

LAND DISPOSITION, DEVELOPMENT AND FUNDING AGREEMENT

BETWEEN

THE COUNTY OF SAN BERNARDINO;

BLOOMINGTON I HOUSING PARTNERS, L.P.;

AND

BLOOMINGTON LIBRARY DEVELOPER, LLC,

Dated as of February 11, 2014

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. DEFINITIONS AND EXHIBITS	3
Section 1.1 Definitions.....	3
Section 1.2 Exhibits.	15
ARTICLE 2. PURPOSE AND OVERVIEW	15
Section 2.1 Scope and Purpose of Agreement.	15
Section 2.2 Phase I Property.	15
Section 2.3 Effect on Prior Agreements.	16
Section 2.4 Recordation of Memorandum of this Agreement.	16
ARTICLE 3. COUNTY LOAN PROVISIONS	16
Section 3.1 County Loan.....	16
Section 3.2 Interest.....	17
Section 3.3 Use of County Loan.	17
Section 3.4 Security.	17
Section 3.5 Repayment Schedule.....	18
Section 3.6 Conditions Precedent to Disbursement of County Loan.....	19
Section 3.7 Reports and Accounting of Residual Receipts.....	20
Section 3.8 Developer Fee.	21
Section 3.9 Assumption.	22
Section 3.10 Subordination.....	22
Section 3.11 Non-Recourse.	23
Section 3.12 NSP3 Requirements.....	24
Section 3.13 Anti-Lobbying Certification.	28
ARTICLE 4. COUNTY GRANT	28
Section 4.1 County Grant.....	28
Section 4.2 Addition of Grantee.	28
Section 4.3 Use of County Grant Funds.	29
Section 4.4 Intentionally Omitted.....	29
Section 4.5 Conditions Precedent to Disbursement.....	29
Section 4.6 Intentionally Omitted.....	31
Section 4.7 Assumption.	31
Section 4.8 Supplemental Operating Expense Reserve.	32
ARTICLE 5. PREDISPOSITION REQUIREMENTS.....	32
Section 5.1 Conditions Precedent to Conveyance.	32
Section 5.2 Land Use Approvals.	33
Section 5.3 Conceptual Site Plan.	33
Section 5.4 Creation of Parcels, Subdivision Approval and Recordation.....	33
Section 5.5 Other Governmental Approvals.....	34
Section 5.6 Financing Plan.	34
Section 5.7 Evidence of Availability of Funds.....	35
Section 5.8 Evidence of Insurance.....	35
Section 5.9 Reciprocal Easement Agreement.....	36
Section 5.10 Library Facility Lease.....	36

TABLE OF CONTENTS

(Continued)

	<u>Page</u>
Section 5.11 Tax Credit Reservation; Other Financing	37
Section 5.12 Other Approved Financing.	37
Section 5.13 Water Impact Payment.....	38
Section 5.14 Sewer Impact Payment.	39
ARTICLE 6. LEASE OF PROPERTY.....	39
Section 6.1 Leases.....	39
Section 6.2 Opening Escrow.....	39
Section 6.3 Closing.....	40
Section 6.4 Condition of Title.....	41
Section 6.5 Condition of Affordable Development Parcel.	42
Section 6.6 Condition of Library Parcel.	45
Section 6.7 Costs of Escrow and Closing.	47
ARTICLE 7. CONSTRUCTION OF IMPROVEMENTS	48
Section 7.1 Construction Pursuant to Plans.	48
Section 7.2 Building Permits.	48
Section 7.3 Construction of Improvements.	48
Section 7.4 Change in Construction of Improvements.	48
Section 7.5 Commencement of Construction.	49
Section 7.6 Completion of Construction.....	49
Section 7.7 Course of Construction.	49
Section 7.8 Construction Contract.	49
Section 7.9 Prevailing Wage Requirement.	50
Section 7.10 Equal Opportunity.....	51
Section 7.11 Construction Responsibilities.	52
Section 7.12 Certificates of Completion.....	52
Section 7.13 Mechanics Liens, Stop Notices, and Notices of Completion.....	53
Section 7.14 Inspections.	53
Section 7.15 Progress Reports and Information.	53
Section 7.16 Records.	54
Section 7.17 Relocation.	54
Section 7.18 Financial Accounting and Post-Completion Audits.	54
Section 7.19 Library Facility Lease.....	55
Section 7.20 Accessibility.....	55
ARTICLE 8. ONGOING DEVELOPER OBLIGATIONS.....	55
Section 8.1 Applicability.	55
Section 8.2 Use.	56
Section 8.3 Records.	56
Section 8.4 Audits.....	56
Section 8.5 Maintenance Phase I Development.....	57
Section 8.6 Taxes and Assessments.....	58
Section 8.7 Hazardous Materials.	58
Section 8.8 Management Plan and Procedures.....	61
Section 8.9 Management Agent; Periodic Reports.....	62
Section 8.10 Approval of Management Plan Modifications.....	63

TABLE OF CONTENTS

(Continued)

	<u>Page</u>
Section 8.11 Insurance Requirements.....	63
Section 8.12 Safety Conditions.....	67
Section 8.13 Allowable Preferences.....	68
Section 8.14 Marketing Plan.....	68
Section 8.15 Notice of Litigation.....	68
Section 8.16 Crime-Free Multi-Housing Unit Program Participation.....	68
Section 8.17 Social Services.....	69
Section 8.18 Mandatory Language in All Subsequent Deeds, Leases and Contracts.....	69
 ARTICLE 9. ASSIGNMENT AND TRANSFERS.....	 71
Section 9.1 Definitions.....	71
Section 9.2 Purpose of Restrictions on Transfer.....	71
Section 9.3 Prohibited Transfers.....	72
Section 9.4 Permitted Transfers.....	73
Section 9.5 Effectuation of Certain Permitted Transfers.....	74
Section 9.6 Other Transfers with County Consent.....	75
 ARTICLE 10. DEFAULT AND REMEDIES.....	 75
Section 10.1 General Applicability.....	75
Section 10.2 Fault of County.....	76
Section 10.3 Fault of Developers.....	76
Section 10.4 Remedies Against Developers.....	78
Section 10.5 Right to Cure at Developer's Expense.....	79
Section 10.6 Collateral Documents.....	79
Section 10.7 Rights of Mortgagees.....	80
Section 10.8 Remedies Cumulative.....	80
Section 10.9 Waiver of Terms and Conditions.....	80
Section 10.10 Limited Liability of Tax Credit Investor.....	80
 ARTICLE 11. SECURITY FINANCING AND RIGHTS OF HOLDERS.....	 81
Section 11.1 No Encumbrances Except for Development Purposes.....	81
Section 11.2 Holder Not Obligated to Construct.....	81
Section 11.3 Notice of Default and Right to Cure.....	81
Section 11.4 Failure of Holder to Complete Affordable Development Improvements.....	82
Section 11.5 Right of County to Cure.....	82
Section 11.6 Right of County to Satisfy Other Liens.....	82
Section 11.7 Holder to be Notified.....	82
Section 11.8 Estoppel Certificates.....	83
 ARTICLE 12. REPRESENTATIONS, WARRANTIES AND COVENANTS.....	 83
Section 12.1 Developer Representations and Warranties.....	83
Section 12.2 Warranties.....	85
Section 12.3 Effect of Representations and Warranties.....	85
Section 12.4 County Representations and Warranties.....	85

TABLE OF CONTENTS

(Continued)

	<u>Page</u>
ARTICLE 13. GENERAL PROVISIONS	86
Section 13.1 Notices, Demands and Communications.	86
Section 13.2 Non-Liability of County Officials, Employees and Agents.....	87
Section 13.3 Forced Delay.	87
Section 13.4 Inspection of Books and Records.	88
Section 13.5 Provision Not Merged with Leases.....	88
Section 13.6 Title of Parts and Sections.	88
Section 13.7 General Indemnification.	88
Section 13.8 Applicable Law.	88
Section 13.9 No Brokers.	88
Section 13.10 Severability.	89
Section 13.11 Venue.	89
Section 13.12 Binding Upon Successors.	89
Section 13.13 Parties Not Co-Venturers.....	89
Section 13.14 Time of the Essence.	89
Section 13.15 Action by the County.	89
Section 13.16 Complete Understanding of the Parties.	90
Section 13.17 Entry by the County.	90
Section 13.18 Amendments.	90
Section 13.19 Operating Memoranda.	90
Section 13.20 Multiple Originals, Complete Understanding of the Parties.....	91
Section 13.21 Recordation of Agreement.....	91
Section 13.22 Multiple Originals; Counterparts.	91
Section 13.23 Mutual Cooperation.	91
Section 13.24 Survival Clause and Termination of Covenants.	91
Section 13.25 Separate Parcels.	91
Exhibit A-1: Legal Description of the Property	
Exhibit A-2: Conceptual Site Plan	
Exhibit B: Schedule of Performance	
Exhibit C: Approved Financing Plan	
Exhibit D-1: Housing Lease	
Exhibit D-2: Library Lease	
Exhibit E: Regulatory Agreement	
Exhibit F: Promissory Note	
Exhibit G: Leasehold Deed of Trust	
Exhibit H-1: Memorandum of Housing Lease	
Exhibit H-2: Memorandum of Library Lease	
Exhibit I: Form of Residual Receipts Report	
Exhibit J: Library Facility Lease	
Exhibit K: Scope of Water Improvements and Sewer Improvements	
Exhibit L: Form First Amendment to Disposition Agreement	
Exhibit M: Special Terms and Conditions	
Exhibit N: Completion Guaranty Agreement	
Exhibit O: Memorandum of DDA	
Exhibit P: Form of Certificate of Completion	

