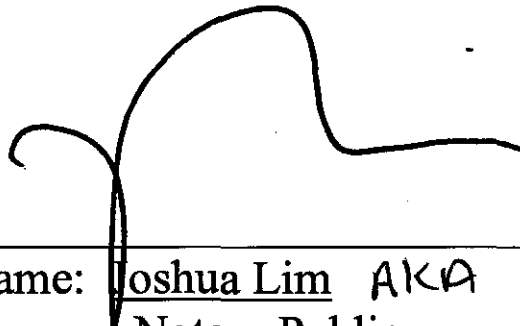
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

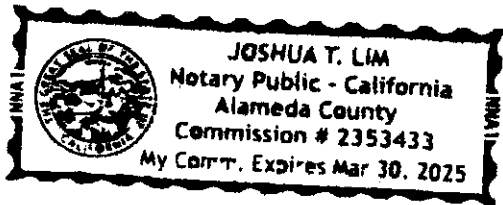
STATE OF CALIFORNIA )  
 )  
COUNTY OF ALAMEDA )

On May 16, 2023, before me, Joshua<sup>T.</sup> Lim, Notary Public, personally appeared Smitha Seshadri, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

  
Name: Joshua Lim AKA Joshua T. Lim  
Notary Public



\* Joshua T. Lim  
Notary Public – California  
Alameda County  
Commission # 2353433  
My Comm. Expires Mar. 30, 2025

**COUNTY DEVELOPMENT LOAN AGREEMENT**  
**BRIDGE BERKELEY WAY AFFORDABLE APARTMENTS**

Between

The County of Alameda

and

BRIDGE Berkeley Way LP

ARTICLE 1	DEFINITIONS AND EXHIBITS.....	2
Section 1.1	Definitions.....	2
Section 1.2	Exhibits.....	10
ARTICLE 2	COUNTY LOAN PROVISIONS.....	11
Section 2.1	County Loan.....	11
Section 2.2	Interest.....	11
Section 2.3	Use of County Loan Funds.....	11
Section 2.4	Security.....	11
Section 2.5	Subordination.....	11
Section 2.6	Conditions Precedent to Disbursement.....	12
Section 2.7	Conditions Precedent to Disbursement of the Retention Amount.....	15
Section 2.8	Repayment Schedule.....	17
Section 2.9	Reports and Accounting of Residual Receipts.....	18
Section 2.10	Non-Recourse.....	18
Section 2.11	Process for Disbursement of County Loan Proceeds.....	19
Section 2.12	Construction Plans.....	20
ARTICLE 3	CONSTRUCTION OF THE DEVELOPMENT.....	20
Section 3.1	Construction Contract.....	20
Section 3.2	Construction Bonds.....	21
Section 3.3	Permits and Approvals.....	21
Section 3.4	Commencement of Construction.....	21
Section 3.5	Completion of Construction.....	21
Section 3.6	Changes; Construction Pursuant to Plans and Laws.....	22
Section 3.7	Prevailing Wages.....	22
Section 3.8	Measure A1 Labor and Contract Compliance Policies.....	24
Section 3.9	County First Source Hiring Program.....	25
Section 3.10	Accessibility.....	25
Section 3.11	Relocation.....	26
Section 3.12	Equal Opportunity.....	26
Section 3.13	Minority and Women-Owned Contractors.....	26
Section 3.14	Progress Reports.....	26
Section 3.15	Construction Responsibilities.....	27
Section 3.16	Mechanics Liens, Stop Notices, and Notices of Completion.....	27
Section 3.17	Inspections During Construction; Construction Inspector.....	28
Section 3.18	Approved Development Budget; Revisions to Approved Development Budget.....	28
Section 3.19	Partnership/Asset Management Fee.....	29
Section 3.20	Developer Fee.....	29
ARTICLE 4	COUNTY LOAN REQUIREMENTS.....	29
Section 4.1	Match Requirement.....	29
Section 4.2	Compliance with County Contract and Implementation Policies.....	29

Section 4.3	Financial Accountings and Post-Completion Audits.....	29
Section 4.4	Information.....	30
Section 4.5	County Audits.....	30
Section 4.6	Hazardous Materials.....	30
Section 4.7	Maintenance and Damage.....	32
Section 4.8	Notices.....	33
Section 4.9	Operation of Development as Affordable Housing.....	33
Section 4.10	Nondiscrimination.....	34
Section 4.11	Transfer.....	34
Section 4.12	Insurance Requirements.....	36
Section 4.13	Covenants Regarding Approved Financing and Partnership Agreement.....	38
ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BORROWER.....		38
Section 5.1	Representations and Warranties.....	38
ARTICLE 6 DEFAULT AND REMEDIES.....		40
Section 6.1	Events of Default.....	40
Section 6.2	Remedies.....	42
Section 6.3	Specific Performance.....	43
Section 6.4	Right to Cure at Borrower's Expense.....	43
Section 6.5	Right of Contest.....	43
Section 6.6	Remedies Cumulative.....	43
Section 6.7	Notice to Investor Limited Partner.....	43
ARTICLE 7 GENERAL PROVISIONS.....		43
Section 7.1	Relationship of Parties.....	43
Section 7.2	No Claims.....	44
Section 7.3	Amendments.....	44
Section 7.4	Indemnification.....	44
Section 7.5	Non-Liability of County Officials, Employees and Agents.....	44
Section 7.6	No Third Party Beneficiaries.....	45
Section 7.7	Discretion Retained By County.....	45
Section 7.8	Conflict of Interest.....	45
Section 7.9	Notices, Demands and Communications.....	45
Section 7.10	Applicable Law.....	46
Section 7.11	Parties Bound.....	47
Section 7.12	Attorneys' Fees.....	47
Section 7.13	Severability.....	47
Section 7.14	Force Majeure.....	47
Section 7.15	County Approval.....	47
Section 7.16	Waivers.....	47
Section 7.17	Title of Parts and Sections.....	48
Section 7.18	Entire Understanding of the Parties.....	48
Section 7.19	Multiple Originals; Counterpart.....	48
Section 7.20	Recognition of County.....	48



EXHIBIT A	Legal Description of the Property
EXHIBIT B	Legal Description of Leasehold Estate
EXHIBIT C	Approved Development Budget
EXHIBIT D	Promissory Note
EXHIBIT E	Deed of Trust
EXHIBIT F	Regulatory Agreement

COUNTY DEVELOPMENT LOAN AGREEMENT  
(BRIDGE Berkeley Way Affordable Apartments)

This County Development Loan Agreement ("Agreement") is entered into as of July 1, 2020 ("Effective Date"), by and between the County of Alameda, a political subdivision of the State of California ("County"), and BRIDGE Berkeley Way LP, a California limited partnership ("Borrower"). County and Borrower shall be individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS

A. Capitalized terms used but not defined in these recitals are as defined in Article 1 of this Agreement.

B. The City of Berkeley, a Charter city ("City"), owns a fee interest in that certain real property located at 2012 Berkeley Way in the City of Berkeley, County of Alameda, State of California, identified as Assessor's Parcel Number 057-2053-022-01, as more particularly described in the legal description attached hereto as Exhibit A and incorporated herein by this reference ("Property").

C. Borrower acquired a leasehold interest in the Property from City pursuant to that certain Ground Lease 2012 Berkeley Way (Berkeley Way BRIDGE Affordable Apartments) dated July 2, 2020 ("Ground Lease"), as more particularly described in the leasehold legal description attached hereto as Exhibit B and incorporated herein by this reference ("Leasehold Estate") wherein, Borrower is required, among other things, to develop thereon eighty-nine units of affordable multi-family housing and attendant site improvements as more specifically described therein ("Improvements").

D. The Improvements and the Leasehold Estate are collectively referred to herein as the "Development."

E. On November 8, 2016, the voters in the County passed the Measure A1 Affordable Housing Bond ("County Bond"), which provides for the issuance of bonds for affordable housing programs countywide. The County is making a loan for the construction of the Development in the amount of Twelve Million One Hundred Seventy-Two Thousand Eight Hundred Four Dollars (\$12, 172, 804) ("County Loan"). The County Loan is being made to further the purposes of the County Bond. On February 5, 2019, by Resolution Number R 2019-72, the County approved the County Loan. The County Loan will be disbursed subject to the terms of that certain Contract for the Use of Measure A1 Affordable Housing Bond Funds dated May 12, 2020, and entered into between the County and Borrower prior to the disbursement of the County Loan ("County Contract"), and the terms of this Agreement.

F. The County Loan will be evidenced by this Agreement, the Note, and secured by the Regulatory Agreement and the Deed of Trust.

G. The City approved the Development under the streamlined approval process created by Senate Bill 35 (Chapter 366, Statutes of 2017) and found that no review was required under

the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) ("CEQA").

NOW, THEREFORE, the Parties agree as follows:

## ARTICLE 1 DEFINITIONS AND EXHIBITS

### Section 1.1 Definitions.

The following capitalized terms have the meanings set forth in this Section 1.1 wherever used in this Agreement, unless otherwise provided:

(a) "A1 Labor and Contract Compliance Policies" has the meaning set forth in Section 3.8 below.

(b) "Accessibility Requirements" has the meaning set forth in Section 3.10 below.

(c) "Agreement" means this County Development Loan Agreement.

(d) "Annual Operating Expenses" means with respect to a particular calendar year, the following costs reasonably and actually incurred for operation and maintenance of the Development, to the extent that they are consistent with the annual operating budget for the Development approved by the County pursuant to the Regulatory Agreement and an annual independent audit performed by a certified public accountant using generally accepted accounting principles:

- (1) property taxes and assessments imposed on the Development;
- (2) debt service currently due on a non-optional basis (excluding debt service due from Residual Receipts or surplus cash of the Development) on loans associated with the Development and approved by the County;
- (3) on-site service provider fees for tenant social services, provided the County has approved, in writing, the plan and budget for such services before such services begin pursuant to the Regulatory Agreement;
- (4) property management fees and reimbursements, not to exceed fees and reimbursements which are standard in the industry and pursuant to a management contract approved by the County;
- (5) the Partnership/Asset Management Fee;
- (6) premiums for property damage and liability insurance;
- (7) utility services not paid for directly by tenants, including water, sewer, and trash collection;
- (8) maintenance and repair expenses and services;

- (9) any annual license or Certificate of Occupancy fees required for operation of the Development;
- (10) security services;
- (11) advertising and marketing;
- (12) the Monitoring Fee;
- (13) cash deposited into reserves for capital replacements of the Development in the amount set forth in Section 4.9(a) of the Regulatory Agreement;
- (14) cash deposited into an operating reserve to maintain the amount set forth in Section 4.9(b) of the Regulatory Agreement (excluding amounts deposited to initially capitalize the account);
- (15) cash deposited into any other reserve accounts as required by permanent lenders and investors and as approved by the County;
- (16) payment of any previously unpaid portion of the developer fee (without interest) not exceeding a cumulative developer fee in the maximum amount set forth in Section 3.20 below;
- (17) extraordinary operating costs specifically approved in writing by the County; and
- (18) payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves, and other ordinary and reasonable operating expenses not listed above.

Annual Operating Expenses shall not include the following: depreciation, amortization, depletion or other non-cash expenses; any amount expended from a reserve account; and any capital cost with respect to the Development, as determined by the accountant for the Development.

(e) "Applicable Governmental Approvals" means the County, City, HCD and other governmental permits and approvals necessary for the Construction Work and operation of the Development, including but not limited to CEQA and NEPA approvals, submissions of design development review documents, detailed exterior plans, overall design and architectural review and any required operating licenses.

(f) "Approved Development Budget" means the proforma development budget, including sources and uses of the Approved Financing funds, as approved by the County and attached hereto and incorporated herein as Exhibit C.

(g) "Approved Financing" means sources of financing for the Development in the Approved Development Budget, which includes the following:

(1) A construction loan from Silicon Valley Bank, a national banking association (the "Bank") financed by the purchase of the tax-exempt bonds and a taxable construction loan in the approximate amount of Thirty-Eight Million Four Hundred Twenty Thousand Nine Hundred Twenty-Three Dollars (\$38,420,923) (the "Bank Construction Loan");

(2) Construction/permanent loan from the City in the aggregate principal amount of Two Million Seven Hundred Seventy-Four Thousand Nine Hundred Twenty-Five Dollars (\$2,774,925) ( the "City Loan");

(3) A permanent loan from Freddie Mac in in the aggregate principal amount of Eight Million Five Hundred Ninety-Eight Thousand Dollars (\$8,598,000) as serviced by PGIM, or an affiliate ( the "Freddie Mac/PGIM Permanent Loan ");

(4) An Affordable Housing Program loan from BRIDGE (by way of Silicon Valley Bank) in the approximate amount of Eight Hundred and Eighty Thousand Dollars (\$880,000) (the "AHP Loan");

(5) The County Loan to the Borrower;

(6) A permanent loan from the Affordable Housing and Sustainable Communities program funds from HCD administered by the California Strategic Growth Council in the approximate amount of Eleven Million Two Hundred Seventy-Nine Thousand Five Hundred Dollars (\$11,279,500) (the "AHSC Loan");

(7) A capital contribution from the Investor Limited Partner in the approximate amount of Twenty-Two Million Three Hundred Seventy-Two Thousand Six Hundred and Thirty Eight Dollars (\$22,372,638) (the "Tax Credit Equity");

(8) A capital contribution from the general partner of the Borrower in the approximate amount of Two Million Seven Hundred Eighty-One Thousand Three Hundred Seventy-Two Dollars (\$2,781,372) (the "GP Capital Contribution"); and

(9) Deferred developer fee for the Development in the approximate amount of One Million Two Hundred Fourteen Thousand Five Hundred Ninety-Two Dollars (\$1,214,592).

(h) "Bank Construction Loan" has the meaning set forth in Section 1.1(g)(1).

(i) "Borrower" has the meaning set forth in the first paragraph of this Agreement.

(j) "Borrower's Share of Residual Receipts" means twenty-five percent (25%) of Residual Receipts.

(k) "BRIDGE" means BRIDGE Housing Corporation, a California nonprofit public benefit corporation.

- (l) "Certificate of Occupancy" means the Certificate of Occupancy or equivalent document issued by the City to certify completion of the construction of the Development.
- (m) "City" means the City of Berkeley, California.
- (n) "City Loan" has the meaning set forth in Section 1.1(g)(2).
- (o) "Completion Date" means the date that a final Certificate of Occupancy, or equivalent document, is issued by the City to certify completion of the construction of the Development.
- (p) "Construction Plans" has the meaning set forth in Section 2.12.
- (q) "Construction Work" means the physical construction work to construct the Development, which shall be performed in accordance with the Applicable Governmental Approvals, the Construction Plans, and all required permits.
- (r) "County" has the meaning set forth in the first paragraph of this Agreement.
- (s) "County A1 Closing" means the closing of escrow on the County Loan and the financing for the construction of the Improvements.
- (t) "County-Assisted Units" means the eighty-eight (88) Units, the occupancy of which is restricted by the County to households with certain income limits, as further set forth in the Regulatory Agreement.
- (u) "County Bond" has the meaning set forth in Recital E.
- (v) "County Contract" has the meaning set forth in Recital E.
- (w) "County Loan" has the meaning set forth in Recital E.
- (x) "County's Share of Residual Receipts" means twenty five percent (25%) of the Residual Receipts **plus** the result, expressed as a percentage of the total Approved Financing attributable to those lenders sharing in the Lenders' Share of Residual Receipts, obtained by dividing here (i) the County Loan funds to be disbursed to Borrower in accordance with this Agreement, by (ii) the sum of the principal amounts of funds disbursed under the (1) County Loan, (2) the City Loan, and (3) the AHSC Loan.
- (y) "Deed of Trust" means the Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing of even date herewith among Borrower, as trustor, Old Republic Title Company, as trustee, and the County, as beneficiary, which will encumber the Borrower's leasehold interest in the Property to secure repayment of the County Loan and performance of the covenants of the Loan Documents, the form of which is attached hereto as Exhibit E and incorporated herein by this reference.

- (z) "Default" has the meaning set forth in Section 6.1 below.
- (aa) "Default Rate" means the lesser of the maximum rate permitted by law or ten percent (10%) per annum.
- (bb) "Development" has the meaning set forth in Recital D.
- (cc) "Effective Date" means the date first written above.
- (dd) "Fifteen Year Compliance Period" means the fifteen (15) year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended.
- (ee) "Final Cost Certification" has the meaning set forth in Section 4.3.
- (ff) "Final Development Cost" means the total of the cost of acquisition of the Property and Construction Work as shown on the Final Cost Certification.
- (gg) "Force Majeure" means the occurrence of one or more of those events described in Section 7.14, permitting an extension of time for performance of obligations under this Agreement.
- (hh) "Freddie Mac" means Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise organized and existing under the laws of the United States of America.
- (ii) "GP Capital Contribution" has the meaning set forth in Section 1.1(g)(8).
- (jj) "Gross Revenue" means with respect to a particular calendar year all revenue, income, receipts, and other consideration actually received from operation and leasing of the Development. Gross Revenue includes, but is not limited to:
  - (1) all rents, fees and charges paid by tenants;
  - (2) Section 8, or other rental subsidy payments received for the dwelling units;
  - (3) deposits forfeited by tenants;
  - (4) all cancellation fees;
  - (5) price index adjustments and any other rental adjustments to leases or rental agreements resulting in actual income;
  - (6) proceeds from vending and laundry room machines;
  - (7) the proceeds of business interruption or similar insurance;

(8) subject to the rights of Senior Lenders, the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Development (or applied toward the cost of recovering such proceeds); and

(9) subject to the rights of Senior Lenders, condemnation awards for a taking of part of all of the Development for a temporary period.

Gross Revenue does not include tenants' security deposits; loan proceeds; capital contributions; interest income earned on reserves, provided that the interest shall be considered reserve funds and is being used for the purposes for which the applicable reserve was established; lender impounds, provided that the interest is held by the lender and used for the purposes of the impound account; or similar advances.

(kk) "Hazardous Materials" means: (i) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, Freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical, and (ii) any waste, substance or material defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic materials", "toxic waste", "toxic substances," or words of similar import under any Hazardous Materials Law.

(ll) "Hazardous Materials Claims" means with respect to the Property (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Borrower or the Property pursuant to any Hazardous Materials Law; and (ii) all claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials.

(mm) "Hazardous Materials Law" means any federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, health, industrial hygiene, environmental conditions, or the regulation or protection of the environment, and all amendments thereto as of this date and to be added in the future and any successor statute or rule or regulation promulgated thereto.

(nn) "HCD" means the California Department of Housing and Community Development.

(oo) "Housing Director" means the Housing Director of the County Housing and Community Development Department or his or her designee.

(pp) "HUD" means the United States Department of Housing and Urban Development.

(qq) "Implementation Policies" means the Measure A1 Implementation Policies adopted by the County Board of Supervisors on November 7, 2017, as such may be updated from time to time, which set forth the Rental Housing Development Fund requirements.

(rr) "Improvements" has the meaning set forth in Recital C.



(ss) "Investor Limited Partner" means the limited partners of Borrower, NEF Assignment Corporation, an Illinois not-for-profit corporation, as nominee, Merritt Community Capital Fund XXI, L.P., a California limited partnership, and MCC Housing LLC, a California limited liability company, and their successors and assigns, providing the Tax Credit Equity

(tt) "Labor and Contract Compliance Closeout Report" means the report regarding Borrower's compliance with the Prevailing Wage, Workforce and Contracting Policies applicable to County Bond funded projects, including the requirements set forth in the County Contract.

(uu) "Lenders' Share of Residual Receipts" means fifty percent (50%) of Residual Receipts.

(vv) "Loan Documents" means this Agreement, the Note, the Regulatory Agreement, and the Deed of Trust.

(ww) "Monitoring Fee" means the monitoring fee paid to the County in the amount of Three Hundred Dollars (\$300) per County-Assisted Unit per year;

(xx) "Net Proceeds of Permanent Financing" means the amount by which Permanent Financing exceeds the Final Development Costs.

(yy) "Note" means the promissory note dated concurrently herewith executed by Borrower and evidencing Borrower's obligation to repay the County Loan, the form of which is attached hereto as Exhibit D and incorporated herein by this reference.

(zz) "Notice of Completion" means the Notice of Completion executed by Borrower in the form specified in California Civil Code Section 8182.

(aaa) "Parties" means the County and Borrower.

(bbb) "Partnership Agreement" means the Agreement of Limited Partnership executed by BRIDGE Berkeley Way LLC as the general partner and the Investor Limited Partner, governing the operation and organization of the Borrower.

(ccc) "Partnership/Asset Management Fee" means (i) partnership management fees (including any asset management fees) payable pursuant to the Partnership Agreement to any partner or affiliate of Borrower or any affiliate of a partner of Borrower, if any, during the Fifteen Year Compliance Period, and (ii) after the expiration of the Fifteen Year Compliance Period asset management fees payable to Borrower, in the amounts approved by the County as set forth in Section 3.19.

(ddd) "Permanent Closing" means closing of the Permanent Financing for the Development.

(eee) "Permanent Financing" means the sum of the following amounts: (1) the Freddie Mac/PGIM Permanent Loan, (2) the City Loan; (3) the County Loan; (4) the AHSC Loan; (5) the AHP Loan; (6) the Tax Credit Equity; and (7) the GP Capital Contribution.