LAND DISPOSITION, DEVELOPMENT AND FUNDING AGREEMENT
(Phase I- Bloomington Mixed Use Development)

This Land Disposition, Development and Funding Agreement (the "Agreement") is entered into as of February 11, 2014 (the "Effective Date"), by and between the County of San Bernardino, a political subdivision of the State of California (the "County"), Bloomington I Housing Partners, L.P., a California limited partnership (the "Affordable Developer"), Bloomington Library Developers, LLC, a California limited liability company (the "Library Developer"), with reference to the following facts, understandings and intentions of the parties:

RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. The County is the fee owner of approximately nine (9) acres of real property located in the unincorporated area of the County known as Bloomington as more fully described on Exhibit A-1 attached hereto and incorporated herein by this reference (the "Property").

C. On July 3, 2012 the County issued a Request for Qualifications to select a developer to assist in developing the Property into a mixed-used development with housing, commercial, and community uses. Based upon the proposals submitted and interviews with applicants, the selection committee recommended Related for development of the Property and in February 2013, Related and the County entered into the ENRA to negotiate the disposition and development of the Property.

D. On February 26, 2013, the County and Related entered into a Predevelopment Loan Agreement, under which the County provided Related Eight Hundred Thousand Dollars (\$800,000) of NSP3 Funds to fund the predevelopment costs for the Development (the "NSP3 Predevelopment Loan").

E. To facilitate the financing and development of the Property, the parties intend to subdivide the Property to create the following parcels: (1) the Affordable Development Parcel; (2) the Library Parcel; and (3) the Phase II Development Parcel. As further described in this Agreement, the subdivision of the Property will occur in multiple steps.

F. The County and Related desire for the Affordable Developer and the Library Developer to construct the Phase I Development. Pursuant to the terms of this Agreement, the Affordable Developer will own and operate the Affordable Development Improvements on the Affordable Development Parcel, as multi-family and intergenerational rental housing to be made available to and occupied by extremely-low, very-low and low income households. Pursuant to the terms of this Agreement, the County will lease the Affordable Development Parcel to the Affordable Developer for such purpose. The County will retain ownership of the fee simple interest in the Affordable Development Parcel.

G. Pursuant to the terms of this Agreement, the Library Developer will own and maintain the Library Improvements on the Library Parcel. Pursuant to the terms of this Agreement, the County will lease the Library Parcel to the Library Developer for such purpose. The County will retain ownership of the fee simple interest in the Library Parcel and upon completion of the Library Improvements, the Library Developer will lease specified portions of the Library Improvements to the County, which the County will operate a public library servicing the Development and the general Bloomington community.

H. The Affordable Developer intends to finance the costs of developing the Affordable Development with sources that include, but are not limited to, the County Loan, the County Grant, Tax Credit Funds, MHSA Funds, and private lender construction financing. This Agreement shall govern the disbursement of the County Loan and the County Grant for the development costs associated with the Infrastructure Improvements and the Affordable Development. This Agreement shall govern the disbursement of the County Loan and the County Grant for the construction of the Affordable Development Improvements

I. The Library Developer and the County intend to finance the costs of developing the Library Improvements with sources that include, but are not limited to, NSP1 Program Income and CDBG Funds. The Library Lease shall govern the disbursement of the Library Funding for the construction of the Library Improvements.

J. The County has determined that the Developers have the necessary expertise, skill and ability to carry out the commitments set forth in this Agreement and that this Agreement is in the best interests, and will materially contribute to the implementation of, the County's vision to create a vibrant economy and sustainable system of high-quality education, community health, public safety, housing, recreation, arts, culture and infrastructure and the timely construction of the Phase I Development.

K. The amount of the County Loan provided pursuant to this Agreement does not exceed the amount of County assistance necessary to make the Affordable Developer's acquisition of the leasehold interest in the Affordable Development Parcel and the construction and operation of the Affordable Development, as restricted by this Agreement, financially feasible.

L. Pursuant to the California Environmental Quality Act and its implementing guidelines, the County (in its capacity as "lead agency"), has prepared, and concurrently with the approval of this Agreement, reviewed and approved the Mitigated Negative Declaration (the "Negative Declaration") for the transactions contemplated by this Agreement, following a duly noticed public hearing. The Negative Declaration serves as the environmental documentation for the County's consideration and approval of this Agreement and the transactions contemplated by this Agreement.

M. In accordance with NEPA, prior to approval of this Agreement, County staff prepared and circulated for public review an environmental assessment and notice of intent to adopt a finding of no significant impact for this Agreement and the development contemplated by this Agreement (the "FONSI"). The County thereafter approved the FONSI after concluding that any mitigation measures set forth in the mitigated FONSI will mitigate any significant

environmental impacts associated with the development contemplated by this Agreement to a level of insignificance.

N. The parties have negotiated this Agreement, setting forth their respective rights and obligations regarding the disposition and development of the Phase I Development. As further described herein, the parties anticipate executing the First Amendment to Disposition Agreement, in substantially the form attached hereto as Exhibit L. This Agreement, as such may be modified by the First Amendment to Disposition Funding Agreement, relates only to the development of the Phase I Development. The Parties anticipate that they will enter into additional agreements for further phases of the Development.

THEREFORE, the County and the Developers agree as follows:

ARTICLE 1. DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply throughout this Agreement.

(a) "Affordable Developer" means Bloomington I Housing Partners, L.P., a California limited partnership, and shall also be referred to as the Partnership.

(b) "Affordable Development" means the Affordable Development Parcel and the Affordable Development Improvements.

(c) "Affordable Development Improvements" means the one hundred six (106) units of affordable multi-family and intergenerational rental housing, including one (1) manager's unit, all common areas, amenities, appurtenances, improvement easements, buildings and fixtures associated with the Affordable Development.

(d) "Affordable Development Parcel" means the approximately 5 acre condominium portion of the Property (including, without limitation specified airspace above the Library Parcel), on which the Affordable Development Improvements will be constructed and as more particularly depicted on the Conceptual Site Plan attached hereto as Exhibit A-2, incorporated herein by this reference.

(e) "Agreement" means this Land Disposition, Development and Funding Agreement, including the attached Exhibits and all subsequent operating memoranda and amendments to this Agreement.

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

- Development;
- (i) Property taxes and assessments imposed on the Affordable Development;
 - (ii) Debt service currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Affordable Development, but including the obligatory 0.42% due annually on account of the loan of the MHSAs Funds) on loans associated with the development of the Affordable Development and approved by the County in the Final Financing Plan;
 - (iii) 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;
 - (iv) Premiums for property damage and liability insurance;
 - (v) Any annual license or Certificate of Completion fees required for operation of the Affordable Development;
 - (vi) Security services;
 - (vii) Advertising and marketing costs;
 - (viii) Cash deposited into reserves for capital replacements of the Affordable Development in an amount to be approved by the County as part of the Final Financing Plan, as the same may be increased during the Term with the approval of the County pursuant to Section 5.6;
 - (ix) Cash deposited into an operating reserve in an amount to be approved by the County as part of the Final Financing Plan, as the same may be increased during the Term with the approval of the County pursuant to Section 5.6, and annual operating budgets, but with the operating reserve capped at six (6) months of gross rent from the Affordable Development (as such rent may vary from time to time);
 - (x) Asset management fee and, for the first fifteen (15) years of the Term, a partnership management fee, in the amount approved by the County as part of the Final Financing Plan;
 - (xi) Utility services not paid for directly by tenants, including without limitation, water, sewer, and trash collection;
 - (xii) maintenance and repair, including pest control, landscaping, grounds maintenance, painting and decorating, cleaning, common systems repair, janitorial supplies and services,
 - (xiii) Social services fees and expenses;

(xiv) Annual audit fees, inspection fees, or monitoring fees required in relation to any Approved Financing;

(xv) Extraordinary operating costs specifically approved by the County in its reasonable discretion; and

(xvi) 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,

(xvii) Reasonable accounting fees and legal fees; and

(xviii) Other ordinary and reasonable operating expenses approved by the County in its reasonable discretion and not listed above.

(xix) Annual Operating Expenses shall exclude the following: depreciation, amortization, depletion or other non-cash expenses or any amount expended from a reserve account.

(g) "Approved Financing" means the loans, grants, and other financing to be secured by the Developers, and approved by the County for the purpose of financing the costs of the Phase I Development which shall be consistent with the Approved Financing Plan.

(h) "Approved Financing Plan" means the Financing Plan approved by the County as of the date of this Agreement, attached to this Agreement as Exhibit C, incorporated herein by this reference, as the same may be amended pursuant to Section 5.6.

(i) "Assignment Agreement" means the Assignment of Collateral Documents pursuant to which the Affordable Developer assigns to the County its rights and obligations with respect to certain agreements, Plans and Specifications, and approvals, executed by the Affordable Developer and the County with regards to the NSP3 Predevelopment Loan and as a precondition to the making of the County Loan and the County Grant

(j) "CalHFA" means the California Housing Finance Agency.

(k) "CDBG Program" means the Community Development Block Grant ("CDBG") program under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.).

(l) "CDBG Funds" means funds allocated to the County under the CDBG Program.

(m) "Certificate of Completion" means the final Certificate of Completion issued by the County, or comparable County sign-off on the completion of construction of the Affordable Development Improvements and the Library Improvements. The form of Certificate of Completion is attached hereto as Exhibit P and incorporated herein by this reference.

(n) "CEQA" means The California Environmental Quality Act, California Public Resources Code §21000- §21177, as amended.

(o) "Close of Escrow" means the date of recording of the Memo of DDA, Memorandum of Housing Lease, Leasehold Deed of Trust against the Affordable Developer's interest in the Affordable Development Parcel and the recording of the Memorandum of Library Lease against the Library Developer's interest in the Library Parcel.

(p) "Collateral" means and includes all right, title, interest, claims and demands of the Affordable Developer in and to the Collateral Documents, including contract rights and general intangibles, now existing or hereafter arising; and all amendments, substitutions for, and proceeds thereof, including, without limitation, insurance and similar payments.

(q) "Collateral Documents" means the Developer's right, title and interest to all project agreements, including but not limited to development reports, all contracts, architect's agreements, engineer's agreements, management agreements, and all other contracts and agreements which concern the development and/or operation of the Phase I Development, all Governmental Approvals (including but not limited to all permits and licenses), plans, specifications, drawings, franchises, utility agreements and similar materials not yet obtained, and any other documents and information related to the Phase I Development, reports, Plans and Specifications, and general documents associated with the Phase I Development. For purposes of clarifying the foregoing, "Collateral Documents" shall expressly exclude any documents that, pursuant to applicable law, the Developers do not have the right to pledge and assign as contemplated by this Agreement.

(r) "Commencement of Construction" means the date on which the construction commences on the Phase I Development.

(s) "Community Redevelopment Law" means Health and Safety Code Section 33000 et seq.

(t) "Completion of Construction" means the date the Certificate of Completion for the Phase I Development is issued by the County.

(u) "Completion Guaranty Agreement" means the agreement in favor of the County guaranteeing the completion of the Phase I Development in accordance with the terms of this Agreement, executed by The Related Companies, L.P., a New York limited partnership (as guarantor), the same entity executing such other guaranty agreements for the construction lenders set forth in the approved Financing Plan. The form of the Completion Guaranty Agreement is attached hereto as Exhibit N, incorporated herein by this reference.

(v) "Conceptual Site Plan" means the schematic documents showing the basic physical characteristics of the Phase I Development and the location of improvements on the Property, including preliminary building plans and section and elevations of the Phase I Development. The Conceptual Site Plan is attached hereto as Exhibit A-2, incorporated herein by this reference, and includes the preliminary "Plans and Specifications."

(w) "Construction Contract" means the construction contract approved by the County pursuant to the terms of Section 7.8 hereof.

(x) "County" means San Bernardino County, a political subdivision of the State of California.

(y) "County Board of Supervisors" means the Board of Supervisors of the County.

(z) "County Documents" shall mean, collectively, this Agreement, the Housing Lease, the Promissory Note, the Leasehold Deed of Trust, the Regulatory Agreement, the Notice of Affordability Restrictions and all other documents required to be executed by the Affordable Developer in connection with the Affordable Development.

(aa) "County Executive Officer" means the County's Chief Executive Officer.

(bb) "County Event of Default" has the meaning set forth in Section 10.2.

(cc) "County Grant" means the grant in an amount not to exceed Seven Million Seventy-Five Thousand Eight Hundred Seventeen Dollars (\$7,075,817) consisting of Housing Asset Funds made from the County to Affordable Developer pursuant to the terms of this Agreement.

(dd) "County Loan" means the loan in an amount not to exceed Five Million Eight Hundred Seventy-One Thousand Dollars (\$5,871,000) consisting of NSP3 Funds, County affordable housing funds and Housing Asset Funds (and subject to adjustments pursuant to Section 3.5(b)) made from the County to the Affordable Developer pursuant to the terms of this Agreement.

(ee) "County's Prorata Share of Lender's Share of Residual Receipts" means, as determined at the Close of Escrow, the percentage resulting from dividing the County Loan funds disbursed to the Affordable Developer in accordance with the Agreement by the sum of such County Loan funds and MHSAs Loan funds disbursed to the Affordable Developer in accordance with the applicable agreements.

(ff) "Developer Event of Default" has the meaning set forth in Section 10.3.

(gg) "Developer Fee" means the fee paid to the Affordable Developer, Related or any affiliates thereof, in the amount and for the purposes set forth in Section 3.8.

(hh) "Developers" means the Affordable Developer and the Library Developer collectively, and their successors and assigns as permitted by this Agreement. The term "Developer" means any of the Developers.

(ii) "Development" means the mixed-used development with housing, commercial, and community uses consisting of the Phase I Development and the Phase II Development, which is also herein referred to as the "Bloomington Mixed-Use Development".

(jj) "ENRA" means that certain Exclusive Negotiating Rights Agreement between the County and Related dated as of February 26, 2013.

(kk) "Escrow" means the escrow established with the Title Company for the purpose of leasing the Affordable Development Parcel from the County to the Affordable Developer and leasing the Library Parcel from the County to the Library Developer.

(ll) "Evidence of Insurance Coverage" has the meaning set forth in Section 4.10 below.

(mm) "Final Map" means the final parcel or subdivision map (including any condominium plan or condominium map) based on the Tentative Parcel Map, approved by the County and recorded either immediately prior to, or concurrent with the conveyance of the Affordable Development Parcel and the Library Parcel which subdivides the Property as contemplated hereunder.

(nn) "First Amendment to Disposition Agreement" means the form of the First Amendment to Disposition, Development and Funding Agreement, substantially in the form attached hereto as Exhibit L, incorporated herein by this reference. The parties expect to execute the First Amendment to Disposition Agreement upon the admission of the Grantee as a general partner of the Affordable Developer and approval of the Grantee's board of this Agreement.

(oo) "Governmental Approvals" has the meaning set forth in Section 5.5 hereof.

(pp) "Grantee" means either: (i) Housing Partners I, Incorporated, a California nonprofit public benefit corporation or a limited liability company in which Housing Partners, I is the sole member; or (ii) a qualified nonprofit public benefit corporation approved in writing by the County, or a limited liability company in which the qualified nonprofit public benefit corporation approved by the County is the sole member. The Grantee will receive the County Grant and contribute the entire County Grant funds to the Affordable Developer (in the form of a capital contribution) in the Grantee's capacity as a general partner of the Affordable Developer.

(qq) "Gross Revenue" with respect to a particular calendar year, means all revenue, income, receipts, and other consideration actually received from operation and leasing of the Affordable Development, including but not limited to:

(i) all rents, fees and charges paid by tenants, payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements resulting in actual income;

(ii) The proceeds of business interruption or similar insurance;

(iii) Any payment received in consideration for the leasing or other use of any portion of the Affordable Development;

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

(v) Subject to the rights of Senior Lenders, condemnation awards for a taking of part or all of the Affordable Development for a temporary period; and

(vi) Gross Revenue shall exclude tenants' security deposits, loan proceeds, capital contributions or other similar advances.