(fff) "PGIM" means PGIM Real Estate Finance, LLC, a Delaware limited liability company.

(ggg) "Property" has the meaning set forth in Recital D.

(hhh) "REA" means the Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way Projects by and among the City, Borrower, and BFHP Hope Center LP dated July 2, 2020.

(iii) "Regulatory Agreement" means the regulatory agreement between the County and Borrower associated with the County Loan, to be recorded against Borrower's leasehold interest in the Property, the form of which is attached hereto as Exhibit F and incorporated herein by this reference.

(jjj) "Residual Receipts" means in a particular calendar year the amount by which Gross Revenue exceeds Annual Operating Expenses.

(kkk) "Retention Amount" means the Forty-Nine Thousand Dollars (\$ 49,000) of County Loan funds subject to the disbursement conditions set forth in Section 2.7 below.

(lll) "Senior Lender" has the meaning set forth in Section 2.5.

(mmm)"Senior Loan" has the meaning set forth in Section 2.5.

(nnn) "Tax Credit Equity" has the meaning set forth in Section 1.1(g)(9).

(ooo) "TCAC" means the California Tax Credit Allocation Committee.

(ppp) "Term" means the term of this Agreement which commences as of the date of this Agreement, and unless sooner terminated pursuant to the terms of this Agreement, ends fifty-five (55) years after the conversion of the Project's construction financing to Permanent Financing, provided, however, if a record of the conversion date to Permanent Financing cannot be located or established, then fifty-seven (57) years after the date of this Agreement.

(qqq) "Transfer" has the meaning set forth in Section 4.11 below.

(rrr) "Unit" means one (1) of the apartment units to be constructed on the Property.

## Section 1.2 Exhibits

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

EXHIBIT A: Legal Description of the Property

EXHIBIT B: Legal Description of Leasehold Estate

- EXHIBIT C: Approved Development Budget
- EXHIBIT D: Form of Promissory Note
- EXHIBIT E: Form of Deed of Trust
- EXHIBIT F: Form of Regulatory Agreement

## ARTICLE 2 COUNTY LOAN PROVISIONS

### Section 2.1 County Loan.

The County shall loan to Borrower the County Loan for the purposes set forth in Section 2.3 of this Agreement. The obligation to repay the County Loan is evidenced by the Note. Upon satisfaction of all applicable requirements and necessary approvals, the County shall loan to Borrower the County Loan.

### Section 2.2 Interest.

(a) Subject to the provisions of Section 2.2(b) below, the outstanding principal balance of County Loan will accrue simple interest at the rate of three percent (3%) per annum based on a 365-day year from the date of disbursement.

(b) In the event of a Default, interest on the County Loan will begin to accrue as of the date of Default and continuing until such time as the County Loan is repaid in full or the Default is cured, at the Default Rate.

### Section 2.3 Use of County Loan Funds.

(a) County Loan. Borrower shall use the County Loan to pay a portion of the construction costs for the Development, consistent with the Approved Development Budget, subject to the disbursement conditions set forth in Section 2.6 and Section 2.7 below.

(b) No Other Uses. Borrower shall not use the County Loan for any other purposes without the prior written consent of the County in its sole discretion.

### Section 2.4 Security.

Borrower shall execute the Deed of Trust to secure the Note, and shall record it as a lien against the Borrower's leasehold interest in the Property. Borrower shall also cause or permit the Regulatory Agreement to be recorded against the Borrower's leasehold interest in the Property. The Deed of Trust may be subordinated in lien priority subject to the requirements of Section 2.5 below. The Regulatory Agreement may not be subordinated unless otherwise approved by the County in writing in its sole discretion.

### Section 2.5 Subordination.

(a) Any agreement by the County to subordinate the Deed of Trust to financing approved by the County in the Approved Development Budget (each a "Senior Loan"),

or any loan obtained by Borrower to refinance a Senior Loan, is subject to the satisfaction of the following conditions:

(1) All of the proceeds of the proposed Senior Loan, less any transaction costs, must be used to provide construction and/or permanent financing for the Development.

(2) The proposed lender of a Senior Loan (each a "Senior Lender") must be a state or federally chartered financial institution, a nonprofit corporation, or a public entity that is not affiliated with Borrower or any of Borrower's affiliates, other than as a depositor or a lender.

(3) Borrower demonstrates to the County's reasonable satisfaction that subordination of the Deed of Trust is necessary to secure adequate construction and/or permanent financing to ensure the viability of the Development, including the operation of the Development as affordable housing, as required by the Loan Documents. To satisfy this requirement, Borrower must provide to the County, in addition to any other information reasonably required by the County, written evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate acquisition, construction, and/or permanent financing to ensure the viability of the Development, and adequate financing for the Development would not be available without the proposed subordination.

(4) Any County subordination agreement must be structured to minimize the risk that the Deed of Trust would be extinguished as a result of a foreclosure by the Senior Lender or other holder of the Senior Loan. To satisfy this requirement, the subordination agreement must provide the County with adequate rights to cure any defaults by Borrower, including, but not limited to: (i) providing the County or its successor with copies of any notices of default at the same time and in the same manner as provided to Borrower; and (ii) providing the County with a cure period of at least ninety (90) days to cure any default.

(5) Any subordination of the County Loan is effective only during the original term of the Senior Loan and any extension of its term that is approved in writing by the County.

(6) Any subordination does not limit the effect of the Deed of Trust before a foreclosure, nor require the consent of the Senior Lender prior to the County exercising any remedies available to the County under the Loan Documents.

(b) Upon a determination by the Housing Director that the conditions in this Section have been satisfied, the Housing Director will be authorized to execute the approved subordination agreement(s) without the necessity of any further action or approval.

#### Section 2.6 Conditions Precedent to Disbursement.

The County will not deliver this Agreement and is not obligated to disburse any portion of the County Loan, or to take any other action under the Loan Documents unless all of the following conditions have been and continue to be satisfied:

- (a) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement, or under any other agreement between the County and Borrower;
- (b) Borrower has acquired a leasehold interest in title to the Property;
- (c) Borrower has delivered to the County copies of all of Borrower's organizational documents, and a copy of an authorizing resolution authorizing Borrower's execution of the Loan Documents, any amendments thereto, and the transactions contemplated by this Agreement, including the Approved Financing;
- (d) Borrower has executed and delivered to the County the Loan Documents and the County Contract, and has caused all other documents, instruments, and policies required under the Loan Documents to be delivered to the County;
- (e) The Deed of Trust and the Regulatory Agreement are recorded against the Borrower's leasehold interest in the Property, with the Regulatory Agreement senior to the Senior Loan deed of trust;
- (f) Borrower has furnished the County with current evidence of the insurance coverage meeting the requirements of Section 4.12 below;
- (g) All Applicable Governmental Approvals necessary for the construction of the Development has been completed;
- (h) Borrower has delivered to the County a copy of the Partnership Agreement, in which the Investor Limited Partner is obligated to provide Borrower the Tax Credit Equity in the amount shown in the Approved Development Budget and the County has approved the Partnership Agreement;
- (i) The general partner of Borrower contributed no less than the GP Capital Contribution in the amount of \$ 2,781,372 directly back to the Development pursuant to Section 3.20 below;
- (j) No material adverse change in the financial condition of Borrower from that shown by the financial statements and other data and information furnished by Borrower to the County prior to the date of this Agreement;
- (k) Borrower has provided a copy of its tax credit reservation letter for the Development, signed by TCAC and accepted by Borrower;
- (l) Borrower has caused to be executed and delivered to the County an agreement with a construction inspector as required under Section 3.17(c);
- (m) The County has approved the Approved Development Budget for the Development;

(n) All environmental review necessary for the Construction Work has been completed, and Borrower has provided the County evidence of planned compliance with all mitigation measures applicable to construction;

(o) Borrower has obtained all permits and approvals necessary for the construction of the Development and the County has received a copy of the building permits required to construct the Development;

(p) The County has received and approved the final Construction Plans for the construction of the Development;

(q) The County has received and approved the general contractor's construction contract that Borrower has entered or proposed to enter for the construction of the Development pursuant to Section 3.1 below;

(r) The County has received and approved labor and material (payment) bonds and performance bonds as required pursuant to Section 3.2 below;

(s) Borrower has delivered to County an executed Project Labor Agreement approved by the County and in compliance with the County Measure A1 Policies pursuant to Section 3.8 (d) below;

(t) Borrower has demonstrated full compliance with the A1 Labor and Contract Compliance Policies:

(1) to the extent required to be performed prior to the County A1 Closing for the initial disbursement of the County Loan, and

(2) to the extent required to be performed during construction as of the second most recent monthly labor and contract compliance report submitted by Borrower for subsequent disbursements of the County Loan, all as further set forth in Section 3.8 below;

(u) Borrower is in compliance with the First Source Hiring Requirements, as described in Section 3.9;

(v) Any amendments to the Loan Documents and the loan documents for the Approved Financing required to be recorded, are recorded against the leasehold interest in the Property, or will be simultaneously with the County A1 Closing;

(w) A title insurer reasonably acceptable to the County is unconditionally and irrevocably committed to issuing an LP-10 update to its Lender's Policy of title insurance or a rewrite of its Lender's Policy of title insurance, insuring the priority of the Deed of Trust in the amount of the County Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the County, and containing such endorsements as the County may reasonably require. Borrower shall provide whatever documentation (including an indemnification agreement), deposits or surety that is reasonably required by the title company in order for the County's Deed of Trust to be senior in lien priority to any mechanics liens in connection with any early start of construction;

(x) Borrower has closed the Approved Financing to be used for construction of the Development approved by the County in the Approved Development Budget and is eligible to receive the proceeds thereof in accordance with the terms and conditions evidencing such financing;

(y) Borrower has obtained and provided to the County evidence that the parties providing the Approved Financing consent to the County Loan disbursement requested by Borrower;

(z) The County has determined that the undisbursed proceeds of the County Loan, together with other funds or firm commitments for funds that Borrower has obtained in connection with the Development, are not less than the amount that is necessary to pay for construction of the Development and to satisfy all of the covenants contained in this Agreement and the Regulatory Agreement; and

(aa) The County has received a written draw request from Borrower meeting the requirements in Section 2.11 below.

#### Section 2.7 Conditions Precedent to Disbursement of the Retention Amount.

(a) Sixty Percent of Retention Amount. The County is not obligated to release the first sixty percent (60%) of the Retention Amount until the County has received and approved the Labor and Contract Compliance Closeout Report.

(b) Forty Percent of Retention Amount. The County is not obligated to disburse the final forty percent (40%) of the Retention Amount unless all of the following conditions have been and continue to be satisfied (to the extent not provided as part of the approved Labor and Contract Compliance Closeout Report). If the following have not be satisfied within twelve (12) months of completion of construction of the Development the County has the right to retain the undisbursed portion of the Retention Amount as partial repayment of the County Loan:

(1) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement;

(2) Permanent Closing has occurred and Borrower has received all equity except for the final equity installment being provided at receipt of Form 8609;

(3) The County has received and approved the preliminary calculation of the Net Proceeds of Permanent Financing in accordance with Section 2.8(b);

(4) The County has received from Borrower the recorded Notice of Completion;

(5) The County has received from Borrower copies of the Certificate of Occupancy or equivalent permit sign-offs for the Development;

(6) The County has received from Borrower a copy of the final City Building Department inspection;

(7) The County has received a completion report from Borrower setting forth (i) the income, household size, and ethnicity of tenants in the County-Assisted Units in the Development, (ii) the unit size, rent amount and utility allowance for all County-Assisted Units in the Development, and (iii) designation of the Units in the Development made accessible pursuant to the applicable Accessibility Requirements;

(8) The County has received a draft of the Final Cost Certification from Borrower;

(9) The County has received a reissue of its loan policy with mechanic's lien endorsements acceptable to the County and, if requested by the County, unconditional lien releases and final payment certification;

(10) The County has received from Borrower current evidence of the insurance coverage meeting the requirements of Section 4.12 below;

(11) The County has received from Borrower a form of tenant lease, a Marketing Plan (as defined in Section 4.4 of the Regulatory Agreement), and a Tenant Selection Plan (as defined in Section 4.5 of the Regulatory Agreement) for the Development;

(12) The County has received from Borrower evidence of marketing for any vacant units in the Development such as copies of flyers, list of media ads, list of agencies and organizations receiving information on availability of units, as applicable;

(13) The County has received from Borrower all relevant contract activity information, including compliance with Section 3 and MBE/WBE requirements;

(14) The County has received from Borrower a final management plan for the Development and contact information for the property manager of the Development and the name and phone number of the on-site property management representative;

(15) In connection with state prevailing wages and/or prevailing wages under the Davis-Bacon Act (40 U.S.C. §§ 3141-3148), the County has received from Borrower all certified payrolls, and any identified payment issues have been resolved, or Borrower is working diligently to resolve any such issues;

(16) The County has received documents showing compliance with any required environmental mitigations;

(17) The County has received a copy of the as-built drawings for the Development;

(18) The County has received from Borrower a certification regarding the accessibility of the Development for disabled persons;



(19) Borrower has paid the construction inspection fees (if any) required to be paid pursuant to Section 3.17(c) and is otherwise in compliance with the construction inspection agreement approved by the County;

(20) The County has received from Borrower the Resident Services Plan and Resident Services Budget (as defined in Section 4.6 of the Regulatory Agreement); and

(21) The County has received a written draw request from Borrower, including certification that the condition set forth in Section 2.6(a) continues to be satisfied, and setting forth the proposed uses of funds consistent with the Approved Development Budget, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. Borrower shall apply the disbursement for the purpose(s) requested.

#### Section 2.8 Repayment Schedule.

The County Loan shall be repaid as follows:

(a) Annual Payments. Commencing on June 1, 2023, and on June 1st of each calendar year thereafter through the end of the Term, Borrower shall make repayments of the County Loan equal to the County's Share of Residual Receipts. Payments made shall be credited first against accrued interest and then against outstanding principal. If all Approved Financing funds are disbursed as anticipated, the County will receive the County's Share of Residual Receipts which shall be used towards repayment of the County Loan.

(b) Special Repayments of County Loan from Net Proceeds of Permanent Financing.

(1) Borrower understands and agrees that, to the extent there are Net Proceeds of Permanent Financing, such Net Proceeds of Permanent Financing shall be shown in the final audited cost certification and (a) used to reduce the principal balance of the County Loan at conversion to permanent financing by an amount not exceeding the contingency shown in the Approved Development Budget, and (b) if the County made a disbursement of the County Loan at conversion to permanent financing and additional Net Proceeds of Permanent Financing are realized following such disbursement, then the Net Proceeds of Permanent Financing, in an amount not exceeding the contingency shown in the Approved Development Budget, shall be made as a special loan repayment within ten (10) days following the issuance of the Borrower's 8609.

(2) No later than sixty (60) days following completion of construction of the Development, Borrower shall submit to the County for its review a preliminary calculation of the Net Proceeds of Permanent Financing and a draft of the Final Cost Certification. The County shall approve or disapprove Borrower's determination of the amount of the Net Proceeds of Permanent Financing in writing within thirty (30) days after receipt. If Borrower's determination is disapproved by the County, Borrower shall re-submit documentation to the County until the County approval is obtained.

(c) Payment in Full. All principal and accrued interest on the County Loan shall be due in full on the earlier to occur of (i) the date of any Transfer not authorized by the

County, (ii) the date of any Default, and (iii) the expiration of the Term.

(d) Prepayment. Borrower shall have the right to prepay the County Loan at any time without premium or penalty. However, the Regulatory Agreement and the Deed of Trust (as security for the Regulatory Agreement) will remain in effect for the entire Term of the County Loan, regardless of any prepayment.

#### Section 2.9 Reports and Accounting of Residual Receipts.

(a) Borrower shall keep and maintain at the principal place of business of Borrower set forth in Section 7.9 below, or elsewhere with the County's written consent, full, complete and appropriate books, records and accounts necessary or prudent to evidence and substantiate in full detail Borrower's calculation of Residual Receipts and disbursements of Residual Receipts.

(b) In connection with payments of the County Loan, Borrower shall furnish to the County:

(1) A statement of Residual Receipts for the relevant period. The first statement of Residual Receipts will cover the period that begins on January 1, 2023, and ends on December 31st of that same year. Subsequent statements of Residual Receipts will cover the twelve-month period that ends on December 31 of each year;

(2) A statement from the independent public accountant that audited Borrower's financial records for the relevant period, which statement must confirm that Borrower's calculation of Residual Receipts, and the County's Share of Residual Receipts, including, but not limited to the Lenders' Share of Residual Receipts, is accurate based on Gross Revenue and Annual Operating Expenses; and

(3) Any additional documentation reasonably required by the County to substantiate Borrower's calculation of Residual Receipts.

(c) The receipt by the County of any statement pursuant to subsection (b) above or any payment by Borrower or acceptance by the County of any County Loan repayment for any period does not bind the County as to the correctness of such statement or payment. The County may audit the Residual Receipts and all books, records, and accounts pertaining thereto pursuant to Section 4.5 below.

#### Section 2.10 Non-Recourse.

Except as provided below, neither Borrower nor its partners shall have any direct or indirect personal liability for payment of the principal of, and interest on, the County Loan. Following recordation of the Deed of Trust, the sole recourse of the County with respect to the principal of, and interest on, the Note will be to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability shall (i) limit or impair the enforcement against all such security for the Note of all the rights and remedies of the County thereunder, or (ii) be deemed in any way to impair the right of the County to assert the unpaid principal amount of the Note as demand for money within the meaning and intentment of

Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note. Nothing contained herein is intended to relieve Borrower of its obligation to indemnify the County under the Loan Documents, and Borrower shall be fully and personally liable for: (i) loss or damage of any kind resulting from waste, fraud, gross negligence, or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust; (iv) willful or grossly negligent violation of applicable law; and (v) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

Section 2.11 Process for Disbursement of County Loan Proceeds.

- (a) Borrower shall submit one (1) draw request to the County not more frequently than one time each calendar month which shall be derived from the County Loan proceeds, less the Retention Amount.
- (b) The draw request must be in a form containing sufficient detail and with sufficient supporting documentation to permit the County to confirm that the request is consistent with this Agreement and must also include a certification that the condition set forth in Section 2.6(a) continues to be satisfied.
- (c) The draw request must include a statement of the total costs incurred by Borrower in connection with the Development, the amount of those costs paid by Borrower, the proposed uses of funds consistent with the Approved Development Budget, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering the costs incurred or to be incurred. When a disbursement is requested to pay any costs other than costs associated with the acquisition of the Property or hard costs for the construction of the Development, such disbursement will be made only on a cost reimbursement basis and the disbursement request must be accompanied by receipts that show the bill or invoice has already been paid by Borrower.
- (d) When a disbursement is requested to pay any contractor in connection with the construction of the Development, the written request must be accompanied by (i) certification by Borrower's architect reasonably acceptable to the County that the work for which disbursement is requested has been completed (although the County reserves the right to inspect the Development and make an independent evaluation); and (ii) lien releases and/or mechanics lien title insurance endorsements reasonably acceptable to the County. Borrower shall apply the disbursement for the purposes requested.
- (e) The County will make good faith efforts to approve Borrower's draw request in approximately sixty (60) days after receipt of a properly completed draw request with all necessary supporting documentation.

(f) Notwithstanding any other provisions of this Agreement, the County shall have no further obligation to approve a draw-down of any portion of the County Loan to Borrower following: (i) termination of this Agreement; or (ii) notification by the County to Borrower of a Default under the terms of this Agreement.

#### Section 2.12 Construction Plans.

(a) Borrower shall submit to the County for review, a copy of the Construction Plans for the Development. As used in this Agreement, "Construction Plans" means all construction documentation upon which Borrower and Borrower's contractor shall rely in constructing all the Improvements on the Property (including dwelling units, landscaping, parking, and common areas) and shall include, but not necessarily be limited to, final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications (also known as "working drawings"). The Construction Plans must incorporate the Accessibility Requirements.

(b) The County shall, if the Construction Plans submitted conform to the provisions of this Agreement, approve the Construction Plans. The County in its sole discretion may waive its right to approve the Construction Plans. Such waiver or approval of the Construction Plans by the County shall not relieve Borrower's obligation to obtain any and all approvals required by the City Building Department.

### ARTICLE 3 CONSTRUCTION OF THE DEVELOPMENT

#### Section 3.1 Construction Contract.

(a) Not later than ten (10) days prior to the County A1 Closing, Borrower shall submit to the County for its approval the proposed construction contract for the Development. The construction contract shall comply with the A1 Labor and Contract Compliance Policies set forth in Section 3.8 below. Each contract that Borrower enters for construction of the Development shall provide that at least ten percent (10%) of the costs incurred shall be payable only upon completion of construction, subject to early release of retention or waiver of the retention requirement for specified subcontractors upon approval by the County. The County's approval of the construction contract shall in no way be deemed to constitute approval of or concurrence with any term or condition of the construction contract except as such term or condition may be required by this Agreement.

(b) All Construction Work and professional services shall be performed by persons or entities licensed or otherwise authorized to perform the applicable Construction Work or service in the State of California. Borrower shall provide the County a copy of the general contractor's license not later than ten (10) days prior to the County A1 Closing.