(rr) "Hazardous Materials" means any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations, except such of the foregoing as may be customarily used in construction of projects like the Phase I Development or kept and used in and about residential property of this type.

(ss) "Hazardous Materials Claim" means respectively: (1) from and after the execution of the Housing Lease, any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Affordable Developer or the Affordable Development pursuant to Hazardous Materials Laws; or (2) from and after the execution of the Library Lease, all claims made or threatened by any third party against the Library Developer or the Library Development relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials.

(tt) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Phase I Development or any portion thereof.

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

(vv) "Housing Asset Funds" means funds on deposit in the County's Low and Moderate Income Housing Asset Fund created pursuant to Health and Safety Code Section 34176(d) which the County is authorized to use in a manner consistent with the affordable housing requirements of the Community Redevelopment Law.

(ww) "Housing Lease" means the long-term lease between the County and the Affordable Developer under which the Affordable Developer shall lease the Affordable Development Parcel from the County, substantially in the form of Exhibit D-1, incorporated herein by this reference.

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

(yy) "Infrastructure Component" means that portion of the County Loan, in the approximate amount of Three Million Four Hundred Seventy-Six Thousand Dollars (\$3,476,000)

to be disbursed to the Affordable Developer, subject to the disbursement conditions set forth in Section 3.6 of this Agreement, to finance the construction of the Infrastructure Improvements (including for payment of impact fees).

(zz) "Infrastructure Improvements" means the Sewer Improvements and the Water Improvements necessary to serve the Development.

(aaa) "Leases" means the Housing Lease and the Library Lease.

(bbb) "LaBarge Industries" means LaBarge Industries, Inc., a California corporation. The Affordable Developer intends to admit LaBarge Industries as a general partner of the Partnership.

(ccc) "Leasehold Deed of Trust" means the leasehold deed of trust that will encumber the Affordable Developer's leasehold interest in the Affordable Development Parcel to secure repayment of the Promissory Note, substantially in the form attached hereto as Exhibit G.

(ddd) "Lender's Share of Residual Receipts" means fifty percent (50%) of the Residual Receipts.

(eee) "Library Development" means the Library Parcel and the Library Improvements.

(fff) "Library Developer" means Bloomington Library Developer, LLC, a California limited liability company, which will be the owner of the Library Improvements.

(ggg) "Library Facility Lease" means the lease between the Library Developer, as landlord, and the County, as tenant, under which the Library Developer shall lease specified interior space in the Library Improvements to the County, substantially in the form attached hereto as Exhibit J, incorporated herein by this reference.

(hhh) "Library Funding" means the approximately Two Million Seven Hundred Five Thousand Dollars (\$2,705,000) of NSP 1 Program Income and CDBG Funds that the County will make available to the Library Developer to fund the construction of the Library Improvements pursuant to the terms of the Library Lease.

(iii) "Library Improvements" means the approximately 6,500 square foot public Library Improvements required to be developed on the Library Parcel, pursuant to the terms of this Agreement.

(jjj) "Library Lease" means the airspace lease between the County, as landlord, and the Library Developer, as tenant, under which the County shall lease the Library Parcel to the Library Developer, substantially in the form attached hereto as Exhibit D-2, incorporated herein by this reference.

(kkk) "Library Parcel" means the certain condominium parcel, on which the Library Improvements will be constructed, as designated on the Final Map that will be recorded prior to the Close of Escrow.

(lll) "Low Income Household" means a household with an adjusted income that does not exceed eighty percent (80%) of area median income, adjusted for actual household size.

(mmm) "Management Agent" means a management agent retained by the Affordable Developer and approved by the County in accordance with the provisions of Sections 8.8 and 8.9 to manage the Affordable Development.

(nnn) "Management Plan" shall have the meaning specified in Section 8.8 below.

(ooo) "Marketing Plan" has the meaning set forth in Section 8.14 below.

(ppp) "Memorandum of DDA" means the memorandum of the Disposition, Development and Funding Agreement to be recorded against the Affordable Development Parcel on the Close of Escrow. The form of the Memorandum of DDA is attached as Exhibit O.

(qqq) "Memorandum of Housing Lease" means the memorandum of the Housing Lease to be recorded against the Affordable Development Parcel on the Close of Escrow. The form of the Memorandum of Housing Lease is attached as Exhibit H-1.

(rrr) "Memorandum of Library Lease" means the memorandum of the Library Lease to be recorded against the Library Parcel on the Close of Escrow. The form of the Memorandum of Library Lease is attached as Exhibit H-2.

(sss) "MHSA Funds" means funds allocated to the County from the California Department of Mental Health, ("DMH") pursuant to Proposition 63, the Mental Health Services Act which must be used by the County in accordance with the Act and California Code of Regulations Title 9, Section 3100, et seq.

(ttt) "NEPA" means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-4347).

(uuu) "Net Excess Proceeds" means the portion of the Approved Financing for the construction of the Affordable Development that is not required to pay the costs of acquisition and development of the Affordable Development (including but not limited to the funding of reserves and repayment of construction financing). Net Excess Proceeds, if any, shall be determined pursuant to the procedure set forth in Section 3.5(c).

(vvv) "Notice of Affordability Restrictions" means the Notice of Affordability Restrictions on Transfer of Property, in a form to be provided by the County, between the County and the Affordable Developer to be recorded against the Affordable Development Parcel at the Close of Escrow, pursuant to Sections 33334.3 and/or 33413(c)(5) of the Community Redevelopment Law, or successor provisions.

(www) "NSP1 Program" means the Neighborhood Stabilization Program established under Title III of Division B of the Housing and Economic Recovery Act of 2008.

(xxx) "NSP1 Program Income" means program income received by the County under the NSP1 Program.

(yyy) "NSP3 Act" means Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

(zzz) "NSP3 Funds" means funds allocated to the County from HUD under the NSP3 Act.

(aaaa) "NSP3 Predevelopment Loan" has the meaning set forth in Recital D.

(bbbb) "NSP3 Program" means the Neighborhood Stabilization Program 3 established pursuant to the NSP3 Act.

(cccc) "NSP3 Regulations" means the statutory and regulatory provisions that govern the CDBG Program under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.), as amended (including those at 24 C.F.R. part 570 subparts A, C, D, J, K, and O, as appropriate), which apply with equal force to the NSP3 Funds.

(dddd) "NSP3 Requirements" means the NSP3 Act and the NSP3 Regulations.

(eeee) "NSP Term" means the period which shall commence on the Effective Date and shall continue until the twentieth (20th) anniversary of the Effective Date, or that date of earlier termination pursuant to the terms of this Agreement.

(ffff) "Official Records" means the official records of the County of San Bernardino, California.

(gggg) "Operating Memorandum" has the meaning given in Section 13.19 below.

(hhhh) "Parties" means the County and both of the Developers, and the term Party shall refer to each of them individually.

(iiii) "Partnership" means Bloomington I Housing Partners, L.P., a California limited partnership, a partnership created for the purpose of syndicating the low income housing tax credits, which will own the Affordable Development and is herein also referred to as the Affordable Developer.

(jjjj) "Permanent Financing" means the sources of approved permanent financing for the Affordable Development as listed in the Financing Plan for the Affordable Development approved by the County pursuant to Section 5.6 and as may be amended.

(kkkk) "Phase I Development" means the Affordable Development and the Library Development.

(llll) "Phase II Development" means the Phase II Development Parcel and the Phase II Development Improvements.

(mmmm) "Phase II Development Improvements" means the approximately eighty-four (84) units of affordable multi-family rental housing, including one (1) manager's unit, all common areas, amenities, appurtenances, improvement easements, buildings and fixtures associated with the Phase II Development.

(nnnn) "Phase II Development Parcel" means the certain 3.39 acre portion of the Property, on which the Phase II Development will be constructed and as depicted on the Conceptual Site Plan attached hereto as Exhibit A-2, incorporated herein by this reference.

(oooo) "Predevelopment Component" means that portion of the County Loan, in the approximate amount of Two Million Three Hundred Ninety-Five Thousand Dollars (\$2,395,000), subject to the disbursement conditions set forth in Section 3.6 of this Agreement.

(pppp) "Promissory Note" shall mean the promissory note that will evidence the Affordable Developer's obligation to repay the County Loan as set forth in this Agreement, substantially in the form of Exhibit F.