(c) Borrower shall ensure that all subcontractors are competitively bid. Competitively bid is defined as soliciting three (3) or more bids per contract, or demonstrating that three (3) or more qualified subcontractors per contract were not available to be solicited. Borrower shall cause the general contractor to maintain copies of all bid documents for submission to the County upon request.

(d) The County shall, if the construction contract submitted conforms to the provisions of this Agreement, approve the construction contract. If the construction contract is not approved by the County, the County shall set forth in writing and notify Borrower of the County's reasons for withholding such approval. Borrower shall thereafter submit a revised construction contract for County approval, which approval shall be granted or denied in ten (10) working days. Any construction contract executed by Borrower for the Improvements shall be in the form approved by the County.

(e) The County requires that Borrower and the general contractor and all subcontractors working on the Development are not debarred or suspended pursuant to HUD guidelines. Borrower shall require the general contractor and all subcontractors to execute a Debarment and Suspension Certification in the form attached to the County Contract as Exhibit E prior to beginning construction work on the Development.

### Section 3.2 Construction Bonds.

Prior to commencement of the County A1 Closing, Borrower shall deliver to the County copies of labor and material bonds and performance bonds for the construction of the Development in an amount equal to one hundred percent (100%) of the scheduled cost of the Improvements. The County must be named as a co-obligee on the bonds.

### Section 3.3 Permits and Approvals.

All permits necessary for the construction of the Development on the Property must be received no later than the date of the County A1 Closing.

### Section 3.4 Commencement of Construction.

Borrower shall cause the commencement of the construction of the Development no later than August 1, 2020 or such later date that the County may approve in writing. For the purposes of this Agreement, "Commencement of Construction" means the date set for the start of construction of the Development in the notice to proceed issued by Borrower to Borrower's general contractor.

### Section 3.5 Completion of Construction.

(a) Borrower shall diligently prosecute construction of the Development to completion, and shall cause the completion of the construction of the Development no later than January 1, 2023 or such later date that the County may approve.

(b) Borrower shall record a Notice of Completion within the time set forth in Section 8182 of the California Civil Code and provide the County a copy of the recorded Notice of Completion.

(c) Borrower shall provide the County a copy of the Certificate of Occupancy, or equivalent permit sign-off within ten (10) days of receipt from the City.

Section 3.6 Changes; Construction Pursuant to Plans and Laws.

(a) Changes. Borrower shall construct the Improvements in substantial conformance with the plans and specifications approved by the City Building Department and the County, and the Approved Development Budget. Borrower shall notify the County in a timely manner of any changes in the work required to be performed under this Agreement, including any additions, changes, or deletions to the Construction Plans approved by the County. A written change order authorized by the County must be obtained before any of the following changes, additions, or deletions in work for the Development may be performed: (i) any change in the work the cost of which exceeds Fifty Thousand Dollars (\$50,000); or (ii) any set of changes in the work the cost of which cumulatively exceeds Two Hundred Thousand Dollars (\$200,000); or (iii) any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the Development as provided for in the plans and specifications approved by the City Building Department. The County's consent to any additions, changes, or deletions to the work shall not relieve or release Borrower from any other obligations under this Agreement, or relieve or release Borrower or its surety from any surety bond.

(b) Compliance with Laws. Borrower shall cause all work performed in connection with the Development to be performed in compliance with: (i) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter; and (ii) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. Borrower shall be responsible to the County for the procurement and maintenance of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, as may be required of Borrower and all entities engaged in work on the Development.

Section 3.7 Prevailing Wages.

(a) Payment of State Prevailing Wages. As required by the Implementation Policies, Borrower shall and shall cause its contractors and subcontractors to pay all workers performing construction work on the Development, not less than the highest prevailing rate of wages as determined and published by the California Department of Industrial Relations (the "DIR"). Borrower shall submit payrolls and other necessary documentation to the County to facilitate the monitoring pursuant to Section 3.7 (e) below of the payment of prevailing wages. This requirement to pay prevailing wages applies whether or not the County Loan falls under an exception to California Labor Code Section 1720 *et seq.*

(b) Other Prevailing Wage Requirements. Notwithstanding Subsection (a) above, if the Development is, independent of the County Loan, subject to the prevailing wage requirements of the federal Davis-Bacon Act (40 U.S.C. §§ 3141-3148) and/or state prevailing wage requirements of California Labor Code Section 1720 *et seq.*, Borrower shall comply with those federal and/or state mandates. Those federal and/or state mandates, to the extent not in conflict with Subsection (a) above, will control. If this Subsection (b) applies, Borrower shall submit payrolls and other necessary documentation to the County to facilitate the monitoring pursuant to Subsection (e) of the payment of prevailing wages.

(c) State Prevailing Wage Compliance Requirements. If the Development is subject to the California Labor Code Section 1720 *et seq.* requirements applicable to the payment of state prevailing wages, whether due to the County Loan, other development financing, a future court decision, or a DIR determination requiring compliance, then in addition to Subsection (a) or (b) above regarding the payment of prevailing wages, Borrower shall:

(1) cause any consultants or contractors to employ apprentices as required by California Labor Code Section 1777.5 *et seq.*, and the implementing regulations of DIR, and to comply with the other applicable provisions of California Labor Code Sections 1720 *et seq.*, 1777.5 *et seq.*, and implementing regulations of the DIR.

(2) keep and retain, and shall cause any consultants and contractors to keep and retain, such records as are necessary to determine if such prevailing wages have been paid as required pursuant to California Labor Code Section 1720 *et seq.*, and apprentices have been employed are required by California Labor Code Section 1777.5 *et seq.*;

(3) post at the Property, or shall cause the contractor to post at the Property, the applicable prevailing rates of per diem wages. Copies of the currently applicable current per diem prevailing wages are available from DIR;

(4) cause contractors and subcontractors constructing the Improvements to be registered as set forth in California Labor Code Section 1725.5;

(5) cause its contractors and subcontractors, in all calls for bids, bidding materials and the construction contract documents for the Construction Work to specify that:

(i) no contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the Construction Work unless registered with the DIR pursuant to California Labor Code Section 1725.5; and

(ii) the Construction Work is subject to compliance monitoring and enforcement by the DIR.

(6) provide the County all information required by California Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within 2 days of the award of any contract (<https://www.dir.ca.gov/pwc100ext/>);

(7) cause its contractors to post job site notices, as prescribed by regulation by the DIR; and

(8) cause its contractors to furnish payroll records required by California Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner.

(d) Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or

entity (including Borrower, its contractor and subcontractors) to pay prevailing wages as required by Subsection (a) or (b) above, and if applicable, to employ apprentices pursuant to California Labor Code Section 1777.5 *et seq.*, to meet the conditions of California Labor Code Section 1771.4, and implementing regulations of the DIR, or to comply with the other applicable provisions of California Labor Code Sections 1720 *et seq.*, 1777.5 *et seq.*, and 1771.4, and the implementing regulations of the DIR, in connection with the Construction Work or any other work undertaken or in connection with the Property. This obligation to indemnify survives termination of this Agreement, repayment of the County Loan, and the reconveyance of the Deed of Trust.

(e) Borrower shall engage a third party prevailing wage monitor, to be selected or approved by the County, and paid for by Borrower to monitor the payment of prevailing wages during the Construction Work. Borrower shall include the cost of the prevailing wage monitor in the Approved Development Budget.

### Section 3.8 Measure A1 Labor and Contract Compliance Policies.

(a) Compliance. As part of the Implementation Policies the County has adopted Prevailing Wage, Workforce and Contracting Policies ("A1 Labor and Contract Compliance Policies") that apply to all tiers of construction contractors working on County Bond funded projects. Borrower shall, and shall cause the general contractor and construction contractors at all tiers working on the Development to comply with A1 Labor and Contract Compliance Policies. The A1 Labor and Contract Compliance Policies are set forth in the Measure A1 Labor and Contract Compliance Policies and Procedures Manual and set goals and outreach requirements for construction hours worked by Local and Targeted Disadvantaged Workers, and dollars of County Bond funds contracted to Local and Small Local Businesses. Borrower's contract with the general contractor shall include provisions requiring compliance with the A1 Labor and Contract Compliance Policies. Borrower shall cause all construction contractors working on the Development to complete outreach requirements to make a good faith effort to meet all goals of the A1 Labor and Contract Compliance Policies. Outreach and reporting requirements take effect before the general contractor solicits any hard bids from construction subcontractors. As part of the County Contract, Borrower has executed the Measure A1 Labor and Contract Compliance Program Certification agreeing to comply with the A1 Labor and Contract Compliance Policies, and has been provided a copy of the Labor and Contract Compliance Policies and Procedures Manual.

(b) Reporting. Borrower must submit compliance reports to the County pursuant to the terms of the County Contract including: (i) a pre-construction report that includes a contractor outreach and pre-selection plan prior to subcontractor selection; (ii) monthly reports during Construction Work; and (iii) the Labor and Contract Compliance Closeout Report within sixty (60) days of completion of construction. Sixty percent (60%) of the Retention Amount funds will be held and not released until approval by the County of the Labor and Contract Compliance Closeout Report.

(c) Noncompliance. If Borrower is found to be out of compliance with the A1 Labor and Contract Compliance Policies and such noncompliance has not been corrected within sixty (60) days of notice from the County, the County may take any of the following actions:



(1) require a Compliance Plan to be submitted to the County for approval. This may include, but not be limited to, requiring additional outreach if evidence submitted shows inadequate outreach, or correction of incomplete or incorrect compliance reports; and

(2) withhold disbursement of County Loan funds until the noncompliance issues have been corrected.

(d) Project Labor Agreement. Pursuant to the Measure A1 Implementation Policies, in order to promote labor peace, to secure the availability of an adequate skilled labor pool, and to ensure that these construction projects are completed on time and on schedule for the benefit of residents and County taxpayers, all new construction of affordable housing projects funded by Measure A1 bond proceeds allocated to the Rental Housing Program that are 80 units or larger shall have a Project Labor Agreement ("PLA") signed by the Borrower, the Building and Construction Trades Council of Alameda County and affiliated construction trades unions. The County will not be a party to the private PLA. The subject Development consists of the new construction of eighty-nine Units. Borrower shall execute and submit for review and approval, a PLA consistent with the Measure A1 Implementation Policies as a condition precedent to disbursement of any County Loan funds.

#### Section 3.9 County First Source Hiring Program.

(a) The County has implemented a First Source Hiring Program for projects funded with more than \$100,000 of County funds. Borrower shall comply with the First Source Hiring Program requirements applicable to its operations and those of its general partner as set forth in the County Contract.

#### Section 3.10 Accessibility.

(a) Borrower shall cause the Improvements to be constructed and operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) Section 504 of the Rehabilitation Act of 1973, (iv) the United States Fair Housing Act, as amended, (v) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

(b) In compliance with the Accessibility Requirements: (i) a minimum of nine (9) units in the Development must be constructed to be fully accessible to households with a mobility impaired member and, (ii) an additional four (4) units in the Development must be fully accessible to hearing and/or visually impaired persons. In compliance with the Accessibility Requirements Borrower shall provide the County with a certification from the Development architect that to the best of the architect's knowledge, the Development complies with all federal and state Accessibility Requirements applicable to the Development.

(c) Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County against any claim for damages, compensation,

finances, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Borrower, its architect, contractor and subcontractors) to construct the Improvements in accordance with the Accessibility Requirements. This obligation to indemnify survives termination of this Agreement, repayment of the County Loan and the reconveyance of the Deed of Trust.

#### Section 3.11 Relocation.

(a) If and to the extent that acquisition and development of the Property will result in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then Borrower shall comply with the relocation requirements in the Implementation Policies, and all applicable local, state, and federal statutes and regulations, (including without limitation the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*), and implementing regulations at 49 C.F.R. Part 24; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 C.F.R. Part 42, if applicable; and California Government Code Section 7260 *et seq.* and implementing regulations at 25 California Code of Regulations Section 6000 *et seq.*) with respect to preparation of a relocation plan, relocation planning, advisory assistance, and payment of monetary benefits. Borrower shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws.

(b) Borrower shall indemnify, defend and hold harmless, (with counsel reasonably acceptable to the County), the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns against any claim for damages, compensation, fines, penalties, relocation payments or other amounts and expenses (including reasonable attorneys' fees) arising out of the failure or alleged failure of any person or entity (including Borrower, or the County) to satisfy relocation obligations related to the construction of the Property. This obligation to indemnify survives termination of this Agreement, repayment of the County Loan and the reconveyance of the Deed of Trust.

#### Section 3.12 Equal Opportunity.

During the construction of the Development, there shall be no discrimination on the basis of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin, ancestry, or disability in the hiring, firing, promoting, or demoting of any person engaged in the Construction Work.

#### Section 3.13 Minority and Women-Owned Contractors.

Borrower will use its best efforts to afford Minority-Owned and Woman-Owned Business Enterprises (MBE/WBE) the maximum practicable opportunity to participate in the Construction Work. Borrower shall, at a minimum, notify Minority-Owned and Woman-Owned Business Enterprises (MBE/WBE) located in Alameda County of bid opportunities for the Construction Work. Documentation of such notifications shall be maintained by Borrower and available to the County as requested, including data indicating the racial/ethnic or gender character of each business receiving a subcontract of \$25,000 or more.

#### Section 3.14 Progress Reports.

Until such time as Borrower has received a Certificate of Occupancy from the City for the Development, Borrower shall provide the County with quarterly progress reports regarding the status of the Construction Work, including a certification that the actual construction costs to date conform to the Approved Development Budget, as it may be amended from time to time pursuant to Section 3.18 below.

#### Section 3.15 Construction Responsibilities.

(a) It shall be the responsibility of Borrower to coordinate and schedule the work to be performed so that commencement and completion of the Construction Work will take place in accordance with this Agreement.

(b) Borrower shall be solely responsible for all aspects of Borrower's conduct in connection with the Development, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of Construction Work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the County with reference to the Development is solely for the purpose of determining whether Borrower is properly discharging its obligations to the County, and should not be relied upon by Borrower or by any third parties as a warranty or representation by the County as to the quality of the design or Construction Work.

#### Section 3.16 Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Property or a stop notice affecting the County Loan is served on the County or any other lender or other third party in connection with the Development, then Borrower shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the County a surety bond in sufficient form and amount, or provide the County with other assurance satisfactory to the County that the claim of lien or stop notice will be paid or discharged.

(b) If Borrower fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, then in addition to any other right or remedy, the County may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at Borrower's expense. Alternately, the County may require Borrower to immediately deposit with the County the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The County may use such deposit to satisfy any claim or lien that is adversely determined against Borrower.

(c) In addition to the obligation set forth in Section 3.5(b), Borrower shall file a valid notice of cessation or Notice of Completion upon cessation of construction on the Development for a continuous period of thirty (30) days or more, and take all other reasonable steps to forestall the assertion of claims of lien against the Property. Borrower authorizes the County, without any obligation, to record any notices of completion or cessation of labor, or any other notice that the County deems necessary or desirable to protect its interests.

Section 3.17 Inspections During Construction; Construction Inspector.

(a) Borrower shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Development by the County and by public authorities during reasonable business hours for the purposes of determining compliance with this Agreement.

(b) After the completion of an inspection, the County shall deliver a copy of the inspection report to Borrower. If the County determines as a result of such inspection that there are any life-threatening health and safety related deficiencies, Borrower has the obligation to correct such deficiencies immediately. If the County determines as a result of the inspection that there are any deficiencies for any of the inspectable items in the Development, Borrower shall correct such deficiencies within fifteen (15) days from the delivery of the inspection report or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Borrower must begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible. In addition, Borrower acknowledges that the County may re-inspect the Development to verify all deficiencies have been corrected or rely on third party documentation submitted by Borrower for non-hazardous deficiencies.

(c) Borrower shall engage a construction inspector selected or approved by the County and paid for by Borrower to conduct inspections prior to, during, and after construction to ensure that work is done in accordance with applicable codes and pursuant to the terms of this Agreement. In the Approved Development Budget, the Borrower shall include estimated construction inspection fees in the amount of Eighteen Thousand Dollars (\$18,000). Borrower shall, as directed by the County, either pay all construction inspection fees to the County or directly to the construction inspector. The relationship between the Borrower, the County and the construction inspector shall be set forth in a construction inspection agreement. Any construction inspection agreement must be in a form approved by the County.

Section 3.18 Approved Development Budget; Revisions to Approved Development Budget.

Borrower shall submit any required amendments to the Approved Development Budget to the County for approval within five (5) days of the date Borrower receives information indicating that actual costs of the Development vary or will vary from the costs shown on the Approved Development Budget. Written consent of the County shall be required to amend the Approved Development Budget. If rejected by the County in whole or in part, Borrower shall submit a revised amendment to the Approved Development Budget within ten (10) days after notification of the County's rejection and the reasons therefor. The County shall then have ten (10) days to review and approve Borrower's revised amendment to the Approved Development Budget. The provisions of this Section relating to time periods for approval, rejection, or resubmission of amendments to the Approved Development Budget shall continue to apply until the amended Approved Development Budget has been approved by the County.

### Section 3.19 Partnership/Asset Management Fee

(a) During the Fifteen Year Compliance Period, the Partnership/Asset Management Fee shall not exceed Thirty-Four Thousand Four Hundred Dollars (\$34,400) per year in the aggregate, with no escalator; provided, however that Borrower can increase the base Partnership/Asset Management Fee to the amount that would be allowed by HCD at the time of conversion to Permanent Financing, with no escalator. For purposes of illustration only, if the construction closing occurs in 2020 and the Partnership/Asset Management Fee is \$34,400, and then upon conversion the base Partnership/Asset Management Fee allowed by HCD is up to \$35,000, the County would allow a base Partnership/Asset Management Fee of \$35,500. In addition, the County will allow accrual of the Partnership/Asset Management Fee for up to three (3) years. After the Fifteen Year Compliance Period, the Partnership/Asset Management Fee may continue but will convert to a Partnership/Asset Management Fee payable to the general partner of Borrower in an amount to be approved by the County.

(b) Any Partnership/Asset Management Fees above the amount approved in Section 3.19 (a) above, escalators on the Partnership/Asset Management Fees, or incentive management fees, if any, must be paid from Borrower's Share of Residual Receipts and are not considered Annual Operating Expenses.

### Section 3.20 Developer Fee.

The maximum cumulative developer fee that may be paid to any entity or entities providing development services to the Development, whether paid up-front or on a deferred basis, shall not exceed the amount approved by the County in accordance with the Implementation Policies. The County approves a developer fee in the maximum amount of Five Million Six Hundred Thousand Dollars (\$5,600,000); provided, however, prior to the County's disbursement of all of the County Loan proceeds or the Permanent Closing, whichever occurs first, the general partner of Borrower shall contribute no less than the GP Capital Contribution in the amount of \$ 2,781,372 directly back to the Development such that the maximum total net cash fee paid to Borrower shall not exceed the maximum total amount of \$ 2,818,628.

## ARTICLE 4 COUNTY LOAN REQUIREMENTS

### Section 4.1 Match Requirement.

Borrower shall ensure that the City provides a match meeting one of the eligibility criteria set forth in Section VI of the Implementation Policies.

### Section 4.2 Compliance with County Contract and Implementation Policies.

Borrower shall comply with all requirements of the Implementation Policies and the County Contract. Any breach under the County Contract subject to the notice and cure periods set forth in Section 6.1(c) below, shall be considered a Default under this Agreement. The Loan Documents and the County Contract shall be interpreted to have consistent terms and to give effect to both the Loan Documents and the County Contract to the greatest extent possible; provided, however in the event of a conflict, the Loan Documents shall control.

Section 4.3 Financial Accountings and Post-Completion Audits.

(a) No later than ninety (90) days following completion of the construction of the Development, Borrower shall provide to the County a financial accounting of all sources and uses of funds for the Development.

(b) No later than ninety (90) days after Permanent Closing, Borrower shall submit an audited financial report showing the sources and uses of all funds utilized for the Development. This requirement may be satisfied by providing the Final Cost Certification to the County. "Final Cost Certification" means the Final Cost Certification Sources and Uses of Funds prepared by Borrower for the Development that: (i) Borrower submits to TCAC; and (ii) has been prepared using generally accepted accounting standards in effect in the United States of America from time to time, consistently applied.

Section 4.4 Information.

Borrower shall provide any information reasonably requested by the County in connection with the Development and Borrower's use of the County Loan funds.

Section 4.5 County Audits.

(a) Each year, Borrower shall provide the County with a copy of Borrower's annual audit, which shall include information on all of Borrower's activities and not just those pertaining to the Development.

(b) In addition, the County or any designated agent or employee of the County at any time is entitled to audit the Residual Receipts, disbursements made from Residual Receipts in compliance with Section 2.8 above, and all of Borrower's books, records, and accounts pertaining thereto. Such audit shall be conducted during normal business hours at the principal place of business of Borrower and other places where records are kept. Immediately after the completion of an audit, the County shall deliver a copy of the results of such audit to Borrower. Borrower shall also follow audit requirements of the Single Audit Act and 2 C.F.R. Part 200.