(qqqq) "Property" has the meaning set forth in Recital A.

(rrrr) "Reciprocal Easement Agreement" means the declaration of reciprocal easements to be executed by the Developers and recorded against the Affordable Development Parcel and the Library Parcel providing for the joint use of certain areas, access, maintenance, and support for the Development. The form of Reciprocal Easement Agreement will be approved by the County, the Library Developer and the Affordable Developer at their reasonable discretion.

(ssss) "Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants that will be recorded against the Affordable Developer's leasehold interest in the Affordable Development Parcel upon execution of the Housing Lease and will restrict the Affordable Development and use of the Affordable Development Parcel to affordable housing, the form of which is attached hereto as Exhibit E.

(tttt) "Related" means The Related Companies of California, LLC, a California limited liability company.

(uuuu) "Related Affiliate" means an entity in which Related has: (i) direct or indirect management or control of the managing member or members in the case of a limited liability company; (ii) direct or indirect management or control of the managing general partner or general partners in the case of a limited partnership; and (iii) board of directors that overlap by fifty percent (50%) or more of their directors, or direct or indirect control of a majority of the directors in the case of a corporation.

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

(wwww) "Schedule of Performance" means the summary schedule of actions to be taken by the Parties pursuant to this Agreement to achieve the disposition of the

various parcels and the development of the Phase I Development. The Schedule of Performance is attached to this Agreement as Exhibit B.

(xxxx) "Security Financing Interest" has the meaning set forth in Section 11.1.

(yyyy) "Senior Lender" has the meaning set forth in Section 3.10(b)(ii) below.

(zzzz) "Sewer Improvements" means the off-site sewer infrastructure improvements required to be installed to provide sewer service to the Phase I Development, as further described in the attached Exhibit K, incorporated herein by this reference.

(aaaaa) "Supplemental Operating Expense Reserve" has the meaning set forth in Section 4.8.

(bbbbb) "Tax Credit Funds" means the proceeds from the sale of a limited partnership interest in the Partnership to a Tax Credit Investor in the anticipated amount set forth in the Approved Financing Plan, or such other amount as may be approved by the County in an amendment to the Approved Financing Plan.

(ccccc) "Tax Credit Investor" means the entity that, in consideration of an allocation of Tax Credits, acquires a limited partner interest in the Partnership.

(dddd) "Tax Credit Reservation" means a preliminary reservation of Tax Credits from TCAC.

(eeee) "Tax Credits" means Low Income Housing Tax Credits granted pursuant to Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Sections 50199, et seq.

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

(ggggg) "Tentative Parcel Map" means the tentative parcel map approved by the County on December 17, 2013.

(hhhhh) "Term" means the term of this Agreement, which shall commence on the Effective Date and shall continue until the fifty-seventh (57th) anniversary of the Effective Date; or that date of earlier termination pursuant to the terms of this Agreement.

(iiii) "Title Company" means the Oakland, California office of Old Republic Title Company, located at 180 Grand Ave, Suite 850, Oakland, CA 94612, unless modified pursuant to Section 6.2.

(jjjj) "Transfer" has the meaning set forth in Section 9.1.

(kkkkk) "Water Improvements" means the off-site water infrastructure improvements required to be installed to provide water service to the Phase I Development, as further described in the attached Exhibit K, incorporated herein by this reference.

Section 1.2 Exhibits.

The following exhibits are attached to and incorporated in the Agreement:

- Exhibit A-1: Legal Description of the Property
- Exhibit A-2: Conceptual Site Plan
- Exhibit B: Schedule of Performance
- Exhibit C: Approved Financing Plan
- Exhibit D-1: Housing Lease
- Exhibit D-2: Library Lease
- Exhibit E: Regulatory Agreement
- Exhibit F: Promissory Note
- Exhibit G: Leasehold Deed of Trust
- Exhibit H-1: Memorandum of Housing Lease
- Exhibit H-2: Memorandum of Library Lease
- Exhibit I: Form of Residual Receipts Report
- Exhibit J: Library Facility Lease
- Exhibit K: Scope of Water Improvements and Sewer Improvements
- Exhibit L: Form First Amendment to Disposition Agreement
- Exhibit M: Special Terms and Conditions
- Exhibit N: Completion Guaranty Agreement
- Exhibit O: Memorandum of DDA
- Exhibit P: Form of Certificate of Completion

ARTICLE 2.
PURPOSE AND OVERVIEW

Section 2.1 Scope and Purpose of Agreement.

The Bloomington Mixed-Use Development is a multi-phased mixed use housing, commercial, and community use development. This Agreement addresses the construction and operation of the Phase I Development (including the required Infrastructure Improvements). The purposes of this Agreement, as more specifically set forth herein, are to: (1) provide for the orderly subdivision of the Property; (2) cause the construction and completion of the Phase I Development; (3) cause the lease of the interior portion of the Library Improvements to the County to enable the County to operate a public library therein; and (4) set forth the ongoing requirements for the operation and maintenance of the Phase I Development.

Section 2.2 Phase I Property.

(a) Land Interests as of Effective Date. As of the Effective Date, and prior to the recordation of the Final Map, the County owns the fee interest in the entire Property.

(b) Land Interests Following the Close of Escrow. Following the recordation of the Final Map and the Close of Escrow the Parties will hold the following interests in real property:

- (i) The Affordable Developer will hold a leasehold interest in the Affordable Development Parcel pursuant to the Housing Lease;
 - (ii) The Library Developer will hold a leasehold interest in the Library Parcel pursuant to the Library Lease;
 - (iii) The County will own the fee interest in the Affordable Development Parcel, subject to the Housing Lease;
 - (iv) The County will own the fee interest in the Library Parcel, subject to the Library Lease; and
 - (v) The County will own the fee interest in the Phase II Development Parcel.
- (c) Library Improvement after Completion. Once constructed, the Library Improvements will constitute a part of the leasehold interest in the Library Parcel and shall become affixed to the Library Developer's leasehold interest in the Library Parcel. Upon the Close of Escrow, the Library Developer will lease specified space located within the Library Improvements to the County pursuant to the terms of the Library Facility Lease and, pursuant to the Library Facility Lease, the County will take possession of specified interior portions of the Library Improvements upon completion of the construction of the Library Improvements.

Section 2.3 Effect on Prior Agreements.

- (a) Termination of ENRA as to Phase I Development. As of the Effective Date of this Agreement, the ENRA is terminated as to the Affordable Development Parcel and the Library Parcel.
- (b) Termination of Predevelopment Loan Agreement. As of the Effective Date of this Agreement, the Predevelopment Loan Agreement is terminated and superseded by the terms of this Agreement.

Section 2.4 Recordation of Memorandum of this Agreement.

As part of the Close of Escrow, the Memorandum of DDA will be recorded against the Affordable Developer's leasehold interests in the Affordable Development Parcel and the Library Developer's leasehold interest in the Library Parcel, subject only to such liens, encumbrances and other exceptions to title approved in writing and in advance by the County, or as otherwise set forth in this Agreement.

ARTICLE 3.
COUNTY LOAN PROVISIONS

Section 3.1 County Loan.

Subject to adjustments pursuant to Section 5.1(b) below, the County shall provide the County Loan to the Affordable Developer as predevelopment and construction financing for the Affordable Development in the principal amount not to exceed Five Million Eight Hundred Seventy-One Thousand Dollars (\$5,871,000) consisting of NSP3 Funds, County affordable housing funds and Housing Asset Funds. The Affordable Developer's obligation to repay the County Loan shall be evidenced by the Promissory Note and secured by the Assignment Agreement, which shall be executed by the Affordable Developer concurrently herewith.

Section 3.2 Interest.

(a) Subject to the provisions of Section 3.2(b) below, the County Loan shall bear zero percent (0%) interest.

(b) Upon the occurrence of a Default by Affordable Developer that remains uncured after expiration of the applicable cure period, at the County's option, the principal amount of the County Loan shall be immediately due and payable, and shall bear interest at the lesser of ten percent (10%) per annum or the maximum rate permitted by law, which will accrue, as of the date of Default and continue until such time as the County Loan funds are repaid in full or the Default is cured. In this regard, payments received from the Affordable Developer shall be applied first to interest accrued and the remaining balance, if any, to principal.

Section 3.3 Use of County Loan.

(a) Predevelopment and Acquisition Component. The Predevelopment Component of the County Loan has been or shall be used solely for predevelopment and acquisition activities, in accordance with the Approved Financing Plan.

(b) Infrastructure Component. The Infrastructure Component of the County Loan shall be used solely to finance the development of the Infrastructure Improvements (including but not limited to payment of impact fees and permit fees associated therewith), in accordance with the Approved Financing Plan and as further described in Exhibit K with respect to the Water Improvements and the Sewer Improvements.

(c) Other Uses Prohibited. The Affordable Developer shall not use the County Loan funds for any other purpose without the prior written consent of the County.

Section 3.4 Security.

(a) Assignment of Collateral Documents. The Affordable Developer's obligations under this Agreement shall be secured by the Assignment Agreement. The Affordable Developer will grant to the County, pursuant to the Assignment Agreement, a valid, second priority, continuing security interest in all of the Affordable Developer's right, title, and interest presently existing and after-acquired or arising Collateral in order to secure prompt, full and complete payment of any and all obligations to the County under this Agreement and in order to secure prompt, full and complete performance by Affordable Developer of each of its covenants and duties under each of the County Loan Documents. For purposes hereof, the Collateral Documents subject to the Assignment Agreement shall expressly exclude any

document that, pursuant to applicable law, the Developers do not have the right to pledge and assign as contemplated by this Agreement. The County shall not have any obligation under any Collateral Documents assigned pursuant to the Assignment Agreement until it expressly agrees in writing to be bound by such contracts or agreements. Upon a Developer Event of Default that has not been cured pursuant to this Agreement, in accordance with the Assignment Agreement, the County may use any of the Collateral Documents for any purpose for which the Affordable Developer could have used them for construction of the Affordable Development, and the Affordable Developer shall cooperate with the County to implement the Assignment Agreement and immediately deposit with the County, for the County's use, all the Collateral Documents.

(b) Deeds of Trust. The Leasehold Deed of Trust will secure the County Loan. The Leasehold Deed of Trust shall be recorded against the Affordable Developer's leasehold interest in the Affordable Development Parcel at the Close of Escrow.

Section 3.5 Repayment Schedule.

The County Loan shall be repaid as follows:

(a) Annual Payments. Commencing on the May 1 following Completion of Construction, and on each May 1 of each year thereafter for the Term, the Affordable Developer shall make repayments of the County Loan in the amount of the County's Pro Rata Share of Lender's Residual Receipts. Payment of the County's Pro Rata Share of the Lender's Residual Receipts shall be credited first against accrued interest and then against outstanding principal, and shall be accompanied by the Affordable Developer's report of Residual Receipts (including the independent auditor's report regarding the auditor's review of Annual Operating Expenses required by this Section). The Affordable Developer shall provide the County in the form attached hereto as Exhibit I, within sixty (60) days following the end of each calendar year, a report showing the actual income and expenditures with respect to the Affordable Development for the immediately preceding calendar year, the calculation of Annual Operating Expenses, Gross Revenue, and Residual Receipts and the status of all reserve funds, including without limitation, an annual audited financial statement for the Affordable Development prepared by a certified public accountant approved by the County. Payments made shall be credited first against accrued interest and then against outstanding principal.

(b) Special Repayments from Net Excess Proceeds. Subject to the rights of senior lenders, no later than ten (10) days after the date the Affordable Developer receives its final Tax Credit Investor Equity contribution, the Affordable Developer shall pay to the County one-hundred percent (100%) of the Net Excess Proceeds, as a special repayment of the County Loan. Notwithstanding anything to the contrary, the County Executive Officer is authorized to approve a reduced special repayment from Net Excess Proceeds of the County Loan pursuant to this subsection in the event the County Executive Officer determines in the County Executive Officer's sole and absolute discretion that such funds are required to pay project costs reasonably incurred by the Affordable Developer and approved by the County pursuant to the Financing Plan.

(c) Determination of Net Excess Proceeds. The amount of the Net Excess Proceeds shall be determined by the Affordable Developer and submitted to the County for

approval on the date the Affordable Developer submits the final cost audit for the Affordable Development to TCAC. The Affordable Developer shall also submit to the County any additional documentation sufficient to verify the amount of the Net Excess Proceeds. The County shall reasonably approve or disapprove the Affordable Developer's determination of the amount of the Net Excess Proceeds in writing within sixty (60) days of the receipt of the Affordable Developer's cost audit and supplemental documentation. If the County disapproves the Affordable Developer's determination of the amount of Next Excess Proceeds, the County shall specify in writing the reasons for the disapproval. If the Affordable Developer's determination is disapproved by the County, the Affordable Developer shall re-submit documentation to the County until the County approval is obtained. The County's share of the Net Excess Proceeds shall be due the County from the Developer within five (5) days after the Affordable Developer receives the final equity contribution from its Tax Credit Investor.

(d) Payment in Full. Subject to the provisions of subsection (e) below, all principal and interest, if any, on the County Loan shall, at the option of the County, be due and payable upon the earliest of: (i) a Transfer other than a Transfer permitted or approved by the County as provided in Article 8 below; (ii) the occurrence of a Default of the Developer for which the County exercises its right to cause the County Loan indebtedness to become immediately due and payable; or (iii) the expiration of the Term.

(e) Prepayment. The Affordable Developer shall have the right to prepay the County Loan at any time. However, this Agreement and the Regulatory Agreement shall remain in effect for their entire respective terms, regardless of any prepayment or timely payment of the County Loan.

Section 3.6 Conditions Precedent to Disbursement of County Loan.

The County shall not be obligated to make any disbursements of the County Loan proceeds for costs of the Affordable Development unless the following conditions precedent are satisfied prior to each such disbursement of the County Loan:

(a) Disbursement of Predevelopment Component. The maximum amount of funds to be disbursed to the Affordable Developer pursuant to this Section as the Predevelopment Component shall not exceed Two Million Three Hundred Ninety-Five Thousand Dollars (\$2,395,000), unless otherwise approved by the County Executive Officer. The Parties agree and acknowledge that as of the Effective Date the sum of Two Million Ninety-Five Thousand Dollars (\$2,095,000) of the Predevelopment Component is deemed to have been disbursed to the Affordable Developer. Within ten (10) days of the Effective Date of this Agreement, the County shall disburse the remaining Three Hundred Thousand Dollars (\$300,000) of the Predevelopment Component to the Affordable Developer.

(b) Disbursement of Infrastructure Component. The maximum amount of funds to be disbursed to the Affordable Developer pursuant to this Section as the Infrastructure Component shall not exceed Three Million Four Hundred Seventy-Six Thousand Dollars (\$3,476,000), unless otherwise approved by the County Executive Officer. The County shall not be obligated to make any disbursements of any portion of the Infrastructure Component unless the following conditions precedent are satisfied by the Affordable Developer:

(i) There exists no Developer Event of Default nor any act, failure, omission or condition that would constitute a Developer Event of Default under Section 10.3 of this Agreement or any other project financing agreements or contracts;

(ii) This Agreement has been executed by the Developers and delivered to the County;

(iii) The Developers have delivered to the County a copy of the Developers' organizational documents and authorizing resolution authorizing execution of this Agreement and the transactions contemplated by this Agreement;

(iv) The County shall have reviewed and approved all contracts and documents associated with the payment of fees or permits (including but not limited to the water impact fee and sewer impact fees) associated with the Water Improvements and the Sewer Improvements and received executed collateral assignment of the contracts for the Water Improvements and Sewer Improvements, in forms approved by the County;

(v) All applicable federal (including all applicable requirements under the National Environmental Review Act) and state environmental review has been completed for the Phase I Development. The Parties acknowledge and agree that this condition is deemed satisfied as of the Effective Date;

(vi) The County has received a written draw request from the Affordable Developer, including certification that the condition set forth in Section 3.6(b)(i) continues to be satisfied, and setting forth the proposed uses of funds consistent with the Financing Plan for the Affordable Development, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred.

Section 3.7 Reports and Accounting of Residual Receipts.

(a) Audited Financial Statement. In connection with the annual repayment of the County Loan, the Affordable Developer shall furnish to the County an audited statement duly certified by an independent firm of certified public accountants approved by the County, setting forth in reasonable detail the computation and amount of Residual Receipts during the preceding calendar year.

(b) Books and Records. The Affordable Developer shall keep and maintain at the Affordable Development, or elsewhere with the County's written consent, full, complete and appropriate books, record and accounts relating to the Affordable Development, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail the Affordable Developer's calculation of Residual Receipts. Books, records and accounts relating to the Affordable Developer's compliance with the terms, provisions, covenants and conditions of this Agreement shall be kept and maintained in accordance with generally accepted accounting principles consistently applied, and shall be consistent with requirements of this Agreement which provide for the calculation of Residual Receipts on a cash basis. All such books, records, and accounts shall be open to and available for inspection by the County, its auditors or other authorized representatives at reasonable intervals during normal business hours

on reasonable prior notice to the Affordable Developer. Copies of all tax returns and other reports that the Affordable Developer may be required to furnish any governmental agency shall at all reasonable times be open for inspection by the County at the place that the books, records and accounts of the Affordable Developer are kept. The Affordable Developer shall preserve records on which any statement of Residual Receipts is based for a period of not less than five (5) years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to subsection (c) below then pending.