(c) If it is determined as a result of such audit that there has been a deficiency in a loan repayment to the County, then such deficiency shall become immediately due and payable with interest at the Default Rate, determined as of and accruing from the date that said payment should have been made. In addition, if the auditor's statement for any Development fiscal year is found to have understated Residual Receipts by more than five percent (5%) and at least Five Thousand Dollars (\$5,000), and the County is entitled to any additional County Loan repayment as a result of said understatement, then Borrower shall pay, in addition to the interest charges referenced above, all of the County's reasonable costs and expenses connected with any audit or review of Borrower's accounts and records.

Section 4.6 Hazardous Materials.

(a) Borrower shall keep and maintain the Property (including but not limited to, soil and ground water conditions) in compliance with all Hazardous Materials Laws and may

not cause or permit the Property to be in violation of any Hazardous Materials Law. Borrower may not cause or permit the use, generation, manufacture, storage or disposal of on, under, or about the Property or transportation to or from the Property of any Hazardous Materials, except such of the foregoing as may be customarily used in construction and operation of projects like the Development or kept and used in and about residential property of this type.

(b) Borrower shall immediately advise the County in writing if at any time it receives written notice of any Hazardous Materials Claims, and Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law including but not limited to the provisions of California Health and Safety Code, Section 25220 *et seq.*, or any regulation adopted in accordance therewith.

(c) The County has the right to join and participate in, as a party if it so elects, and be represented by counsel acceptable to the County (or counsel of its own choice if a conflict exists with Borrower) in any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Borrower.

(d) Borrower shall indemnify and hold harmless the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, fine, penalty, judgment, award, settlement, expense or liability, directly or indirectly arising out of or attributable to: (i) any actual or alleged past or present violation of any Hazardous Materials Law; (ii) any Hazardous Materials Claim; (iii) any actual or alleged past or present use, generation, manufacture, storage, release, threatened release, discharge, disposal, transportation, or presence of Hazardous Materials on, under, or about the Property; (iv) any investigation, cleanup, remediation, removal, or restoration work of site conditions of the Property relating to Hazardous Materials (whether on the Property or any other property); and (v) the breach of any representation of warranty by or covenant of Borrower in this Section 4.6, and Section 5.1. Such indemnity shall include, without limitation: (x) all consequential damages; (y) the costs of any required or necessary investigation, repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (z) all reasonable costs and expenses incurred by the County in connection with clauses (x) and (y), including but not limited to reasonable attorneys' fees and consultant fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property, (2) loss or restriction of use of rentable space on the Property, (3) adverse effect on the marketing of any rental space on the Property, and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties). This obligation to indemnify survives termination of this Agreement, repayment of the County Loan and the reconveyance of the Deed of Trust, and will not be diminished or affected in any respect as a result of any notice, disclosure, or knowledge, if any, to or by the County of Hazardous Materials.

(e) Without the County's prior written consent, which will not be unreasonably withheld, Borrower may not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the County's judgment, impair the value of the County's security hereunder; provided, however, that the County's prior consent is not necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the County's consent before taking such action, provided that in such event Borrower shall notify the County as soon as practicable of any action so taken. The County agrees not to withhold its consent, where such consent is required hereunder, if: (i) a particular remedial action is ordered by a court of competent jurisdiction; (ii) Borrower will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Borrower establishes to the satisfaction of the County that there is no reasonable alternative to such remedial action which would result in less impairment of the County's security hereunder; or (iv) the action has been agreed to by the County.

(f) Borrower hereby acknowledges and agrees that: (i) this Section is intended as the County's written request for information (and Borrower's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5; and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

(g) In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the County's or the trustee's rights and remedies under the Deed of Trust, the County may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to: (i) waive its lien on such environmentally impaired or affected portion of the Property; and (ii) exercise, (1) the rights and remedies of an unsecured creditor, including reduction of its claim against Borrower to judgment, and (2) any other rights and remedies permitted by law. For purposes of determining the County's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Borrower will be deemed to have willfully permitted or acquiesced in a release or threatened release of Hazardous Materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of Hazardous Materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and Borrower knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the County in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the Default Rate, until



paid, will be added to the indebtedness secured by the Deed of Trust and is due and payable to the County upon its demand made at any time following the conclusion of such action.

Section 4.7 Maintenance and Damage.

(a) During the course of ownership of the Property, construction of the Improvements, and operation of the Development, Borrower shall maintain the Property and the Development in good repair and in a neat, clean and orderly condition in accordance with the Regulatory Agreement.

(b) Subject to the requirements of Senior Lenders and the Ground Lease, and if economically feasible in the County's judgment after consultation with Borrower, if any improvement now or in the future on the Property is damaged or destroyed, then Borrower shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the plans and specifications approved by the County with such changes as have been approved by the County. Such work or repair is to be commenced no later than the later of one hundred twenty (120) days, or such longer period approved by the County in writing, after the damage or loss occurs or thirty (30) days following receipt of the insurance or condemnation proceeds, and is to be complete within one (1) year thereafter. Any insurance or condemnation proceeds collected for such damage or destruction are to be applied to the cost of such repairs or restoration and, if such insurance or condemnation proceeds are insufficient for such purpose, then Borrower shall make up the deficiency. If Borrower does not promptly make such repairs then any insurance or condemnation proceeds collected for such damage or destruction are to be promptly delivered by Borrower to the County as a special repayment of the County Loan, subject to the rights of the Senior Lenders.

Section 4.8 Notices.

Borrower shall promptly notify the County in writing of any and all of the following:

(a) Any litigation known to Borrower materially affecting Borrower, or the Property and of any claims or disputes that involve a material risk of litigation;

(b) Any written or oral communication Borrower receives from any governmental, judicial, or legal authority giving notice of any claim or assertion that the Property or Improvements fail in any respect to comply with any applicable governmental law;

(c) Any material adverse change in the physical condition of the Property (including any damage suffered as a result of fire, earthquakes, or floods);

(d) Any material adverse change in Borrower's financial condition, any material adverse change in Borrower's operations, or any change in the management of Borrower;

(e) That any of the statements in Section 5.1(l) regarding Hazardous Materials are no longer accurate;

(f) Any (i) Default or (ii) event which, with the giving of notice or the passage of time or both, would constitute a Default; and

(g) Any other circumstance, event, or occurrence that results in a material adverse change in Borrower's ability to timely perform any of its obligations under any of the Loan Documents.

#### Section 4.9 Operation of Development as Affordable Housing.

(a) Promptly after completion of Construction Work, Borrower shall operate the Development (i) in accordance with all applicable laws, codes, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, and (ii) as an affordable housing development consistent with: (1) the Regulatory Agreement attached hereto as Exhibit F and incorporated herein by this reference, (2) the REA, and (3) any other regulatory requirements imposed on Borrower including but not limited to regulatory agreements associated with the Low Income Housing Tax Credits provided by TCAC, and rental subsidies provided to the Development.

#### Section 4.10 Nondiscrimination.

(b) Borrower covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, familial status, source of income, ancestry or national origin, Vietnam era veteran's status, political affiliation, HIV/AIDS, or any other arbitrary basis in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Development, nor shall Borrower or any person claiming under or through Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Development, or in connection with the employment of persons for the construction, operation and management of the Development. Notwithstanding the above, with respect to familial status, the above should not be construed to apply to housing for older persons as defined in Section 12955.9 of the Government Code and other applicable sections of the Civil Code as identified in Health and Safety Code Section 33050(b). The foregoing covenant shall run with the land.

(2) Nothing in this Section prohibits Borrower from requiring County-Assisted Units in the Development to be available to and occupied by eligible households in accordance with the Regulatory Agreement.

#### Section 4.11 Transfer.

(c) For purposes of this Agreement, "Transfer" shall mean any sale, assignment, or transfer, whether voluntary or involuntary, of (i) any rights and/or duties under this Agreement, and/or (ii) any interest in the Borrower and/or the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Borrower retains title. "Transfer" shall exclude the leasing of any single Unit in the Development to an occupant in compliance with the

Regulatory Agreement. The Housing Director is authorized to execute assignment and assumption agreements on behalf of the County to implement any approved Transfer.

(2) Except as otherwise permitted in this Section 4.11, no Transfer shall be permitted without the prior written consent of the County, which the County may withhold in its sole discretion. The County Loan shall automatically accelerate and be due in full upon any Transfer made without the prior written consent of the County. The County hereby approves the initial Transfer, if any, of the limited partnership interest in Borrower to the Investor Limited Partner.

(a) The Investor Limited Partner may Transfer, or cause or permit the Transfer, of all or any portion of its interests and to substitute its assignee in its place as a substitute Investor Limited Partner only: (1) to an affiliate of the Investor Limited Partner; or (2) to any other entity provided that, (i) the Investor Limited Partner will remain liable to make all required capital contributions outstanding at the time of the transfer, (ii) Investor Limited Partner's transferee consists of one or more entities, or their affiliates, which are wholly owned by, (A) a publicly traded company with a net worth of at least \$15,000,000; (B) a non-publicly traded, U.S. based company with a net worth of at least \$20,000,000; (C) an insurance company with a net worth or equivalent of at least \$20,000,000; and (3) the proposed entity is an experienced investor in low-income housing tax credit transactions (with a current product line including syndication of or investment in deals with new tax credit allocations), with a record of making timely capital contributions and no defaults under any applicable partnership agreements, or to a partnership or limited liability company in which the Investor Limited Partner is the general partner or managing member.

(b) The County hereby approves a Transfer of the Property from Borrower to BRIDGE, or a non-profit affiliate of BRIDGE, and an assumption of the County Loan by such transferee at or prior to the end of the Fifteen Year Compliance Period, provided that: (i) such Transfer is pursuant to an option or right of first refusal agreement referenced in the Partnership Agreement, (ii) the assignment and assumption agreement evidencing such Transfer requires the transferee to expressly assume the obligations of Borrower under the Loan Documents, and (iii) the County is provided executed copies of all documents evidencing the Transfer.

(c) The County hereby approves the Transfer of the Investor Limited Partner interest to BRIDGE, or a non-profit affiliate of BRIDGE or prior to the end of the Fifteen Year Compliance Period, provided that (i) such Transfer is pursuant to an option or right of first refusal agreement referenced in the Partnership Agreement, and (ii) the County is provided executed copies of all documents evidencing the Transfer.

(d) In the event the general partner of Borrower is removed by the Investor Limited Partner of Borrower for cause following default under the Partnership Agreement, the County hereby approves the Transfer of the general partner interest to (i) a nonprofit corporation that is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (the "Code"), or a limited liability company whose sole member is a nonprofit corporation exempt from federal income taxation pursuant to Section 501(c)(3) of the Code, selected by the Investor Limited Partner and approved by the County in writing, which approval shall not be withheld unreasonably, or (ii) the Investor Limited Partner, or an affiliate thereof,

but only for a period not to exceed ninety (90) days from the date of removal of the general partner, during which time such entity shall diligently seek a replacement general partner meeting the requirements of clause (i) of this paragraph.

(e) The County approves the grant of the security interests required to secure the Approved Financing.

#### Section 4.12 Insurance Requirements.

Borrower shall maintain the following insurance coverage throughout the Term of the County Loan or for such other period as indicated below:

(d) Workers' Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars (\$1,000,000) each accident.

(2) Commercial General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations, and Advertising Liability.

(a) Commercial Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses, as applicable.

(b) Builders' risk insurance during the course of the construction, and, upon completion of construction, property insurance covering the Development, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the County, naming the County as a Loss Payee, as its interests may appear. Flood insurance shall be obtained if required by applicable federal regulations.

(c) Commercial crime insurance covering all officers and employees, for loss of County Loan proceeds caused by dishonesty, in an amount approved by the County, naming the County a Loss Payee, as its interests may appear, which insurance shall be maintained only until the entire balance of the County Loan has been disbursed for eligible costs hereunder and utilized by Borrower in compliance with this Agreement.

(d) Borrower shall cause any general contractor, agent, or subcontractor working on the Development under direct contract with Borrower or subcontract to maintain insurance of the types and in at least the minimum amounts described in subsections (a), (b), and (c) above, except that the limit of liability for comprehensive general liability insurance for subcontractors shall be One Million Dollars (\$1,000,000), and shall require that such insurance shall meet all of the general requirements of subsections (g), (h), (i), and (j) below.

(e) The required insurance shall be provided under an occurrence form, and Borrower shall maintain the coverage described in subsections (a) through (d) continuously

throughout the Term. Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire Term and until three (3) years following termination and acceptance of all work provided under this Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

(f) Commercial General Liability and Comprehensive Automobile Liability insurance policies shall be endorsed to name as an additional insured the County and its officers, agents, employees, volunteers, and members of the County Board of Supervisors.

(g) All policies and bonds shall contain: (i) the agreement of the insurer to give the County at least ten (10) days' notice prior to cancellation or material change for non-payment of premium, and thirty (30) days' notice prior to cancellation for any other change or cancellation in said policies; (ii) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the County; (iii) a provision that no act or omission of Borrower shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (iv) a waiver by the insurer of all rights of subrogation against the County and its authorized parties in connection with any loss or damage thereby insured against.

(h) All insurance companies providing coverage pursuant to this Section shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, and shall have an A. M. Best's rating of not less than "A:VII" or equivalent.

(i) Any design professionals working on the Development in direct contract with Borrower shall maintain errors and omission coverage in a minimum amount of One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) in the aggregate.

(j) Acceptance of Borrower's insurance by the County does not relieve or decrease the liability of Borrower under the Loan Documents. The insurance required to be procured by Borrower pursuant to this Section does not reduce or limit Borrower's contractual obligation to indemnify and defend the County as provided in this Agreement.

(k) Deductible amounts under the insurance policies provided by Borrower are subject to the reasonable approval of the County. Any deductible or self-insured retention amount or other similar obligation under the insurance policies provided by Borrower are the sole responsibility of Borrower.

(l) Excess or umbrella coverage can be used to satisfy the insurance requirements set forth in this Section 4.12.

(m) Before commencing operations under this Agreement, Borrower shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form satisfactory to County, evidencing that all required applicable insurance coverage is in effect. The County

reserves the rights to require the contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent to the County at the address in Section 7.9, with a copy to the County's Risk Management Unit (125 – 12th Street, 3rd Floor, Oakland, CA 94607).

Section 4.13 Covenants Regarding Approved Financing and Partnership Agreement.

(e) Borrower shall promptly pay the principal and interest when due on any Approved Financing.

(a) Borrower shall promptly notify the County in writing of the existence of any default under any documents evidencing Approved Financing whether or not a default has been declared by the lender, and any defaults under the Partnership Agreement, and provide the County copies of any notice of default.

(b) Borrower may not amend, modify, supplement, cancel or terminate the Partnership Agreement or any documents related to any loan that is part of the Approved Financing without the prior written consent of the County except for amendments solely to effectuate Transfers permitted under Section 4.11 above. Borrower shall provide the County copies of all amendments, modifications, and supplements to the Partnership Agreement and any document related to any loan that is part of Approved Financing.

(c) Borrower may not incur any indebtedness of any kind (other than Approved Financing), or encumber the Development with any liens (other than liens for Approved Financing approved by the County) without the prior written consent of the County.

(d) To the extent the Partnership Agreement is inconsistent with this Agreement with respect to the repayment of the County Loan including, without limitation, the Residual Receipts definition and the payment provisions of Section 2.8 above, this Agreement will control. Any payments made in conflict with the Residual Receipts definition and payment requirements of this Agreement will be considered a Default.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BORROWER

Section 5.1 Representations and Warranties.

Borrower hereby represents and warrants to the County as follows:

(f) Organization. Borrower is duly organized, validly existing, and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

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

(b) Authority of Persons Executing Documents. This Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Borrower, and all actions required under Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

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

(d) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement and the Loan Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Borrower, or any provision of the organizational documents of Borrower, or will conflict with or constitute a breach of or a default under any agreement to which Borrower is a party, or will result in the creation or imposition of any lien upon any assets or property of Borrower, other than liens established pursuant hereto.

(e) Compliance With Laws; Consents and Approvals. The construction of the Development will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

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

(g) Interest in the Property. At the time of recordation of the Deed of Trust, Borrower will have acquired a leasehold interest in the Property and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens for current real property taxes, and liens in favor of the County or approved in writing by the County.

(h) Financial Statements. The financial statements of Borrower and other financial data and information furnished by Borrower to the County fairly and accurately present

the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of Borrower from that shown by such financial statements and other data and information.

(i) Sufficient Funds. Borrower holds sufficient funds and/or binding commitments for sufficient funds to complete the Construction Work in accordance with the plans and specifications approved by the County.

(j) Taxes. Borrower and its subsidiaries have filed all federal and other material tax returns and reports required to be filed, and have paid all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their income or the Property otherwise due and payable, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with generally accepted accounting principles. There is no proposed tax assessment against Borrower or any of its subsidiaries that could, if made, be reasonably expected to have a material adverse effect upon the Property, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of Borrower and its subsidiaries, taken as a whole, which would be expected to result in a material impairment of the ability of Borrower to perform under any Loan Document to which it is a party, or a material adverse effect upon the legality, validity, binding effect or enforceability against Borrower of any Loan Document.

(k) Hazardous Materials. To the best of Borrower's knowledge, except as disclosed in writing by Borrower to the County prior to the date of this Agreement: (i) no Hazardous Material has been disposed of, stored on, discharged from, or released to or from, or otherwise now exists in, on, under, or around, the Property; (ii) neither the Property nor Borrower is in violation of any Hazardous Materials Law; and (iii) neither the Property nor Borrower is subject to any existing, pending or threatened Hazardous Materials Claims.

## ARTICLE 6 DEFAULT AND REMEDIES

### Section 6.1 Events of Default.

Each of the following shall constitute a "Default" by Borrower under this Agreement, subject to the provisions of Section 7.14 regarding Force Majeure:

(g) Failure to Construct. After the County A1 Closing, failure of Borrower to commence and complete Construction Work within the times set forth in this Agreement;

(a) Failure to Make Payment. Failure of Borrower to pay when due any sums payable under the Loan Documents including but not limited to failure to repay the principal and any interest on the County Loan within ten (10) days after receipt of written notice from the County that such payment is due pursuant to the Loan Documents.

(b) Breach of Covenants. Failure by Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the County to Borrower or, if the breach cannot be cured within thirty (30) days, Borrower shall not be in breach so long as Borrower is diligently undertaking to cure such breach and such



breach is cured within sixty (60) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 6, the specific provisions shall control.

(c) Default Under Other Loans. A default is declared under any other financing for the Development by the lender of such financing that remains uncured following any applicable notice and cure periods.

(d) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Borrower, Borrower's general partner, or a member of Borrower's general partner to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Borrower, Borrower's general partner, or a member of Borrower's general partner or seeking any arrangement for Borrower, Borrower's general partner, or a member of Borrower's general partner under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower, Borrower's general partner, or a member of Borrower's general partner in bankruptcy or insolvency or for any of their properties, (iv) directing the winding up or liquidation of Borrower, Borrower's general partner, or a member of Borrower's general partner if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) calendar days; or (v) Borrower, Borrower's general partner, or a member of Borrower's general partner shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the events of Default in this paragraph shall act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Note.

(e) Assignment; Attachment. Borrower, Borrower's general partner, or a member of Borrower's general partner shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) calendar days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Note.

(f) Suspension; Termination. Borrower, Borrower's general partner, or a member of Borrower's general partner shall have voluntarily suspended its business or the partnership shall have been dissolved or terminated, other than a technical termination of the partnership for tax purposes.

(g) Liens on Property and the Development. There shall be filed any claim of lien (other than liens approved in writing by the County) against the Development or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the County Loan and the continued maintenance of said claim of lien or notice to withhold for a period of twenty (20) days, without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to the County.

(h) Condemnation. The condemnation, seizure, or appropriation of all or a substantial part of the Property and the Development.

(i) Unauthorized Transfer. Any Transfer other than as permitted by this Agreement.

(j) Representation or Warranty Incorrect. Any Borrower representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the County in connection with any of the Loan Documents, proving to have been incorrect in any material respect when made.

(k) Failure to Timely Lease. Failure of Borrower to initially lease all of the County-Assisted Units within eighteen (18) months of the completion of construction of the Development.

#### Section 6.2 Remedies.

The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the County or automatically where so specified, relieve the County of any obligation to make or continue the County Loan and shall give the County the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents, including but not limited to the following:

(h) Acceleration of Note. The County shall have the right to cause all indebtedness of Borrower to the County under this Agreement and the Note together with any accrued interest thereon, to become immediately due and payable, subject to the non-recourse provision in Section 2.10. Borrower waives all right to presentment, demand, protest or notice of protest or dishonor. The County may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the County as a creditor and secured party under the law, including rights available under the Uniform Commercial Code and rights of foreclosure under the Deed of Trust. Borrower shall be liable to pay the County on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorneys' fees and expenses) paid or incurred by the County in connection with the collection of the County Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the County Loan.

Section 6.3 Specific Performance. The County shall have the right to specific performance, mandamus, or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things which may be unlawful or in violation of the provisions of the Loan Documents.

Section 6.4 Right to Cure at Borrower's Expense. The County shall have the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the County Loan. Borrower agrees to reimburse the County for any funds advanced by the County to cure a monetary default by Borrower upon demand therefor, together with interest thereon at the Default Rate.

#### Section 6.5 Right of Contest.

Borrower shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the County or the rights of the County hereunder.

#### Section 6.6 Remedies Cumulative.

No right, power, or remedy given to the County by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the County by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the County to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the County of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

#### Section 6.7 Notice to Investor Limited Partner.

The County agrees that it shall provide Borrower's Investor Limited Partner a duplicate copy of all notices of default that the County may give to or serve in writing upon Borrower pursuant to the terms of the Loan Documents, at an address provided to the County, provided, the County shall have no liability to the Investor Limited Partner for its failure to do so. The Investor Limited Partner shall have the right, but not the obligation, to cure any Default of Borrower set forth in such notice, during any applicable cure period described in the Loan Documents, and the County will accept tender of such cure as if delivered by Borrower

### ARTICLE 7 GENERAL PROVISIONS

#### Section 7.1 Relationship of Parties.

The relationship of the parties to this Agreement is that of borrower and lender. Nothing contained in this Agreement shall be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the County and Borrower or its agents, employees or contractors, and Borrower shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Borrower has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. In regards to the construction and operation of the Development, Borrower shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. Borrower shall be solely responsible for its own acts and those of its agents and employees.

#### Section 7.2 No Claims.

Nothing contained in this Agreement shall create or justify any claim against the County by any person that Borrower may have employed or with whom Borrower may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the purchase of the Property, the construction or operation of the Development, and Borrower shall include similar requirements in any contracts entered into for the construction or operation of the Development.

#### Section 7.3 Amendments.

No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties hereto. The Housing Director is authorized to execute on behalf of the County amendments to the Loan Documents or amended and restated Loan Documents as long as any material change in the amount of the County Loan or terms of this Agreement is approved by the County Board of Supervisors, or in the event the amounts or terms of financing provided by other parties for the Development is revised, requiring conforming amendments to the Loan Documents. Any legal fees incurred due to any amendment of the Loan Documents shall be paid for by the Borrower.

#### Section 7.4 Indemnification.

Borrower shall indemnify, defend and hold the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including, but not limited to, the purchase of the Property, development, construction, marketing and operation of the Development, except to the extent such claim arises from the gross negligence or willful misconduct of the County, its agents, and its employees; provided, however, any gross negligence or willful misconduct of County and the other indemnitees will only affect Borrower's duty to indemnify for the specific act found to be grossly negligent or willful misconduct, and will not preclude a duty to indemnify for any act or omission of Borrower. This obligation to indemnify survives termination of this Agreement, repayment of the County Loan and the reconveyance of the Deed of Trust.

#### Section 7.5 Non-Liability of County Officials, Employees and Agents.

No member, official, employee or agent of the County shall be personally liable to Borrower in the event of any default or breach by the County or for any amount which may become due to Borrower or its successor or on any obligation under the terms of this Agreement.

#### Section 7.6 No Third Party Beneficiaries.

There shall be no third party beneficiaries to this Agreement.

#### Section 7.7 Discretion Retained By County.

The County's execution of this Agreement in no way limits the discretion of the County in the permit and approval process in connection with development of the Development.

Section 7.8 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in Subsection (b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or financial benefit from the activity, or have a financial interest in any contract, subcontract, or agreement with respect thereto, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during such person's tenure or for one year thereafter. Borrower shall exercise due diligence to ensure that the prohibition in this Section is followed.

(b) The conflict of interest provisions of Subsection (a) above apply to any person who is an employee, agent, consultant, officer, or any elected or appointed official of the County.

(c) Immediate family ties, as referenced in Subsection (a), include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.

(d) In accordance with Government Code Section 1090 and the Political Reform Act, Government Code section 87100 *et seq.*, no person who is a director, officer, partner, trustee or employee or consultant of Borrower, or immediate family member of any of the preceding, shall make or participate in a decision, made by the County or a County board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Borrower. Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code Section 87100 *et seq.*, its implementing regulations manual and codes, and Government Code Section 1090.

Section 7.9 Notices, Demands and Communications.

Formal notices, demands, and communications between the County and Borrower shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the County and Borrower as follows:

County:

County of Alameda  
Housing and Community Development Department  
224 W. Winton Avenue, Room 108  
Hayward, CA 94544  
Attention: Housing Director

Borrower:

BRIDGE Berkeley Way LP  
c/o BRIDGE Housing Corporation  
600 California Street, Suite 900  
San Francisco, California 94108  
Attention: Executive Vice President

With copies to:

*Borrower's Counsel* Goldfarb and Lipman  
1300 Clay Street, 11th Floor  
Oakland, CA 94612  
Attention: Heather Gould

*Primary Limited Partner:*

NEF Assignment Corporation  
10 South Riverside Plaza  
Suite 1700  
Chicago, Illinois 60606

*First Co-Limited Partner:*

Merritt Community Capital Fund XXI, L.P.  
c/o Merritt Community Capital Corporation  
1970 Broadway, Suite 250  
Oakland, California 94612

*Second Co-Limited Partner:*

MCC Housing LLC  
c/o Merritt Community Capital Corporation  
1970 Broadway, Suite 250  
Oakland, California 94612

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable). Copies of notices sent to Borrower shall also be sent to any successor investor limited partner of Borrower who requests such notices in writing and provides its address to the County.

Section 7.10 Applicable Law.

This Agreement shall be governed by and construed in accordance with California law.

Section 7.11 Parties Bound.

Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement is intended to run with the land and shall bind Borrower and its successors and assigns in the Property and the Development for the entire Term, and the benefit hereof shall inure to the benefit of the County and its successors and assigns.

Section 7.12 Reserved.

Section 7.13 Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 7.14 Force Majeure.

In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in Default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, quarantine restrictions, freight embargoes, lack of transportation, national, state or local emergencies or disasters, epidemics or pandemics, or court order. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) days of receipt of the notice. In no event shall the County be required to agree to cumulative delays in excess of one hundred eighty (180) days.

Section 7.15 County Approval.

The County has authorized the Housing Director to execute the Loan Documents and deliver such approvals or consents as are required by this Agreement, and to execute estoppel certificates concerning the status of the County Loan and the existence of Borrower defaults under the Loan Documents. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies.

Section 7.16 Waivers.

Any waiver by the County of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the County to take action on any breach or default of Borrower or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Borrower to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the County to any act or omission by Borrower shall not be construed to

be a consent to any other or subsequent act or omission or to waive the requirement for the County's written consent to future waivers.

Section 7.17 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

Section 7.18 Entire Understanding of the Parties.

The Loan Documents and the County Contract constitute the entire understanding and agreement of the Parties with respect to the County Loan.

Section 7.19 Multiple Originals; Counterpart.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 7.20 Recognition of County.

Borrower will publicly recognize the funding provided by the County in all newspaper articles and any other public relations opportunities related to the Development. Borrower will invite County staff and members of the Board of Supervisors to participate in the groundbreaking and grand opening ceremonies, if held.

**[Signatures on following page]**




WHEREAS, this Agreement has been entered into by the undersigned as of the Effective Date.

**COUNTY:**

COUNTY OF ALAMEDA, a political subdivision of the State of California

By:

  
\_\_\_\_\_  
Michelle Starratt, Director  
Housing and Community Development Department

**BORROWER:**

BRIDGE BERKELEY WAY LP,  
a California limited partnership

By: BRIDGE BERKELEY WAY LLC,  
a California limited liability company  
its managing general partner

By: BRIDGE HOUSING CORPORATION,  
a California nonprofit public benefit corporation,  
its sole member and manager

By:

\_\_\_\_\_  
Smitha Seshadri,  
Executive Vice President

WHEREAS, this Agreement has been entered into by the undersigned as of the Effective Date.

**COUNTY:**

COUNTY OF ALAMEDA, a political subdivision of the State of California

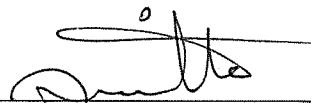
By: \_\_\_\_\_  
Michelle Starratt, Director  
Housing and Community Development Department

**BORROWER:**

BRIDGE BERKELEY WAY LP,  
a California limited partnership

By: BRIDGE BERKELEY WAY LLC,  
a California limited liability company  
its managing general partner

By: BRIDGE HOUSING CORPORATION,  
a California nonprofit public benefit corporation,  
its sole member and manager

By:   
\_\_\_\_\_  
Smitha Seshadri,  
Executive Vice President

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

The land referred to is situated in the County of Alameda, City of Berkeley, State of California, and is described as follows:

**PARCEL ONE:**

Parcel C, as shown on the Parcel Map 11051, filed March 20, 2020, in Book 346 of Parcel Maps, Pages 1 through 11, inclusive, Alameda County Records.

**PARCEL TWO:**

Easements for construction, maintenance, utilities, structural support and encroachment, set forth in that certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way, dated July 2, 2020, executed by the City of Berkeley and BRIDGE Berkeley Way LP and BFHP Hope Center LP, and recorded concurrently herewith.

Being a portion of APN 057-2053-022-01

**EXHIBIT B**

**LEGAL DESCRIPTION OF LEASEHOLD ESTATE**

The land referred to is situated in the County of Alameda, City of Berkeley, State of California, and is described as follows:

Leasehold estate as created by that certain lease dated July 2, 2020 made by and between City of Berkeley, a charter city, as lessor, and Bridge Berkeley Way, LP, a California limited partnership, as lessee, for the term of 75 years and upon the terms and conditions contained in said lease and subject to provisions contained in the lease which limit the right of possession, said lease recorded concurrently herewith, in and to the following described parcel of land:

**PARCEL ONE:**

Parcel C, as shown on the Parcel Map 11051, filed March 20, 2020, in Book 346 of Parcel Maps, Pages 1 through 11, inclusive, Alameda County Records.

**PARCEL TWO:**

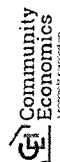
Easements for construction, maintenance, utilities, structural support and encroachment, set forth in that certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way, dated July 2, 2020, executed by the City of Berkeley and BRIDGE Berkeley Way LP and BFHP Hope Center LP, and recorded concurrently herewith.

Being a portion of APN 057-2053-022-01

**EXHIBIT C**

**APPROVED DEVELOPMENT BUDGET**

BRIDGE  
BERKELEY WAY  
Final for Closing



	BP	BO	BR	BS	BT	BU	BV	BW	BX	BY	BZ	CA
2	TOTAL	8,598,000	0	0	0	0	0	0	0	0	0	0
3	First Mortgage	12,172,804	0	0	0	0	0	0	0	0	0	0
4	Alameda County - A1	398,962	0	0	0	0	0	0	0	0	0	0
5	MHC	111,875	0	0	0	0	0	0	0	0	0	0
6	City of Berkeley	2,774,925	0	0	0	0	0	0	0	0	0	0
7	MHP	890,000	0	0	0	0	0	0	0	0	0	0
8	Construction Loan - tax exempt	37,335,000	0	0	0	0	0	0	0	0	0	0
9	Construction - In-Place Btl.	1,214,352	0	0	0	0	0	0	0	0	0	0
10	Deferred developer fee	2,781,372	0	0	0	0	0	0	0	0	0	0
11	General Partner Contribution	22,312,638	0	0	0	0	0	0	0	0	0	0
12	Limited Partner @ 99.99%	100,084,664	0	0	0	0	0	0	0	0	0	0
13	TOTAL SOURCES	62,893,141	0	0	0	0	0	0	0	0	0	0
14	TOTAL DEVELOPMENT COST	62,893,141	0	0	0	0	0	0	0	0	0	0
15	USES OF FUNDS	62,893,141	0	0	0	0	0	0	0	0	0	0
16	Land cost	500	0	0	0	0	0	0	0	0	0	0
17	Legal fees	93,810	0	0	0	0	0	0	0	0	0	0
18	Legalizing costs for acquisition	218,492	0	0	0	0	0	0	0	0	0	0
19	Soil remediation	544,756	0	0	0	0	0	0	0	0	0	0
20	Off-site improvements	1,721,259	0	0	0	0	0	0	0	0	0	0
21	Site work	33,686,187	0	0	0	0	0	0	0	0	0	0
22	Residential hard costs (incl contractor's contingency)	2,199,346	0	0	0	0	0	0	0	0	0	0
23	Contractor general requirements	0	0	0	0	0	0	0	0	0	0	0
24	Escalation/Design Contingency	1,325,980	0	0	0	0	0	0	0	0	0	0
25	Contractor Overhead and Profit	350,435	0	0	0	0	0	0	0	0	0	0
26	Contractor Insurance & bond & tax	284,705	0	0	0	0	0	0	0	0	0	0
27	Other small property in Construction Contract	0	0	0	0	0	0	0	0	0	0	0
28	Protections	0	0	0	0	0	0	0	0	0	0	0
29	Furniture Purchased by Owner	200,000	0	0	0	0	0	0	0	0	0	0
30	Construction contingency	2,015,559	0	0	0	0	0	0	0	0	0	0
31	Permits	2,547,813	0	0	0	0	0	0	0	0	0	0
32	Development Impact Fees	216,995	0	0	0	0	0	0	0	0	0	0
33	Utility Fees	1,404,506	0	0	0	0	0	0	0	0	0	0
34	Architecture	1,700,488	0	0	0	0	0	0	0	0	0	0
35	Survey, engineering	998,730	0	0	0	0	0	0	0	0	0	0
36	Construction management, wage monitoring, security	270,800	0	0	0	0	0	0	0	0	0	0
37	Environmental	156,899	0	0	0	0	0	0	0	0	0	0
38	Construction period interest	863,120	0	0	0	0	0	0	0	0	0	0
39	Construction period taxes	0	0	0	0	0	0	0	0	0	0	0
40	Soft cost contingency	614,980	0	0	0	0	0	0	0	0	0	0
41	Local lender loan fee and costs	448,890	0	0	0	0	0	0	0	0	0	0
42	Local lender loan fee and costs - costs of issuance	250,796	0	0	0	0	0	0	0	0	0	0
43	Perm loan fee and expenses - costs of issuance	0	0	0	0	0	0	0	0	0	0	0
44	Perm loan fee and expenses - tax exempt	0	0	0	0	0	0	0	0	0	0	0
45	Construction loan interest - tax exempt	2,632,118	0	0	0	0	0	0	0	0	0	0
46	Construction loan interest - taxable	81,681	0	0	0	0	0	0	0	0	0	0
47	Construction period interest on soft loans	489,909	0	0	0	0	0	0	0	0	0	0
48	Construction tender legal & expenses - costs of issuance	813,230	0	0	0	0	0	0	0	0	0	0
49	Appraisal	3,700	0	0	0	0	0	0	0	0	0	0
50	Tax Credit Allocation Committee Fees	61,919	0	0	0	0	0	0	0	0	0	0
51	Predevelopment interest	32,000	0	0	0	0	0	0	0	0	0	0
52	Legal Fees - construction loan closing	43,125	0	0	0	0	0	0	0	0	0	0
53	Legal - Permanent loan closing	34,975	0	0	0	0	0	0	0	0	0	0
54	Legal - Permanent loan closing	80,000	0	0	0	0	0	0	0	0	0	0
55	Interest Costs	20,000	0	0	0	0	0	0	0	0	0	0
56	Title - Permanent loan closing	6,000	0	0	0	0	0	0	0	0	0	0
57	Market Study	55,000	0	0	0	0	0	0	0	0	0	0
58	Tronant - Synchro	40,000	0	0	0	0	0	0	0	0	0	0
59	Tronant - Synchro - Construction financing	336,698	0	0	0	0	0	0	0	0	0	0
60	Transition Reserves (3 months)	0	0	0	0	0	0	0	0	0	0	0
61	Operating Deficit Reserve	0	0	0	0	0	0	0	0	0	0	0
62	Operating Deficit Reserve	0	0	0	0	0	0	0	0	0	0	0
63	Lease Up Reserve	5,600,000	0	0	0	0	0	0	0	0	0	0
64	Lease Up Reserve	38,420,823	0	0	0	0	0	0	0	0	0	0
65	Repayment of Construction loan	60,084,664	0	0	0	0	0	0	0	0	0	0
66	TOTAL PROJECT COSTS	60,084,664	0	0	0	0	0	0	0	0	0	0

Item	Value
Developer Fee Cap - A1NSC - Scattered Sites - Berkeley Way & MORE City PSH	83,842,690
Eligible Basis (less fee)	81,989,287
Threshold Basis Limit (two affordability boost)	102.41%
High Cost Ratio	2,200,000
Basis Fee Limit	97.59%
High Cost Test Factor	2,147,035
Max. HCD Combined Fee	1,601,688
Developer Fee Split	545,347
Berkeley Way PSH	74.00%
MORE Center PSH	25.00%

Schedule	Units	Months in Service
2-Jul-20	0	0
6-Jul-20	0	0
7-May-22 22 months	0	0
June, 2022	0	0
30-Sep-22 6 months	22	6
30-Jul-22 6 months	9	6
1-Jun-23 6 months	9	6
Form 8609	0	0
Months to Stabilized Occupancy	0	0
Months to Stabilized Occupancy	9	9
First Year Portion in Operation (2022)	9	75%
Second Year Portion in Operation	12	100%
First Year Post Perm Conversion	1	8%
First Year % Occupied (per lease up Schedule below)	1	46%

Category	Amount
50% test	59,827,000
Basis plus land/office costs	37,335,000
Tax exempt financing	67,465%
3% tax exempt	1,025,973
Lease loan	37,335,000
Costs of bond issuance	60,000
Bond counsel	72,000
Issuance fee	7,500
Trustee Fee/Legal	13,097
CDLAC	5,000
Title	30,000
Leasehold Lease Fee	36,700
Construction lender costs	85,990
Permanent Loan Fee 1%	136,915
Lender Legal	75,000
Borrower Attorney	30,000
TOTAL	813,230

Category	Amount
50% test	59,827,000
Basis plus land/office costs	37,335,000
Tax exempt financing	67,465%
3% tax exempt	1,025,973
Lease loan	37,335,000
Costs of bond issuance	60,000
Bond counsel	72,000
Issuance fee	7,500
Trustee Fee/Legal	13,097
CDLAC	5,000
Title	30,000
Leasehold Lease Fee	36,700
Construction lender costs	85,990
Permanent Loan Fee 1%	136,915
Lender Legal	75,000
Borrower Attorney	30,000
TOTAL	813,230







BRIDGE  
BERKELEY WAY  
Final for Closing



CD	CE	CF	CG	CH	CI	CJ	CK	CL	CM	CN	CO	CP
19	SOURCES AND USES OF CAPITAL CONTRIBUTIONS AND LOAN PROCEEDS											
20		8,598,000	0	38,420,923	12,571,766	11,279,500	2,865,873	880,000	1,214,592	2,781,372	22,372,838	
21	Perm Loan Tranche A			Construction Loan	Alameda County	AHSC	City of Berkeley	AHP	Deferred Debt Fee	GP Equity	LP	TOTALS
22												
23	Source of Loan or Equity	500			500							500
24	Land cost											
25	Holding costs	93,610										93,610
26	Legal/clearing costs for acquisition	218,492										218,492
27	Cost of remediation	0										0
28	Cost of improvements	544,756										544,756
29	Site work	1,721,259										1,721,259
30	Residential hard costs (incl contractor's contingency)	33,886,187		23,843,601	5,464,872		2,774,925	880,000		100	770,822	33,066,180
31	Contractual hard costs											
32	Contractor general requirements	2,199,366		2,199,366								2,199,366
33	Contractor Contingency	0		0								0
34	Contractor Overhead Profit	1,325,689		1,325,689								1,325,689
35	Contractor insurance & bond & tax	350,435		350,435								350,435
36	Personal Property in Construction Contract	264,725		264,725								264,725
37	Other hard costs out of contract	0		0								0
38	Photovoltaics	0		0								0
39	Construction cost based by Owner	200,000		200,000								200,000
40	Construction contingency	2,015,559		2,015,559								2,015,559
41	Permits	2,547,813		2,547,813								2,547,813
42	Local Development Impact Fees	218,695		218,695								218,695
43	Utility Fees	1,404,506		1,404,506								1,404,506
44	Structure	1,700,486		1,700,486								1,700,486
45	Structural engineering	298,730		298,730								298,730
46	Construction management, wage mobilizing, security	158,899		158,899								158,899
47	Environmental	893,287		893,287								893,287
48	Course of Construction Insurance	0		0								0
49	Construction period fares	614,980		614,980								614,980
50	Construction contingency	0		0								0
51	Marketing	250,798		250,798								250,798
52	Local lender loan fee and costs	0		0								0
53	Construction Loan Fees - costs of issuance	2,632,118		2,632,118								2,632,118
54	Perm loan fee and expenses - costs of issuance	81,061		81,061								81,061
55	Construction period interest on soft loans	489,900		489,900								489,900
56	Construction period legal & expenses - costs of issuance	0		0								0
57	Construction lender legal & expenses - costs of issuance	813,233		813,233								813,233
58	Costs of issuance	3,700		3,700								3,700
59	Appraisal	61,919		61,919								61,919
60	Operational/Construction Committees Fees	32,000		32,000								32,000
61	Proceedural/Interest	43,125		43,125								43,125
62	Legal Fees - construction loan closing	48,875		48,875								48,875
63	Legal - Syndication	34,500		34,500								34,500
64	Legal - Permanent loan closing	80,000		80,000								80,000
65	Investor Costs	20,000		20,000								20,000
66	Market Study	55,000		55,000								55,000
67	Market Study - Permanent loan closing	40,000		40,000								40,000
68	Consultant - Syndication	30,000		30,000								30,000
69	Consultant - Construction financing	40,000		40,000								40,000
70	Title & Escrow - Construction financing	336,898		336,898								336,898
71	Project Audit	0		0								0
72	Operating Reserve (6 months)	0		0								0
73	Operating Reserve	0		0								0
74	Operating Deficit Reserve	0		0								0
75	Lease Up Reserve	5,600,000		5,600,000								5,600,000
76	Development Fee	38,420,923		38,420,923								38,420,923
77	Payment of Construction Loan	8,598,000		8,598,000								8,598,000
78	TOTAL PROJECT COSTS	100,984,664	0	38,420,923	12,571,766	11,279,500	2,865,873	880,000	1,214,592	2,781,372	22,372,838	100,984,664