(c) County Audits. The receipt by the County of any statement pursuant to subsection (a) above or any payment by the Affordable Developer or acceptance by the County of any loan repayment for any period shall not bind the County as to the correctness of such statement or such payment. Within three (3) years after the receipt of any such statement, the County or any designated agent or employee of the County at any time shall be entitled to audit the Residual Receipts and all books, records, and accounts pertaining thereto. Such audit shall be conducted during normal business hours at the principal place of business of the Affordable Developer 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 the Affordable Developer. If it shall be 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 set forth in Section 3.2(b) above, determined as of and accruing from the date that said payment should have been made. In addition, if the Affordable Developer's auditor's statement for any calendar year shall be found to have understated Residual Receipts by more than five percent (5%) and the County is entitled to any additional County Loan repayment as a result of said understatement, then the Affordable Developer shall pay, in addition to the interest charges referenced hereinabove, all of the County's reasonable costs and expenses connected with any audit or review of the Affordable Developer's accounts and records.

Section 3.8 Developer Fee.

(a) The amount and the terms of the County Loan, as provided in this Article 3, have been established by taking into account the anticipated costs of development, including a Developer Fee not to exceed Two Million Dollars (\$2,000,000), to be paid for development and construction management services. Except for the Developer Fee, no compensation from any source shall be received by or be payable to the Affordable Developer or Related, or any affiliate of the Affordable Developer or Related (collectively the "Developer Fee Recipient") in connection with the provision of development and construction management services for the acquisition and construction of the Affordable Development. 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, is not to exceed Two Million Dollars (\$2,000,000) and as approved by the County.

(b) The Affordable Developer hereby agrees to cause the Developer Fee Recipient to use One Hundred Twenty Thousand Dollar (\$120,000) of the Developer Fee to capitalize and fund operating and replacement reserve accounts which shall be used by the Library Developer in a manner consistent with the Library Facility Lease. The Affordable Developer agrees to cause the Developer Fee Recipient to pay to capitalize and fund the reserve accounts required here under on a pro-rata basis from each distribution of Developer Fee within five (5) business days of each such Developer Fee distribution until the full One Hundred

Twenty Thousand (\$120,000) has been paid by the Developer Fee Recipient, the final component is expected to be paid within five (5) business days of the issuance of Form 8609 by TCAC. The requirements of this section shall run with the land, and shall bind all successors claiming any portion of the Developer Fee.

Section 3.9 Assumption.

The Promissory Note shall not be assumable by successors and assigns of the Affordable Developer without the prior written consent of the County, which consent shall be granted or denied in the County's sole discretion.

Section 3.10 Subordination.

(a) DDA Subordination. The County will subordinate this Agreement, on condition that all of the requirements of Section 3.10(b) are satisfied with regards to this Agreement, which conditions are deemed to have been satisfied with regards to this Agreement.

(b) Subordination of Leasehold Deed of Trust and Regulatory Agreement. The County agrees to subordinate the Leasehold Deed of Trust and the Regulatory Agreement to other Approved Financing (in each case, a "Senior Lien"), but only on condition that all of the following conditions are satisfied:

(i) All the proceeds of the proposed Senior Lien, less any transaction costs, must be used to provide acquisition, construction or permanent financing for the Affordable Development, or any combination thereof.

(ii) The proposed lender (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 the Affordable Developer, Related or any Related Affiliate, other than as a depositor or a lender.

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

(iv) The subordination agreement(s) must be structured to minimize the risk that the Leasehold Deed of Trust and/or Regulatory Agreement would be extinguished as a result of a foreclosure by the Senior Lender or other holder of the Senior Lien. To satisfy this requirement, the subordination agreement must provide the County with adequate rights to cure any defaults by the Affordable Developer, including: (A) 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 the

Affordable Developer; and (B) providing the County with a cure period of at least sixty (60) days to cure any default.

(v) The subordination(s) described in this Section may be effective only during the original term of the Senior Loan and any extension of its term or refinancing approved in writing by the County.

(vi) No subordination may limit the effect of the Leasehold Deed of Trust and/or Regulatory Agreement before a foreclosure, nor require consent of the holder of the Senior Loan to exercise any remedies by the County under the Loan Documents.

(vii) Upon a determination by the County Executive Officer that the conditions in this Section have been satisfied, the County Executive Officer or the County Executive Officer's designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval.

(c) In no event shall the County subordinate its fee interest in any portion of the Property or any parcel created under the Final Map to any mortgage, deed of trust, or regulatory agreement.

Section 3.11 Non-Recourse.

(a) Except as provided below, upon recordation of the Leasehold Deed of Trust, the Affordable Developer shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the County Loan or the performance of the covenants of the Affordable Developer under the Leasehold Deed of Trust. The sole recourse of the County with respect to the principal of, or interest on, the Promissory Note and defaults by the Affordable Developer in the performance of its covenants under the Leasehold Deed of Trust shall be to the property described in the Leasehold 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 Promissory Note of all the rights and remedies of the County thereunder;

(ii) Be deemed in any way to impair the right of the County to assert the unpaid principal amount of the Promissory Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto;

(iii) Be deemed in any way to limit the rights of the County to obtain specific performance by the Affordable Developer of its covenants under the County Loan Documents, other than the covenants to pay the County principal and interest due under the Promissory Note;

(b) 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 Promissory Note and the performance of the Affordable Developer's obligations under the Leasehold Deed of

Trust, except as hereafter set forth; nothing contained herein is intended to relieve the Affordable Developer of its obligation to indemnify the County under this Agreement, or liability for:

- (i) Fraud or willful misrepresentation of the Affordable Developer;
- (ii) The failure to pay taxes, assessments or other charges which may create liens on the Affordable Developer's interest in the Affordable Development Parcel that are payable or applicable prior to any foreclosure under the Leasehold 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 the Affordable Developer other than in accordance with the Leasehold Deed of Trust; and/or
- (iv) 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 Affordable Development.

Section 3.12 NSP3 Requirements.

(a) For the entire NSP Term, the Affordable Developer shall comply with all applicable laws and regulations governing the use of the NSP3 Funds as set forth in the NSP3 Requirements, and with the requirements of the Regulatory Agreement. In the event of any conflict between this Agreement and applicable laws and regulations governing the use of the County Loan funds, the applicable laws and regulations govern.

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

(i) 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.

(ii) Applicability of OMB Circulars. The applicable policies, guidelines, and requirements of OMB Circulars Nos. A-87, A-102, Revised, A-110, A-122, and A-133.

(iii) Debarred, Suspended or Ineligible Contractors. The prohibition on the use of debarred, suspended, or ineligible contractors set forth in 24 C.F.R. Part 24.

(iv) 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.

(v) 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.

(vi) Relocation. The requirements of 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(as modified by the NSP3 Requirements); 24 C.F.R. 570.606; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 C.F.R. 42 et seq.; and California Government Code Section 7260 et seq. and implementing regulations at 25 California Code of Regulations Sections 6000 et seq.

(vii) Discrimination against the Disabled. 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.

(viii) 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.

(ix) Uniform Administrative Requirements. The provisions of 24 C.F.R. 570.502 regarding cost and auditing requirements to the extent applicable.

(x) 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. The Affordable Developer agrees to include the following language in all subcontracts executed under this Agreement:

(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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).

(xi) Labor Standards. The labor requirements set forth in 24 C.F.R. Section 570.603; 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.

(xii) 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 24.

(xiii) 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.

(xiv) 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 the Affordable Developer shall immediately notify the County. The Affordable Developer 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.

(xv) Flood Disaster Protection. The requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234) (the "Flood Act"). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under Section 3(a) of the Flood Act, for use in an area identified by HUD as having special flood hazards which is not then in compliance with the requirements for participation in the national flood insurance program pursuant to Section 201(d) of the Flood Act. The use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the National Flood Insurance Program is subject to the mandatory purchase of flood insurance requirements of Section 102(a) of the Flood Act. If the Property is located in an area identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., the property owner and its successors or assigns must obtain and maintain, during the ownership of the Property, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(s) of

the Flood Act. Such provisions are required notwithstanding the fact that the construction on the Property is not itself funded with assistance provided under this Agreement.