	CS	CT	CU	CV	CW	CX	CY	CZ
	enter	50% construction completion	construction completion	stabilized occupancy	tax return			
19 DISBURSEMENTS OF UNITED PARTNER CAPITAL CONTRIBUTIONS								
20								
21								
22								
23								
24								
25								
26								
27								
28								
29								
30								
31								
32								
33								
34								
35								
36								
37								
38								
39								
40								
41								
42								
43								
44								
45								
46								
47								
48								
49								
50								
51								
52								
53								
54								
55								
56								
57								
58								
59								
60								
61								
62								
63								
64								
65								
66								
67								
68								
69								
70								
71								
72								
73								
74								
75								
76								
77								
78								
79								
80								
Totals	772,900	121,120	0	254,354	19,646,526	98,233	30,698	
	2,342,827	0	0	254,354	19,646,526	98,233	30,698	
	720,829							
	613,233							
	3,700							
	61,919							
	43,125							
	48,875							
	34,500							
	80,000							
	0							
	0							
	30,000							
	536,898							
	0							
	0							
	0							
	0							
	4,395,409							
	509,148							
	15,762,151							
	22,312,638							
	0							
	254,354							
	3,492,978							
	15,762,151							
	98,233							
	19,646,526							
	30,698							
	30,698							







	IA	IB	IC	ID	IE	IF	IG	IH	II	IK	IL	IM	IN	IO	IP	IQ
1	CAPITAL ACCOUNT ANALYSIS DURING OWNERSHIP BY LIMITED PARTNERSHIP															
2	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
3	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037
4	56,191,413	57,755,657	55,778,245	53,800,867	51,823,722	48,775,335	47,664,200	45,882,559	43,800,654	41,919,208	39,813,857	37,096,485	36,059,835	34,121,425	32,183,255	30,089,155
5	-1,481,902	-2,024,190	-2,024,190	-2,024,190	-2,024,190	-2,029,327	-2,029,327	-2,029,327	-2,029,327	-2,029,327	-1,988,619	-1,968,619	-1,968,619	-1,968,619	-1,962,667	-1,964,659
6	57,709,510	55,731,467	53,754,055	51,776,677	49,799,532	47,746,008	45,834,873	43,853,232	41,874,327	39,888,881	37,827,239	36,011,866	34,073,216	32,134,800	30,200,588	28,194,496
7	35,330,758	35,658,348	35,977,118	36,300,866	36,627,951	36,957,926	37,290,890	37,626,890	37,965,348	38,306,797	38,650,937	38,997,499	39,349,250	39,696,589	39,997,584	40,318,226
8	0	0	0	0	0	0	0	0	0	0	923,598	2,985,632	5,235,034	7,528,753	9,797,068	12,213,700
9	0	19,098,035	17,950,969	15,841,072	13,739,127	11,643,375	9,553,768	7,472,638	5,398,428	3,331,180	1,270,933	735,539	-966,268	-1,197,213	-1,428,363	-1,659,349
10	22,243,707	128,931	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12	-2,121,919	-2,115,969	-2,109,995	-2,103,545	-2,095,732	-2,089,607	-2,081,130	-2,074,210	-2,067,249	-2,060,247	-2,056,472	-2,050,944	-2,045,944	-2,041,500	-2,030,986	-2,027,653
13	-182,857	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14	19,098,035	17,950,969	15,841,072	13,739,127	11,643,375	9,553,768	7,472,638	5,398,428	3,331,180	1,270,933	735,539	-966,268	-1,197,213	-1,428,363	-1,659,349	-1,887,163
15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
16	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
17	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
18	19,098,035	17,950,969	15,841,072	13,739,127	11,643,375	9,553,768	7,472,638	5,398,428	3,331,180	1,270,933	735,539	-966,268	-1,197,213	-1,428,363	-1,659,349	-1,887,163
19	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
20	19,098,035	17,950,969	15,841,072	13,739,127	11,643,375	9,553,768	7,472,638	5,398,428	3,331,180	1,270,933	735,539	-966,268	-1,197,213	-1,428,363	-1,659,349	-1,887,163
21	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
22	CALCULATION OF TAX CONSEQUENCES ON SALE (TRANSFER OF LIMITED PARTNERSHIP INTERESTS (outside basis))															
23	20,121,891	18,134,823	16,025,528	13,822,983	11,827,232	9,737,624	7,656,495	5,582,285	3,515,036	1,454,789	551,603	-782,412	-1,013,356	-1,244,508	-1,475,482	-1,703,327
24	22,243,707	20,121,891	18,134,823	16,025,528	13,822,983	11,827,232	9,737,624	7,656,495	5,582,285	3,515,036	1,454,789	551,603	-782,412	-1,013,356	-1,244,508	-1,475,482
25	-2,121,816	-2,115,900	-2,109,985	-2,103,545	-2,095,782	-2,089,606	-2,081,130	-2,074,210	-2,067,249	-2,060,247	-2,056,472	-2,050,944	-2,045,944	-2,041,500	-2,030,986	-2,027,653
26	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
27	20,121,891	18,134,823	16,025,528	13,822,983	11,827,232	9,737,624	7,656,495	5,582,285	3,515,036	1,454,789	551,603	-782,412	-1,013,356	-1,244,508	-1,475,482	-1,703,327
28	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
29	20,121,891	18,134,823	16,025,528	13,822,983	11,827,232	9,737,624	7,656,495	5,582,285	3,515,036	1,454,789	551,603	-782,412	-1,013,356	-1,244,508	-1,475,482	-1,703,327
30	-4,225,287	-3,825,313	-3,395,531	-2,929,827	-2,453,719	-2,043,001	-1,607,684	-1,172,285	-738,158	-305,506	-119,659	-164,306	-219,895	-291,346	-399,853	-557,669

BRIDGE  
BERKELEY WAY  
Final for Closing



IB	IC	ID	IE	IF	IG
DATE	LOSS	CREDITS	INVESTMENT	NET	IRR
441	INTERNAL RATE OF RETURN (CALCULATED QUARTERLY)				5.156%
46	Mar-20			0	
47	Jun-20			-2,342,827	
48	Mar-21			0	
49	Jun-21			0	
50	Mar-21		0	0	
51	Jun-21			0	
52	Sep-21			0	
53	Dec-21			0	
54	Mar-22	0		0	
55	Jun-22	0		0	
56	Sep-22	359,007	254,354	253,180	
57	Dec-22	148,527	359,007	507,534	
58	Mar-23	111,090	19,646,520	-19,138,992	
59	Jun-23	111,090		696,781	
60	Sep-23	111,090	126,931	696,781	
61	Dec-23	111,090	585,671	696,781	
62	Mar-24	110,738	585,671	696,409	
63	Jun-24	110,738	585,671	696,409	
64	Sep-24	110,738	585,671	696,409	
65	Dec-24	110,384	585,671	696,055	
66	Mar-25	110,384	585,671	696,055	
67	Jun-25	110,384	585,671	696,055	
68	Sep-25	110,384	585,671	696,055	
69	Dec-25	110,384	585,671	696,055	
70	Mar-26	110,027	585,671	695,698	
71	Jun-26	110,027	585,671	695,698	
72	Sep-26	110,027	585,671	695,698	
73	Dec-26	109,704	585,671	695,342	
74	Mar-27	109,704	585,671	695,342	
75	Jun-27	109,704	585,671	695,342	
76	Sep-27	109,704	585,671	695,342	
77	Dec-27	109,350	585,671	694,986	
78	Mar-28	109,259	585,671	694,930	
79	Jun-28	109,259	585,671	694,930	
80	Sep-28	109,259	585,671	694,930	
81	Dec-28	108,898	585,671	694,574	
82	Mar-29	108,898	585,671	694,574	
83	Jun-29	108,898	585,671	694,574	
84	Sep-29	108,898	585,671	694,574	
85	Dec-29	108,898	585,671	694,574	
86	Mar-30	108,531	585,671	694,218	
87	Jun-30	108,531	585,671	694,218	
88	Sep-30	108,531	585,671	694,218	
89	Dec-30	108,163	585,671	693,862	
90	Mar-31	108,163	585,671	693,862	
91	Jun-31	108,163	585,671	693,862	
92	Sep-31	108,163	585,671	693,862	
93	Dec-31	108,163	585,671	693,862	
94	Mar-32	105,340	316,416	421,756	
95	Jun-32	105,340	316,416	421,756	
96	Sep-32	105,340	316,416	421,756	
97	Dec-32	105,340	316,416	421,756	
98	Mar-33	12,113		12,113	
99	Jun-33	12,113		12,113	
100	Sep-33	12,113		12,113	
101	Dec-33	12,113		12,113	
102	Mar-34	12,125		12,125	
103	Jun-34	12,125		12,125	
104	Sep-34	12,125		12,125	
105	Dec-34	12,125		12,125	
106	Mar-35	12,135		12,135	
107	Jun-35	12,135		12,135	
108	Sep-35	12,135		12,135	
109	Dec-35	12,135		12,135	
110	Mar-36	12,127		12,127	
111	Jun-36	12,127		12,127	
112	Sep-36	12,127		12,127	
113	Dec-36	12,127		12,127	
114	Mar-37	-309,653		-309,653	

**EXHIBIT D**

**FORM OF PROMISSORY NOTE**



**EXHIBIT E**

**FORM OF DEED OF TRUST**

**EXHIBIT F**

**FORM OF REGULATORY AGREEMENT**

7

Recorded at the Request of  
Old Republic Title Company-  
Oakland  
110402161

No fee per GC27388.1; recorded in  
connection with concurrent transfer  
subject to imposition of  
documentary transfer tax

NO FEE DOCUMENT

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

CERTIFIED A TRUE COPY OF THE ORIGINAL  
RECORDED IN THE OFFICIAL RECORDS OF  
ALAMEDA COUNTY ON July 7, 2020  
Under Recorder's Serial No. 2020156929  
Old Republic Title Company  
By: \_\_\_\_\_

Alameda County  
Housing and Community Development Department  
224 W. Winton Avenue, Room 108  
Hayward, CA 94544  
Attn: Housing Director

No fee for recording pursuant to  
Government Code Section 27383 and 27388.1

REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS  
(Alameda County A1 Bond – BRIDGE Berkeley Way Affordable Apartments)

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is dated July 1, 2020, and is between the County of Alameda, a political subdivision of the State of California (the "County"), and BRIDGE Berkeley Way LP, a California limited partnership ("Borrower").

RECITALS

A. Capitalized terms used but not defined in these recitals are as defined in Article 1 of this Agreement.

B. Borrower has acquired from the City of Berkeley (the "City"), a leasehold interest in that certain real property located in the City of Berkeley, State of California, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"). Borrower intends to construct on the Property eighty-eight (88) units of housing affordable to very low and low-income households, one (1) manager's unit and attendant site improvements (along with the Property, the "Development").

C. On November 8, 2016, the voters in the County passed the Measure A1 Affordable Housing Bond (the "County Bond"), which provides for the issuance of bonds for affordable housing programs countywide. The County is making a loan for the Development in an amount not to exceed Twelve Million One Hundred Seventy Two Thousand Eight Hundred Four Dollars (\$12,172,804). The County Loan is being made to further the purposes of the County Bond. On February 5, 2019, by Resolution Number R2019-72, the County approved the County Loan. The County Loan will be disbursed subject to the terms of that certain Contract for the Use of Measure A1 Affordable Housing Bond Funds dated May 12, 2020, and entered into between the County and Borrower prior to the disbursement of the County Loan (the "County Contract"), the County Development Loan Agreement entered into by and between the County and Borrower dated of even date herewith ("Loan Agreement") and this Agreement. Any

capitalized terms not defined herein shall have the meaning ascribed to such terms in the Loan Agreement.

D. Subject to the terms of the Loan Agreement, the County has agreed to make the County Loan to Borrower on the condition that the Development be maintained and operated in accordance with restrictions concerning affordability, operation, and maintenance of the Development, as specified in this Agreement, the Loan Agreement, and the Implementation Policies.

E. In consideration of receipt of the County Loan at an interest rate substantially below the market rate, Borrower has further agreed to restrict the use and occupancy of the Property to very low and low income households for a period of fifty-five (55) years as specified below.

F. In order to ensure that the entire Development will be used and operated in accordance with these conditions and restrictions, County and Borrower wish to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, incorporated herein by this reference, and the covenants and promises contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the County and Borrower hereby agree as follows:

## ARTICLE 1 DEFINITIONS

### Section 1.1 Definitions.

When used in this Agreement, the following terms have the following meanings:

(a) "50% AMI Household" means a household with a 50% Income Level as published by TCAC, or if TCAC does not publish such levels, a household with an Adjusted Income that does not exceed fifty percent (50%) of Area Median Income.

(b) "50% Units" means the Units which, pursuant to Section 2.1(a) below, are required to be occupied by 50% AMI Households.

(c) "60% AMI Household" means a household with a 60% Income Level as published by TCAC, or if TCAC does not publish such levels, a household with an Adjusted Income that does not exceed sixty percent (60%) of Area Median Income.

(d) "60% Units" means the Units which, pursuant to Section 2.1(b) below, are required to be occupied by 60% AMI Households.

(e) "Accessibility Requirements" has the meaning set forth in Section 2.1(e).

(f) "Actual Household Size" means the actual number of persons in

the applicable household.

(g) "Adjusted Income" means with respect to a Tenant of a County-Assisted Unit, the income from all persons in the household including nonrelated individuals, calculated using the methods to calculate income adopted by TCAC.

(h) "Agreement" means this Regulatory Agreement and Declaration of Restrictive Covenants.

(i) "Annual Operating Budget" has the meaning set forth in Section 4.8(a).

(j) "Annual Operating Expenses" has the meaning set forth in Section 1.1 of the Loan Agreement.

(k) "Area Median Income" means the median gross yearly income, adjusted for Actual Household Size as specified herein, in the County of Alameda, California as published from time to time by HUD. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the County shall provide Borrower with other income determinations that are reasonably similar with respect to methods of calculation to those previously published by HUD.

(l) "Borrower" has the meaning set forth in the first paragraph of this Agreement.

(m) "City" means the City of Berkeley, California.

(n) "Completion Date" means the date a final certificate of occupancy, or equivalent document is issued by the City to certify that the Development may be legally occupied.

(o) "County Bond" has the meaning set forth in Recital C.

(p) "County Loan" has the meaning set forth in Recital C.

(q) "County-Assisted Units" means eighty-eight (88) units in the Development restricted by the County pursuant to this Agreement.

(r) "Deed of Trust" means the leasehold deed of trust dated of even date herewith, executed by Borrower, as trustor, Old Republic Title Company, as trustee, and the County, as beneficiary, to be recorded concurrently herewith in the Official Records against Borrower's leasehold interest in the Property to secure repayment of the Note and the performance by Borrower under the Loan Agreement and this Agreement.

(s) "Development" has the meaning set forth in Recital B.

(t) "Development Regulatory Documents" has the meaning set forth in Section 4.2(a).

- (u) "Gross Revenue" has the meaning set forth in Section 1.1 of the Loan Agreement.
- (v) "Housing Director" means the Housing Director of the County Housing and Community Development Department or his or her designee.
- (w) "HUD" means the United States Department of Housing and Urban Development.
- (x) "Implementation Policies" means the Measure A1 Implementation Policies adopted by the County Board of Supervisors on November 7, 2017, as such may be updated from time to time, which set forth the Rental Housing Development Fund requirements.
- (y) "Loan Agreement" means the County Development Loan Agreement entered into by and between the County and Borrower dated of even date herewith.
- (z) "Loan Documents" means this Agreement, the documents executed by Borrower evidencing the County Loan including the Note, the Loan Agreement, the Deed of Trust and all other documents evidencing or securing the County Loan between Borrower and the County or by Borrower for the benefit of the County, as each may be amended.
- (aa) "Marketing Plan" has the meaning set forth in Section 4.4(a).
- (bb) "Note" means the promissory note executed by Borrower in favor of the County, dated of even date herewith, evidencing the County Loan.
- (cc) "Operating Reserve Account" has the meaning set forth in Section 4.9(b) below.
- (dd) "Partnership Agreement" has the meaning set forth in Section 1.1 of the Loan Agreement.
- (ee) "Permanent Financing" has the meaning set forth in Section 1.1 of the Loan Agreement.
- (ff) "Property" has the meaning set forth in Recital B.
- (gg) "Rent" means the total of monthly payments by the Tenant of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Borrower that are customarily charged in rental housing and required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Borrower, and paid by the Tenant.

- (hh) "Replacement Reserve Account" has the meaning set forth in Section 4.9(a) below.
- (ii) "Resident Services Budget" has the meaning set forth in Section 4.6(a) below.
- (jj) "Resident Services Plan" has the meaning set forth in Section 4.6(a) below.
- (kk) "TCAC" means the California Tax Credit Allocation Committee.
- (ll) "TCAC 50% Rent" means the maximum rent published by TCAC for a "50% AMI Household" in Alameda County for the applicable bedroom size.
- (mm) "TCAC 60% Rent" means the maximum rent published by TCAC for a "60% AMI Household" in Alameda County for the applicable bedroom size.
- (nn) "Tenant" means a household legally occupying a Unit pursuant to a valid lease with Borrower.
- (oo) "Tenant Selection Plan" has the meaning set forth in Section 4.5(a).
- (pp) "Term" means the term of this Agreement which commences as of the date of this Agreement, and unless sooner terminated pursuant to the terms of this Agreement, ends on the later of: (i) fifty-five (55) years after the conversion of the Project's construction financing to Permanent Financing, provided, however, if a record of the conversion date cannot be located or established, then fifty-seven (57) years after the date of this Agreement, or (ii) repayment in full of the County Loan and all interest due thereon.
- (qq) "Unit" means one or all of the eighty-nine (89) units in the Development.

## ARTICLE 2 AFFORDABILITY AND OCCUPANCY COVENANTS

### Section 2.1 Occupancy Requirements.

- (a) 50% Units. During the Term Borrower shall cause fifty-four (54) Units to be rented to and occupied by, or, if vacant, available for occupancy by, 50% AMI Households.
- (b) 60% Units. During the Term Borrower shall cause thirty-four (34) Units to be rented to and occupied by, or, if vacant, available for occupancy by, 60% AMI Households.
- (c) Managers' Unit. One (1) Unit consisting of two-bedrooms is to be

available for designation as the manager's unit.

(d) Intermingling of Units. Borrower shall cause the County-Assisted Units to be intermingled throughout the Development and be of comparable quality to all other Units. Tenants in all Units shall have equal access to and enjoyment of all common facilities in the Development. The County-Assisted Units must be of the bedroom size set forth in the following chart:

	<b>50% Units</b>	<b>60% Units</b>	<b>Total Units</b>
<b>Studio</b>	17	17	34
<b>One- Bd.</b>	18	17	35
<b>Two- Bed.</b>	19	-	20
<b>Total</b>	54	34	88

(e) Disabled Persons Occupancy.

(1) Borrower shall cause the Development to be operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) Section 504 of the Rehabilitation Act of 1973, (iv) the United States Fair Housing Act, as amended, (v) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

(2) Borrower shall indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the County) the County, and its board members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Borrower's failure to comply with the Accessibility Requirements. This obligation to indemnify survives termination of this Agreement, repayment of the County Loan and the reconveyance of the Deed of Trust.

(f) Loss of Subsidy.

Notwithstanding the foregoing, in the event of a loss of project-based rental assistance or operating subsidy to the Development, Borrower may be permitted to increase rent to County-Assisted Units only upon the written consent of the County pursuant to Section 2.3 (e).

## Section 2.2 Allowable Rent.

(a) 50% Units. Subject to the provisions of Section 2.3 below, Rent paid by Tenants of the 50% Units shall not exceed the TCAC 50% Rent for the applicable bedroom size.

(b) 60% Units. Subject to the provisions of Section 2.3 below, Rent paid by Tenants of the 60% Units shall not exceed the TCAC 60% Rent for the applicable bedroom size.



(c) No Additional Fees. Borrower shall not charge any fee, other than Rent, to any resident of the County-Assisted Units for any housing or other services provided by Borrower.

Section 2.3 Rent Increases: Increased Income of Tenants.

(a) Rent Increases. Initial Rents and subsequent Rents for all County-Assisted Units are subject to written County approval. All Rent increases for all County-Assisted Units are also subject to County approval. Notwithstanding the foregoing, County's review and approval of Rents and Rent increases shall be limited to determining that such Rents and Rent increases comply with the requirements of this Regulatory Agreement. No later than sixty (60) days prior to the proposed implementation of any Rent increase affecting a County-Assisted Unit, Borrower shall submit to the County in writing a schedule of any proposed increase in the Rent charged for County-Assisted Units. In addition to the requirement that the all Rent increases must be approved by the County, Rents may not be increased more often than once every twelve (12) months and by no more than five percent (5%) per year. Borrower shall provide each Tenant with at least sixty (60) days written notice of any increase in Rent applicable to such Tenant, following completion of the County approval process set forth above.

(b) Increased Income of a 50% AMI Household Above the Limit for a 50% AMI Household but Below Limit for a 60% AMI Household. Subject to Section 2.3 (a) above, in the event that, upon recertification of the income of a Tenant of a 50% Unit, Borrower determines that the income of the Tenant has increased to above the qualifying limit of a 50% AMI Household, but below the qualifying limit of a 60% AMI Household, the Tenant may continue to occupy the Unit and the Tenant's Rent will remain at the TCAC 50% Rent. Borrower shall then rent the next available Unit to a 50% AMI Household, at a Rent not exceeding the maximum Rent specified in Section 2.2(a). At the time that Borrower rents the next available unit to a 50% AMI Household, the Unit with the over-income 50% AMI Household may be re-designated a 50% AMI Unit or 60% AMI Unit consistent with the current income level of the Tenant, and as necessary to comply with the Unit mix requirements of Section 2.1 above, and at the time of such re-designation, such over-income Tenant's Rent may be increased to match the new designation.

(c) Non-Qualifying Households. Subject to Section 2.3 (a) above, if, upon recertification of the income of a Tenant of a County-Assisted Unit, Borrower determines that a Tenant of a County-Assisted Unit has an Adjusted Income exceeding the maximum qualifying income for a 60% AMI Household, such Tenant shall be permitted to continue occupying the County-Assisted Unit and upon sixty (60) days written notice, the Rent may be increased to one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of the actual Adjusted Income of the Tenant, and Borrower shall rent the next available Unit to a 50% AMI Household or 60% AMI Household, as applicable, at a Rent not exceeding the maximum Rent specified in Section 2.2, or designate another Unit in the Development with a 50% AMI Household as a 50% Unit, or with a 60% AMI Household as a 60% Unit, as applicable, to meet the Unit Mix requirements of Section 2.1 above.

(d) Termination of Occupancy. Upon termination of occupancy of a County-Assisted Unit by a Tenant, such Unit shall be deemed to be continuously occupied by a

household of the same income level as the initial income level of the vacating Tenant, until such Unit is reoccupied, at which time the income character of such Unit will be redetermined to meet the occupancy requirements of Section 2.1 above.

(e) Loss of Subsidy. It is anticipated that certain Units in the Development (the "Subsidy Units") will receive Project-Based Section 8 or other rental subsidies (the "Rental Subsidy") throughout the Term, as reflected in the budget for the Development approved by the County. If any change in federal law occurs, or any action (or inaction) by Congress or any federal, state or local agency occurs, which results in a material reduction, termination or nonrenewal of the Rental Subsidy through no fault of the Borrower, such that the Rental Subsidy shown on the budget for the Development approved by the County is no longer available, Borrower shall, in anticipation of such loss in Rental Subsidy, use good faith efforts for a period of sixty (60) days, to obtain alternative sources of rental subsidies and shall provide the County weekly progress reports on Borrower's efforts to obtain alternative sources of rental subsidies. If at the end of such sixty (60) day period Borrower is unable to secure an alternate source of rental subsidy, notwithstanding Section 2.2, Borrower may increase the Rent on one or more of the County-Assisted Units that overlap with a Subsidy Unit, to the TCAC 60% Rent, subject to the following requirements:

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

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

(3) Any subsequent Rent increases remain subject to Section 2.3(a) above;

(4) The number of County-Assisted Units subject to the Rent increase and the level of rent increase may not be greater than the amount required to ensure that the Development generates sufficient income to cover its operating costs and debt service as shown on the Annual Operating Budget, and as is necessary to maintain the financial stability of the Development; and

(5) Borrower shall continue to use good faith efforts to obtain alternative sources of rental subsidies and shall provide the County with annual progress reports on efforts to obtain alternative sources of rental subsidies that would allow the rents on the County-Assisted Units to be reduced back to the Rents set out in Section 2.2. Upon receipt of any alternative rental subsidies, Borrower shall reduce the income levels (at vacancy) and rents on the County-Assisted Units back to the income levels and Rents set out in Section 2.1 and 2.2, respectively, to the extent that the alternative rental subsidies provide sufficient income to cover the operating costs and debt service of the Development as shown on the Annual Operating Budget.

(f) Rent Increases on Foreclosure. Notwithstanding Section 2.2, in the event that a Senior Lender (as defined in the Loan Agreement) forecloses on the Development (or receives a deed in lieu of foreclosure), the Rents on one or more of the County-Assisted Units may be increased to the TCAC 60% Rent and the income levels set forth in Section 2.1 may be increased to 60% AMI Households to maintain the financial feasibility of the Development, subject to the following requirements:

(1) Any such income and/or Rent increase must be pursuant to a transition plan approved by the County in writing, in its sole discretion, showing: (i) how the income and/or Rent increase will be phased-in; (ii) which County-Assisted Units will be subject to the increase; and (iii) the operating income and expenses for the Development comparing the current rent structure to the proposed rent structure;

(2) The number of County-Assisted Units subject to the income and/or Rent increase and the level of income and/or rent increase may not be greater than the amount required to ensure that the Development generates sufficient income to cover its operating costs and debt service as shown on the Annual Operating Budget, and as is necessary to maintain the financial stability of the Development; and

(3) The Rent increase may occur only at the time of renewal of the term of the lease of an existing Tenant or the time of leasing a County-Assisted Unit to a new Tenant. The income level increase may occur only upon vacancy of the County-Assisted Unit. Any subsequent Rent increases remain subject to Section 2.3(a) above.

#### Section 2.4 Income and Rent Calculations.

In the event that TCAC no longer publishes the income and rent information that this Agreement contemplates that TCAC will publish, respectively, the County shall provide Borrower with other income and rent determinations which are reasonably similar with respect to methods of calculation to those previously published by TCAC, as applicable.

#### Section 2.5 Monitoring Fee.

In connection with the restrictions imposed by this Agreement, the County shall charge Borrower and Borrower shall pay a monitoring fee in the amount of Three Hundred Dollars (\$300) per County-Assisted Unit per year.

### ARTICLE 3 INCOME CERTIFICATION; REPORTING; RECORDS

#### Section 3.1 Income Certification.

(a) Borrower shall obtain, complete, and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Tenant renting

any of the County-Assisted Units. Borrower shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking two (2) or more of the following steps as a part of the verification process: (i) obtain a pay stub for the most recent two (2) months of pay period; (ii) obtain an income tax return for the most recent tax year; (iii) conduct a credit agency or similar search; (iv) obtain an income verification form from the applicant's current employer verifying employment for the last two (2) months; (v) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (vi) if the applicant is unemployed and has no such tax return, obtain another form of independent verification.

(b) Borrower shall also complete and/or have the Tenants of the County-Assisted Units complete and sign the "Income Computation and Certification" and the "Owner's Certification of Household Income" both of which are attached hereto as Exhibit B, or any other form approved by the County, and/or any other forms related to Tenants' income provided to Borrower by the County or that provide income information that is sufficient to determine an applicant's income as required by this Section. Copies of Tenant income certifications shall be made available to the County upon request.

Section 3.2 Reserved.

Section 3.3 Resident/Workforce Priority.

To the extent permitted by law, including applicable federal and state fair housing laws, and consistent with the Implementation Policies, Borrower shall give a priority in the rental of the County-Assisted Units to eligible households in which at least one member lives or works in the County. Borrower's Marketing Plan and Tenant Selection Plan must reflect County-wide outreach in order to satisfy this requirement. The preference stated in this section applies to the rentals of the County-Assisted Units throughout the Term. Borrower shall not, without the prior written consent of the County, give any other preference to any particular class or group of persons in renting the County-Assisted Units, except to the extent that the County-Assisted Units are required to be leased to eligible households pursuant the requirements concerning the applicable provisions of any project based vouchers provided to the Development.

Section 3.4 Reporting Requirements.

Upon completion of the construction, Borrower shall submit to the County quarterly Development status reports for the first year of Development operation no later than ninety (90) days after the end of each quarter. Thereafter, Borrower shall submit to the County annual reports in a form approved by the County, no later than one hundred twenty (120) days after the end of Borrower's fiscal year. The reports shall contain such information as the County may require, including, but not limited to, the following:

(a) A statement of the fiscal condition of the Development, including a financial statement indicating surpluses or deficits in operating accounts for the period covered, a detailed itemized listing of income and expenses, and the amounts of any Development reserves. The report due after the end of each fiscal year shall contain an audited version of this statement.

Such audit shall be prepared in accordance with the requirements of the County and certified at the Development's expense by an independent Certified Public Accountant licensed by the State of California. Borrower shall also follow audit requirements of the Single Audit Act and 2 C.F.R. Part 200.

(b) The substantial physical defects in the Development, if any, including a description of any major repair or maintenance work undertaken in the reporting period.

(c) The occupancy of the Development indicating:

(1) A listing of current Tenants' names, income levels, Rent charged and paid, move-in dates, and the race and ethnic groups of Tenants;

(2) A listing of the Tenants in the targeted group identified in Section 3.2 above;

(3) The number of applicants denied/accepted for tenancy with a household member with criminal convictions, along with the basis of denials;

(4) The number of Tenants receiving services for each year and an assessment of compliance with the Resident Services Plan; and

(5) General management performance, including Tenant relations and other relevant information.

Upon request of the County, Borrower shall furnish, within fifteen (15) days, copies of all Tenant agreements for the County-Assisted Units. Within fifteen (15) days after receipt of a written request from the County, Borrower shall also submit any other information or completed forms requested by the County (provided, however, that Borrower shall in no event be obligated to provide any information that it cannot legally obtain as a housing provider).

### Section 3.5 Additional Information.

Borrower shall provide any additional information reasonably requested by the County. The County shall have the right to examine and make copies of all books, records or other documents of Borrower which pertain to the Development.

### Section 3.6 Tenant Records.

Borrower shall maintain complete, accurate and current records pertaining to the income and household size of Tenants. All Tenant lists, applications and waiting lists relating to the Development shall at all times be kept separate and identifiable from any other business of Borrower and shall be maintained as required by the County, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the County. Borrower shall retain copies of all materials obtained or produced with respect to occupancy of the County-Assisted Units for a period of at least five (5) years. The County may examine and

make copies of all books, records or other documents of Borrower that pertain to the Tenants.

Section 3.7 Development Records.

(a) Borrower shall keep and maintain at the principal place of business of the Borrower set forth in Section 6.11 below, or elsewhere with the County's written consent, full, complete and appropriate books, records and accounts relating to the Development. Borrower shall cause all books, records and accounts relating to its compliance with the terms, provisions, covenants and conditions of the Loan Documents to be kept and maintained in accordance with generally accepted accounting principles consistently applied, and to be consistent with requirements of this Agreement. Borrower shall cause all books, records, and accounts to be open to and available for inspection and copying by HUD, the County, its auditors or other authorized representatives at reasonable intervals during normal business hours. Borrower shall cause copies of all tax returns and other reports that Borrower may be required to furnish to any government agency to be open for inspection by the County at all reasonable times at the place that the books, records and accounts of Borrower are kept. Borrower shall preserve such records for a period of not less than five (5) years after their creation in compliance with all HUD records and accounting requirements. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the County Loan is pending at the end of the record retention period stated herein, then Borrower shall retain the records until such action and all related issues are resolved. Borrower shall cause the records to include all invoices, receipts, and other documents related to expenditures from the County Loan funds. Such records are to include but are not limited to:

(1) Records providing a full description of the activities undertaken with the use of the County Loan funds;

(2) Records demonstrating compliance with the affordability and income requirements for Tenants;

(3) Records documenting compliance with the fair housing, equal opportunity, and affirmative fair marketing requirements;

(4) Records demonstrating compliance with applicable relocation requirements which must be retained for at least five (5) years after the date by which persons displaced from the Property have received final payments;

(5) Records demonstrating compliance with Section 3, and labor requirements, including (a) certified payrolls from Borrower's general contractor evidencing that applicable prevailing wages have been paid and (b) prevailing wage monitoring reports in a form approved by the County; and

(6) Financial and other records as required by 2 C.F.R. Part 200.

The County shall notify Borrower of any records it deems insufficient. Borrower shall have fifteen (15) days after the receipt of such a notice to correct any deficiency in the records specified by the County in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Borrower shall begin to correct the deficiency within

fifteen (15) days and correct the deficiency as soon as reasonably possible.

ARTICLE 4  
OPERATION OF THE DEVELOPMENT

Section 4.1      Residential Use.

The Development shall be operated only for residential use. No part of the Development shall be operated as transient housing. Borrower shall provide to Tenants and post in a public location at the Development a "Tenants Rights and Responsibilities" document in the form provided by the County.

Section 4.2      Compliance with Loan Documents and Regulatory Requirements.

(a) Borrower's actions with respect to the Property shall at all times be in full conformity with: (i) all requirements of the Loan Documents then applicable to the Development; (ii) the Implementation Policies; (iii) the Ground Lease, (iv) the REA, and (v) any other regulatory requirements, then applicable to the Development, imposed on the Development including but not limited to regulatory agreements associated with the Low Income Housing Tax Credits provided by the California Tax Credit Allocation Committee, the HCD AHSC Loan, City Loan, and rental subsidies provided to the Development (collectively the "Development Regulatory Documents").

(b) Borrower shall promptly notify the County in writing of the existence of any default under any Development Regulatory Documents, and provide the County written copies of any such notice of default.

Section 4.3      Taxes and Assessments.

(a) Borrower is solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development, and shall pay such charges prior to delinquency and at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property. Borrower is also solely responsible for payment of all personal property taxes, and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, and shall pay such charges prior to delinquency and at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property.

(b) However, Borrower is not required to pay and discharge any such charge so long as: (i) the legality thereof is being contested diligently and in good faith and by appropriate proceedings; and (ii) if requested by the County, Borrower deposits with the County any funds or other forms of assurance that the County in good faith from time to time determines appropriate to protect the County from the consequences of the contest being unsuccessful.

(c) In the event Borrower exercises its right to contest any tax, assessment, or charge against it, Borrower, on final determination of the proceeding or contest, will immediately

pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

(d) Borrower shall not apply for a property tax exemption for the Property under any provision of law except California Revenue and Taxation Code Section 214(g) without the prior written consent of the County.

Section 4.4 Marketing Plan.

(a) No later than six (6) months prior to the projected date of the completion of the Development, Borrower shall submit to the County for approval its plan for marketing the Development (the "Marketing Plan"), to ensure that target populations, countywide and local residents and workforce populations will be aware of the housing opportunities in the Development. Specifically, the Marketing Plan must comply with the requirements set forth in Section III.F of the Implementation Policies regarding affirmative fair marketing, and include information on Borrower's plan to: (i) affirmatively market the Development to income-eligible households, (ii) comply with fair housing laws, (iii) meet the targeting requirements of Section 3.2 above, and (iv) meet the preference requirements of Section 3.3 above.

(b) Upon receipt of the Marketing Plan, the County shall promptly review the Marketing Plan and shall approve or disapprove it within fifteen (15) days after submission. If the Marketing Plan is not approved, the County shall set forth in writing and notify Borrower of the County's reasons for withholding such approval. Borrower shall submit a revised Marketing Plan within fifteen (15) days thereafter, and the County shall approve or disapprove it within fifteen (15) days after submission. If the County does not approve the revised Marketing Plan, Borrower shall be in default hereunder.

(c) Borrower shall comply with the approved Marketing Plan during the Term and may not make material modifications to the Marketing Plan without the prior written approval of the County.

Section 4.5 Tenant Selection Plan.

(a) No later than six (6) months prior to the projected date of the completion of the Development, Borrower shall submit in writing to the County for approval its policies and criteria for selecting tenants for the Development to ensure that the leasing of the Development will be conducted in a manner that provides fair and equal access under the law (the "Tenant Selection Plan"). The Tenant Selection Plan may be part of the Marketing Plan. The Tenant Selection Plan must comply with the requirements set forth in the Implementation Policies including but not limited to Sections III.H, I, J, and K, of the Implementation Policies regarding Tenant screening, immigration status, applications and waitlists, and Coordinated Entry, and include information on Borrower's plan to: (i) limit occupancy to income-eligible households, (ii) give notice to applicants of rejection and grounds for rejection, (iii) manage applicants on a wait list for occupancy in the Development, and (iv) comply with fair housing laws.

(b) Upon receipt of the Tenant Selection Plan, the County shall review the Tenant Selection Plan and shall approve or disapprove it within fifteen (15) days after submission. If the Tenant Selection Plan is not approved, the County shall set forth in writing



and notify Borrower of the County's reasons for withholding such approval. Borrower shall submit a revised Tenant Selection Plan within fifteen (15) days thereafter, and the County shall approve or disapprove it within fifteen (15) days after submission. If the County does not approve the revised Tenant Selection Plan, Borrower shall be in default hereunder.

(c) Borrower shall comply with the approved Tenant Selection Plan during the Term and may not make material modifications to the Tenant Selection Plan without the prior written approval of the County.

#### Section 4.6 Resident Services Plan and Budget.

(a) No later than six (6) months prior to the projected date of the completion of the Development, Borrower shall submit to the County in writing a plan for providing supportive services to the Tenants (the "Resident Services Plan") and a budget for providing those services (the "Resident Services Budget") for the initial year of operation of the Development. The Resident Services Plan must identify service provider(s) and staffing levels, and describe the services provided. The Resident Services Plan must include copies of contracts and/or memoranda of understanding for the provision of services by service providers, along with any annual compliance certifications. The Resident Services Budget must state the dollar value of the services, and the funding source(s) for the services (cash or in-kind).

(b) Upon receipt by the County of the proposed Resident Services Plan and Resident Services Budget, the County shall promptly review the same and approve or disapprove it within fifteen (15) days, provided that such approval shall not be unreasonably denied. If the Resident Services Plan and/or Resident Services Budget are not approved by the County, the County shall set forth in writing and notify Borrower of the County's reasons for withholding such approval, which may include a request by the County for a change in the nature or scope of resident services or a change in service provider. Borrower shall, within fifteen (15) days thereafter, submit a revised Resident Services Plan and/or Resident Services Budget for County approval in accordance with this subsection. If the County does not approve the revised Resident Service Plan, Borrower shall be in Default hereunder.

(c) Borrower shall thereafter submit to the County annual updates to the Resident Services Plan and Resident Services Budget by October 1st of each year of operation of the Development, identifying any changes made to the previously approved Resident Services Plan and Resident Services Budget. Any revisions to the Resident Services Plan and Resident Services Budget shall be subject to the County's review and approval and the process for timing and review of such revisions shall be subject to the process identified in Section 4.7 (b) above.

#### Section 4.7 Lease Provisions.

(a) No later than four (4) months prior to the date construction of the Development is projected to be complete, Borrower shall submit to the County Borrower's proposed form of lease agreement for the County's review and approval. When leasing Units within the Development, Borrower shall use the form of lease approved by the County. The form of lease must comply with all requirements of this Agreement, the other Loan Documents and must, among other matters:

(1) Provide for termination of the lease and consent by the Tenant to immediate eviction for failure: (i) to provide any information required under this Agreement or reasonably requested by Borrower to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Development in accordance with the standards set forth in this Agreement, and (ii) to qualify as a 50% AMI Household, or 60% AMI Household, as applicable, as a result of any material misrepresentation made by such Tenant with respect to the income computation.

(2) Be for an initial term of not less than one (1) year, unless by mutual agreement between the Tenant and Borrower, and provide for no increase in Rent during such year. After the initial year of tenancy, the lease may be month-to-month by mutual agreement of Borrower and the Tenant. Notwithstanding the above, any Rent increases shall be subject to the requirements of Section 2.3.

(3) Include a provision which shall require a Tenant who is residing in a Unit made accessible pursuant to Section 4.10 of the Loan Agreement and who is not in need of an accessible Unit to move to a non-accessible Unit when a non-accessible Unit becomes available and another Tenant or prospective Tenant is in need of an accessible Unit.

(4) Include any provisions necessary to comply with the requirements of the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113-4, 127 Stat. 54) applicable to HUD-funded programs.

(b) Any termination of a lease or refusal to renew a lease for a County-Assisted Unit within the Development must be preceded by not less than sixty (60) days written notice to the Tenant by Borrower specifying the grounds for the action.

#### Section 4.8 Annual Operating Budget; Operating Deficiencies.

(a) Borrower, at least sixty (60) days prior to the end of each of Borrower's fiscal years, shall furnish the County a budget for the operation of the Development (the "Annual Operating Budget"). The County may request additional information to assist the County in evaluating the financial viability of the Development. Upon receipt by the County of the proposed Annual Operating Budget, the County shall promptly review the same and approve or disapprove it within fifteen (15) days, provided that such approval shall not be unreasonably denied. If the Annual Operating Budget is not approved by the County, the County shall set forth in writing and notify Borrower of the County's reasons for withholding such approval. Borrower shall thereafter submit a revised Annual Operating Budget for County approval within thirty (30) days, which approval shall be granted or denied within fifteen (15) days in accordance with the procedures set forth above.

(b) Borrower shall promptly notify the County upon Borrower's discovery that Borrower's rental income and other Development subsidies are insufficient to pay for any or all operating expenses incurred by Borrower in connection with the operations of the Development.

#### Section 4.9 Reserves: County Approval of Use of Reserve Funds.

(a) Replacement Reserve Account. Borrower shall establish and maintain an

account that is available for capital expenditures for repairs and replacement necessary to maintain the Development in the condition required by the Loan Documents (the "Replacement Reserve Account"). Borrower shall deposit in the Replacement Reserve Account Five Hundred Dollars (\$500) per unit.

(b) Operating Reserve Account. Borrower shall establish and maintain an account that is available to fund operating deficits (which is the amount by which Annual Operating Expenses exceed Gross Revenue for any period) (the "Operating Reserve Account"). Borrower shall capitalize the Operating Reserve Account at conversion in the amount of three (3) months of Annual Operating Expenses; provided, however that if the Partnership Agreement or the documents evidencing the Permanent Financing require the Operating Reserve Account to be capitalized and replenished in a greater amount, Borrower shall capitalize and replenish the Operating Reserve Account as required by the Partnership Agreement or the documents evidencing the Permanent Financing, as applicable, for as long as the Partnership Agreement or the Permanent Financing, as applicable, is outstanding. Borrower shall make payments in a schedule approved by the County until the Operating Reserve Account reaches six (6) months of operating expenses. County approves of the remaining three (3) months of operating expenses being funded out of residual cashflow after the Deferred Developer Fee is paid out pursuant to the Approved Development Budget.

(c) Consent to Withdraw Funds. Prior to the use of funds from any reserve account, excepting for those withdrawals that are consistent with the Approved Development Budget, Borrower must submit a written request to withdraw funds from the reserve account if such withdrawal will exceed Five Thousand Dollars (\$5,000) or if the cumulative of all draws made to date exceed Twenty Thousand (\$20,000). The written request shall specify the amount requested and state how the funds will be used. The County shall review such request and provide an approval or denial within thirty (30) days of receipt of the written request for use of reserves. If the County fails to respond to such request within thirty (30) days of receipt, such request shall be deemed approved.

#### Section 4.10 Additional County Requirements.

(a) Borrower shall comply with all applicable laws and regulations governing the use of the County Loan including but not limited to, the requirements of the Implementation Policies, this Agreement, the Loan Agreement and the County Contract.

(b) Borrower shall comply with the Development Regulatory Documents.

(c) The laws and regulations governing the use of the County Loan funds include (but are not limited to) the following:

(1) Environmental and Historic Preservation. 24 C.F.R. Part 58, which prescribes procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4361), and the additional laws and authorities listed at 24 C.F.R. 58.5.

(2) Applicability of Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The applicable policies, guidelines, and requirements of 2 C.F.R. Part 200.

(3) Debarred, Suspended or Ineligible Contractors. The prohibition on the use of debarred, suspended, or ineligible contractors set forth in 24 C.F.R. Section 24.1 and 2 C.F.R. Part 2424.

(4) Civil Rights, Housing and Community Development, and Age Discrimination Acts. The Fair Housing Act (42 U.S.C. 3601 *et seq.*) and implementing regulations at 24 C.F.R. Part 100; Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended; Section 504 of the Rehabilitation Act of 1973 (29 USC 794, *et seq.*); the Age Discrimination Act of 1975 (42 USC 6101, *et seq.*); Executive Order 11063 as amended by Executive Order 12259 and implementing regulations at 24 C.F.R. Part 107; Executive Order 11246 as amended by Executive Orders 11375, 12086, 11478, 12107; Executive Order 11625 as amended by Executive Order 12007; Executive Order 12432; Executive Order 12138 as amended by Executive Order 12608; Executive Order 13672 concerning gender identity.

(5) Lead-Based Paint. The requirement of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 *et seq.*), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. 4851 *et seq.*), and implementing regulations at 24 C.F.R. Part 35.

(6) Relocation. The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC 4601, *et seq.*) and implementing regulations at 49 C.F.R. Part 24; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 C.F.R. Part 42; and California Government Code Section 7260 *et seq.* and implementing regulations at 25 California Code of Regulations Sections 6000 *et seq.*

(7) Discrimination against the Disabled. The requirements of the requirements of the Fair Housing Act (42 U.S.C. 3601 *et seq.*) and implementing regulations at 24 C.F.R. Part 100; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and federal regulations issued pursuant thereto, which prohibit discrimination against the disabled in any federally assisted program, the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and the applicable requirements of Title II and/or Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 *et seq.*), and federal regulations issued pursuant thereto.

(8) Clean Air and Water Acts. The Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*, the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.*, and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 1500, as amended from time to time.

(9) Training Opportunities. The requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"), requiring that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by

persons residing in, the areas of the project. Borrower agrees to include the following language in all subcontracts in excess of \$100,000 executed under this Agreement:

i. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

ii. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

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

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

v. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. Part 135.

vi. Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

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

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

(10) Labor Standards. The applicable labor requirements which require compliance with the prevailing wage requirements of the Davis-Bacon Act and implementing rules and regulations (40 U.S.C. 3141-3148); the Copeland "Anti-Kickback" Act (40 U.S.C. 276(c)) which requires that workers be paid at least once a week without any deductions or rebates except permissible deductions; the Contract Work Hours and Safety Standards Act – CWHSSA (40 U.S.C. 3701-3708) which requires that workers receive "overtime" compensation at a rate of 1-1/2 times their regular hourly wage after they have worked forty (40) hours in one (1) week; and Title 29, Code of Federal Regulations, Subtitle A, Parts 1, 3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

(11) Drug Free Workplace. The requirements of the Drug Free Workplace Act of 1988 (P.L. 100-690) and implementing regulations at 24 C.F.R. Part 2429.

(12) Anti-Lobbying; Disclosure Requirements. The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 C.F.R. Part 87.

(13) Historic Preservation. The historic preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. Section 470) and the procedures set forth in 36 C.F.R. Part 800. If archeological, cultural, or historic period resources are discovered during construction, all construction work must come to a halt and Borrower shall immediately notify the County. Borrower shall not alter or move the discovered material(s) until all appropriate procedures for "post-review discoveries" set forth in Section 106 of the National Historic Preservation Act have taken place, which include, but are not limited to, consultation with the California State Historic Preservation Officer and evaluation of the discovered material(s) by a qualified professional archeologist.

(14) Violence Against Women. The requirements of the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113-4, 127 Stat. 54) applicable to HUD-funded programs.

## ARTICLE 5 PROPERTY MANAGEMENT AND MAINTENANCE

### Section 5.1 Management Responsibilities.

Borrower is responsible for all management functions with respect to the Development, including, without limitation, the selection of Tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The County shall have no responsibility over management of the Development. Borrower shall retain a

professional property management company approved by the County in writing in its reasonable discretion to perform Borrower's management duties hereunder. An on-site resident manager shall also be required.

#### Section 5.2 Management Agent.

Borrower shall cause the Development to be managed by an experienced management agent reasonably acceptable to the County, with demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). Borrower shall submit for the County's written approval the identity of any other proposed Management Agent (and the County hereby pre-approves BRIDGE Property Management Company as the initial Management Agent). Borrower shall also submit such additional information about the background, experience and financial condition of any proposed management agent as is reasonably necessary for the County to determine whether the proposed management agent meets the standard for a qualified management agent set forth above. If the proposed management agent meets the standard for a qualified management agent set forth above, the County shall approve the proposed management agent by notifying Borrower in writing.

#### Section 5.3 Periodic Performance Review.

The County reserves the right to conduct an annual (or more frequently, if deemed necessary by the County) review of the management practices and financial status of the Development. The purpose of each periodic review will be to enable the County to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. Borrower shall cooperate with the County in such reviews.

#### Section 5.4 Replacement of Management Agent.

If, as a result of a periodic review, the County determines in its reasonable judgment that the Development is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, the County shall deliver written notice to Borrower of its intention to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days after receipt by Borrower of such written notice, County staff and Borrower shall meet in good faith to consider methods for improving the financial and operating status of the Development, including, without limitation, replacement of the Management Agent.

If, after such meeting, County staff recommends in writing the replacement of the Management Agent, Borrower shall promptly dismiss the current Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a management agent set forth in Section 5.2 above and approved by the County pursuant to Section 5.2 above.

Any contract for the operation or management of the Development entered into by Borrower shall provide that the Management Agent may be dismissed and the contract terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute a default under this Agreement, and the County shall

have the right to enforce this provision through legal proceedings as specified in Section 6.5 below.

Section 5.5 Approval of Management Policies.

Borrower shall submit its written management policies with respect to the Development to the County for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.

Section 5.6 Property Maintenance.

(a) County Standards. The County places prime importance on quality maintenance to protect its investment and to ensure that all County-assisted housing projects within the County are not allowed to deteriorate due to below-average maintenance. Normal wear and tear of the Development will be acceptable to the County assuming Borrower agrees to provide all necessary improvements to assure the Development is maintained in good condition. Borrower shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

(b) Maintenance Requirements. For the entire Term of this Agreement Borrower shall maintain all interior and exterior improvements, including landscaping, on the Property in decent, safe and sanitary condition, and good condition and repair (and, as to landscaping, in a healthy condition), in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. Borrower shall cause the Development to be free of all health and safety defects. Borrower shall correct any life-threatening maintenance deficiencies, immediately upon notification.

(c) Violation of Maintenance Requirements. In the event that Borrower breaches any of the covenants contained in this section and Borrower does not commence to cure such breach within (i) a period of five (5) business days after written notice from County (and diligently prosecute such cure to completion within ten (10) business days following such notice) with respect to graffiti, debris, waste material, landscaping and general maintenance or (ii) a period of ten (10) business days after written notice from the County (and diligently prosecute such cure to completion within thirty (30) days following such notice) with respect to building improvements, then the County, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Development and the Borrower's interest in the Property and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, the County shall be permitted (but is not required) to enter upon the Development and the Borrower's interest in the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Development and the Borrower's interest in the Property, and to attach a lien on the Development and the Borrower's interest in the Property, or to assess on the Development and the Borrower's interest in the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the County



and/or costs of such cure, which amount shall be promptly paid by Borrower to the County upon demand.

Section 5.7 Inspections.

(a) The County shall have the right to perform an on-site inspection of the Development when deemed necessary by the County, in any event at least one (1) time per year upon reasonable notice to Borrower to ensure compliance with the requirements of the Loan Documents. Borrower agrees to cooperate in such inspection.

(b) After the completion of an inspection, the County shall deliver a copy of the inspection report to Borrower. If the County determines as a result of such inspection that there are any life-threatening health and safety related deficiencies, Borrower has the obligation to correct such deficiencies immediately. If the County determines as a result of the inspection that there are any deficiencies for any of the inspectable items in the Development, Borrower shall correct such deficiencies within fifteen (15) days from the delivery of the inspection report or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Borrower must begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible. In addition, Borrower acknowledges that the County may reinspect the Development to verify all deficiencies have been corrected or rely on third party documentation submitted by Borrower for non-hazardous deficiencies.

Section 5.8 Asset Management.

Borrower is responsible for all asset management functions with respect to the Development, including, without limitation, the oversight of the Management Agent, maintaining accurate and current books and records for the Development, and promptly paying costs incurred in connection with the Development. The County shall have no responsibility over asset management of the Development.

ARTICLE 6  
MISCELLANEOUS

Section 6.1 Nondiscrimination.

(a) Borrower covenants by and for Borrower, its assigns, and all persons claiming under or through Borrower, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, familial status, source of income, ancestry or national origin, Vietnam era veteran's status, political affiliation, HIV/AIDS, or any other arbitrary basis, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor shall Borrower or any person claiming under or through Borrower, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the construction, operation and management of any Unit. Notwithstanding the above, with respect to familial

status, the above should not be construed to apply to housing for older persons as defined in Section 12955.9 of the Government Code and other applicable sections of the Civil Code as identified in Health and Safety Code Section 33050(b).

(b) Nothing in this Section prohibits Borrower from requiring County-Assisted Units in the Development to be available to and occupied by eligible households in accordance with this Agreement.

(c) Borrower shall accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. Borrower shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective Tenants, nor shall Borrower apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of units by such prospective Tenants.

#### Section 6.2 Application of Provisions.

The provisions of this Agreement shall apply to the Development and the Borrower's interest in the Property for the entire Term, even if the entire County Loan is paid in full prior to the end of the Term. This Agreement binds any successor, heir or assign of Borrower, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the County. The County makes the County Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

#### Section 6.3 Notice of Expiration of Term.

(a) At least six (6) months prior to the expiration of the Term, Borrower shall provide by first-class mail, postage prepaid, a notice to all Tenants containing (i) the anticipated date of the expiration of the Term, (ii) any anticipated increase in Rent upon the expiration of the Term, (iii) a statement that a copy of such notice will be sent to the County, and (iv) a statement that a public hearing may be held by the County on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. Borrower shall also file a copy of the above-described notice with the Housing Director.

(b) In addition to the notice required above, Borrower shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11. Such notice requirements include: (i) a twelve (12) month notice to existing tenants, prospective tenants and Affected Public Entities (as defined in California Government Code Section 65863.10(a), which would include the Housing Director) prior to the expiration of the Term, (ii) a six (6) month notice requirement to existing tenants, prospective tenants and Affected Public Entities prior to the expiration of the Term; (iii) a notice of an offer to purchase the Development to "qualified entities" (as defined in California Government Code Section 65863.11(d)), if the Development is to be sold within five (5) years of the end of the Term; (iv) a notice of right of first refusal within the one hundred eighty (180) day period that qualified entities may purchase the Development.

Section 6.4 Covenants to Run With the Land.

The County and Borrower hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Development; provided, however, that on the expiration of the Term, said covenants and restrictions expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Development or the Borrower's interest in the Property or any portion thereof, is to be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the County expressly releases such conveyed portion of the Development or the Borrower's interest in the Property from the requirements of this Agreement.

Section 6.5 Enforcement by the County.

If Borrower fails to perform any obligation under this Agreement, and fails to cure the default within thirty (30) days after the County has notified Borrower in writing of the default or, if the default cannot be cured within thirty (30) days, failed to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within sixty (60) days, the County shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

(a) Calling the County Loan. The County may declare a default under the Note, accelerate the indebtedness evidenced by the Note, and proceed with foreclosure under the Deed of Trust.

(b) Action to Compel Performance or for Damages. The County may bring an action at law or in equity to compel Borrower's performance of its obligations under this Agreement, and/or for damages.

(c) Remedies Provided Under Loan Documents. The County may exercise any other remedy provided under the Loan Documents, at equity or under the law.

Section 6.6 Attorneys' Fees and Costs.

In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including reasonable attorneys' fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

Section 6.7 Recording and Filing.

The County and Borrower shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Alameda. This Agreement shall be recorded against the Borrower's leasehold interest in the Property senior to any other instrument, including, but not limited to the Senior Lender deed of trust.

Section 6.8 Governing Law.

This Agreement is governed by the laws of the State of California.

Section 6.9 Waiver of Requirements.

Any of the requirements of this Agreement may be expressly waived by the County in writing, but no waiver by the County of any requirement of this Agreement shall, or shall be deemed to, extend to or affect any other provision of this Agreement.

Section 6.10 Amendments.

This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the Official Records of the County of Alameda. Any legal fees incurred due to any amendment of this Agreement, or any of the Loan Documents, shall be paid for by the Borrower.

Section 6.11 Notices.

Formal notices, demands, and communications between the Parties shall be sufficiently given if, and shall not be deemed given unless, dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

County:

County of Alameda  
Housing and Community Development Department  
224 W. Winton Avenue, Room 108  
Hayward, CA 94544  
Attention: Housing Director

Borrower:

BRIDGE Berkeley Way LP  
600 California Street, Suite 900  
San Francisco, California 94108  
Attn: Executive Vice President

With a copy to Borrower's investor limited partner:

*Primary Limited Partner:*

NEF Assignment Corporation  
10 South Riverside Plaza  
Suite 1700  
Chicago, Illinois 60606

*First Co-Limited Partner:*

Merritt Community Capital Fund XXI, L.P.  
c/o Merritt Community Capital Corporation  
1970 Broadway, Suite 250  
Oakland, California 94612

*Second Co-Limited Partner:*

MCC Housing LLC  
c/o Merritt Community Capital Corporation  
1970 Broadway, Suite 250  
Oakland, California 94612

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 6.12 Severability.

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

Section 6.13 Multiple Originals; Counterparts.


This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

**[Signatures on following page.]**

WHEREAS, this Agreement has been entered into by the undersigned as of the date first written above.

**COUNTY:**

COUNTY OF ALAMEDA, a political subdivision of the State of California

By:   
\_\_\_\_\_  
Michelle Starratt, Director  
Housing and Community Development Department

**BORROWER:**

BRIDGE BERKELEY WAY LP,  
a California limited partnership

By: BRIDGE Berkeley Way LLC,  
a California limited liability company,  
its managing general partner

By: BRIDGE Housing Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

**executed in counterpart**

By: \_\_\_\_\_  
Smitha Seshadri,  
Executive Vice President

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

STATE OF CALIFORNIA )  
 )  
COUNTY OF Alameda )

On June 26, 2020, before me, Eileen De Guzman, <sup>Deputy County Clerk</sup> ~~Notary Public~~, personally appeared Michelle Stewart, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Eileen De Guzman  
Name: Eileen De Guzman  
~~Notary Public~~ Deputy County Clerk

WHEREAS, this Agreement has been entered into by the undersigned as of the date first written above.

**COUNTY:**

COUNTY OF ALAMEDA, a political subdivision of the State of California

By: \_\_\_\_\_  
Michelle Starratt, Director  
Housing and Community Development Department

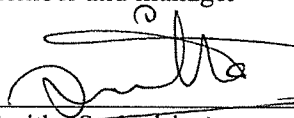
**executed in counterpart**

**BORROWER:**

BRIDGE BERKELEY WAY LP,  
a California limited partnership

By: BRIDGE Berkeley Way LLC,  
a California limited liability company,  
its managing general partner

By: BRIDGE Housing Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

By:   
\_\_\_\_\_  
Smitha Seshadri,  
Executive Vice President



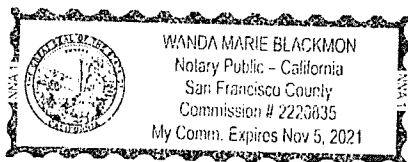
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF ALAMEDA )

On May 13, 2020, before me, Wanda Marie Blackmon, Notary Public, personally appeared Smitha Seshadri, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Wanda Marie Blackmon  
Name: Wanda Marie Blackmon  
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The land referred to is situated in the County of Alameda, City of Berkeley, State of California, and is described as follows:

Leasehold estate as created by that certain lease dated July 2, 2020 made by and between City of Berkeley, a charter city, as lessor, and Bridge Berkeley Way, LP, a California limited partnership, as lessee, for the term of 75 years and upon the terms and conditions contained in said lease and subject to provisions contained in the lease which limit the right of possession, said lease recorded concurrently herewith, in and to the following described parcel of land:

PARCEL ONE:

Parcel C, as shown on the Parcel Map 11051, filed March 20, 2020, in Book 346 of Parcel Maps, Pages 1 through 11, inclusive, Alameda County Records.

PARCEL TWO:

Easements for construction, maintenance, utilities, structural support and encroachment, set forth in that certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way, dated July 2, 2020, executed by the City of Berkeley and BRIDGE Berkeley Way LP and BFHP Hope Center LP, and recorded concurrently herewith.

Being a portion of APN 057-2053-022-01

EXHIBIT B

I, the Undersigned, certify that I have read and answered fully, and truthfully each of the following questions for all persons in the household who are to occupy a room in this house for which application is made.

<u>Occupant's Name</u>	<u>Social Security #</u>	<u>Age</u>	<u>Place of Employment</u>	<u>Annual Income</u>
1.				
2.				
3.				
4.				
5.				
6.				
7.				
			<b>TOTAL:</b>	

The total anticipated annual household income\* for the twelve (12) month period beginning this date (the sum of the final column): \$ \_\_\_\_\_.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
                     Head of Household

\* The anticipated annual Income as determined by Attachment A.

**Owner's Certification of Household Income**

Household Name \_\_\_\_\_

I certify, as Owner/Management Agent for \_\_\_\_\_ that I have verified this Household's Income by using the following:

- 1. Tax returns \_\_\_\_\_
- 2. Place of employment verification \_\_\_\_\_
- 3. Pay stubs \_\_\_\_\_
- 4. Notarized statement from lessee \_\_\_\_\_
- 5. Other (please describe) \_\_\_\_\_

\_\_\_\_\_  
Owner/Management Agent

\_\_\_\_\_  
Date