(xvi) HUD Regulations. Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to the County Loan funds.

Section 3.13 Anti-Lobbying Certification. The Affordable Developer certifies, to the best of the Affordable Developer's knowledge or belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

(c) This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000) and no more than One Hundred Thousand Dollars (\$100,000) for such failure.

ARTICLE 4. COUNTY GRANT

Section 4.1 County Grant.

The County shall make the County Grant to the Grantee for the purposes set forth in Section 4.3 of this Agreement. The County Grant shall be disbursed as more fully described in Section 4.5 below.

Section 4.2 Addition of Grantee.

The parties anticipate executing the First Amendment to Disposition Agreement, in substantially the form attached hereto as Exhibit L, the purpose of which is to make the Grantee a party to this Agreement. The parties shall as a condition precedent to disbursement of the County Grant, execute the First Amendment to Disposition Agreement upon the admission of the

Grantee as a general partner of the Affordable Developer and approval of the Grantee's board of this Agreement. The County Executive Officer or the County Executive Officer's designee will be authorized to execute the First Amendment to Disposition Agreement, in substantially the form attached hereto as Exhibit L, without the necessity of any further action or approval of the Board of Supervisors.

Section 4.3 Use of County Grant Funds.

(a) Grantee to Make a Capital Contribution. The Grantee shall use the County Grant funds solely for the purpose of making a capital contribution to the Affordable Developer to be used by the Affordable Developer solely to pay development costs consistent with the Financing Plan for the Affordable Development and for funding of the Supplemental Operating Expense Reserve. Approximately Three Hundred Sixty-Six Thousand Dollars (\$366,000) of the County Grant shall be credited toward the acquisition of a portion of the Affordable Development Parcel.

(b) Affordable Developer Agreements. Any and all agreements between the Grantee and the Affordable Developer shall ensure that the County Grant funds are used solely to finance the construction and operation of the Affordable Development Improvements, consistent with the Financing Plan for the Affordable Development.

(c) Other Uses Prohibited. Any costs to be paid for with County Grant funds must be eligible uses under the Community Redevelopment Law. Neither the Grantee nor the Affordable Developer shall use the County Grant funds for any other purpose without the prior written consent of the County.

Section 4.4 Intentionally Omitted.

Section 4.5 Conditions Precedent to Disbursement.

(a) Conditions Precedent to Disbursement of County Grant. The maximum amount of funds to be disbursed pursuant to this Section shall not exceed Seven Million Four Hundred Forty-One Thousand Eight Hundred Seventeen Dollars (\$7,075,817) of which Five Hundred Twelve Thousand Dollars (\$512,000) shall be used to capitalize the Supplemental Operating Expense Reserve account at the Close of Escrow. The County shall not be obligated to make any disbursements of the County Grant proceeds to the Grantee unless the following conditions precedent are satisfied prior to such disbursement of the County Grant, as noted below:

(i) The Grantee has delivered to the County a certified copy of the Grantee's organizational documents and authorizing resolution authorizing execution of the First Amendment to Disposition Agreement and the transactions contemplated by this Agreement;

(ii) The County has received an executed original Completion Guaranty Agreement securing completion of construction of the Phase I Development.

(iii) The parties have executed the First Amendment to Disposition Agreement as contemplated under Section 4.2 above.

(iv) The Grantee and the Affordable Developer have entered into a limited partnership agreement under which the Grantee agrees to contribute all of the County Grant funds to the Affordable Developer solely for the purpose of financing the construction of the Affordable Development and funding the Supplemental Operating Expense Reserve, and executed copies of any and all documents necessary to effectuate the capital contribution of the County Funds to the Affordable Developer have been delivered to and approved by the County.

(v) The County and the Grantee or the Affordable Developer have entered into a construction escrow agreement, construction funding agreement, or construction monitoring and disbursement agreement, and any and all documents necessary for the County and the Affordable Developer to coordinate the disbursement of the County Grant funds to the Grantee who will contribute the County Grant funds to the Affordable Developer as a capital contribution. The County Executive Officer or the County Executive Officer's designee will be authorized to execute the agreement contemplated under this subsection without the necessity of any further action or approval of the Board of Supervisors. The Grantee or the Affordable Developer agree that any agreement executed to satisfy this subsection (v), shall require that: (A) the County Community Development and Housing Director, or a designee, shall be allowed to participate in draw meetings and that reasonable notice of the times and dates for such meetings shall be provided to the County; (B) the County Community Development and Housing Director's written approval of any draw requests submitted by the Affordable Developer or Grantee to spend County Grant funds, such approval shall be deemed granted if the County Community Development and Housing Director fails to provide written approval within five (5) business days. The parties further intend that any such agreement shall contemplate: (A) the County fund the entire amount of the County Grant to the Grantee at the Close of Escrow, (B) concurrently with the Close of Escrow, the Grantee shall contribute the Grant funds received under the immediately preceding subsection (A), to the Affordable Developer, and (C) any portion of the amount so contributed by Grantee to the Affordable Developer at the Close of Escrow not spent by the Affordable Developer in connection with such closing shall be delivered to the Senior Lender as borrower's funds for disbursement to pay construction costs of the Affordable Development prior to disbursement of the Senior Loan.

(vi) There exists no Developer Event of Default nor any act, failure, omission or condition that would constitute a Developer Event of Default under Section 10.3 of this Agreement or any other project financing agreements or contracts;

(vii) The Affordable Developer has executed and delivered to the County the Housing Lease, the Memorandum of Housing Lease, the Notice of Affordability Restricts, Reciprocal Easement Agreement, the Leasehold Deed of Trust, and the Regulatory Agreement;

(viii) The Memorandum of Housing Lease, the Reciprocal Easement Agreement, the Notice of Affordability Restrictions, , the Leasehold Deed of Trust, and the Regulatory Agreement have been recorded against the Developer's leasehold interest in the Affordable Development Parcel;

(ix) The County has received reviewed and approved any updates or amendments to the Approved Financing Plan pursuant to Section 5.6 below;

(x) The Tax Credit Investor, LaBarge Industries and the Grantee have entered the Partnership pursuant to a Partnership Agreement approved by the County;

(xi) The County has received and approved the general contractor's construction contract that the Developers propose to enter into for construction of the Phase I Development;

(xii) The Affordable Developer has closed all construction financing for the Affordable Development and has provided evidence reasonably acceptable to the County that the Affordable Developer is prepared to commence construction of the Phase I Development no later than the date set forth in the Schedule of Performance; and

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

(xiv) The County has received and approved any updates to the Plans and Specifications for the Phase I Development;

(xv) The Affordable Developer has received all Governmental Approvals and all building permits (or is entitled to receive such building permits subject to the payment of fees therefor) necessary to perform the construction work pursuant to the terms of this Agreement; and

(xvi) The County has received a written draw request, including certification that the condition set forth in Section 4.5(a)(iv) continues to be satisfied, and setting forth the proposed uses of funds consistent with the Approved Financing Plan, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred.

Section 4.6 Intentionally Omitted.

Section 4.7 Assumption. Notwithstanding anything to the contrary and subject to Section 4.8 below, the County Grant shall not be assumable by successors and assigns of the Grantee or the Affordable Developer except by permitted transferees as provided in this Agreement, without the prior written consent of the County, which consent shall be granted or denied in the County's sole discretion.

Section 4.8 Supplemental Operating Expense Reserve.

(a) A special "Supplemental Operating Expense Reserve" shall be created and maintained as a segregated interest-bearing account held by CalHFA for the Term of this Agreement, subject to subsections (c) and (d) below. The Supplemental Operating Expense Reserve shall be capitalized in the amount of Five Hundred Twelve Thousand Dollars (\$512,000) of the County Grant funds, subject to the requirements of Section 4.5(b) above, and shall be under the control of CalHFA at all times. Any interest earned on funds in the Supplemental Operating Expense Reserve shall be added to and become part of the Supplemental Operating Expense Reserve.

(b) The Supplemental Operating Expense Reserve shall be used to pay any "Operating Expense Deficit" (which is the amount by which Annual Operating Expenses exceed Gross Revenue for any period) which occurs during the Term of this Agreement; provided, however, the Affordable Developer shall have no right to expend funds from the Supplemental Operating Expense Reserve while a Developer Event of Default is continuing.

(c) If at any time during the Term, the Affordable Developer experiences a cash flow shortfall resulting in an Operating Expense Deficit which the Affordable Developer believes qualifies for payment out of the Supplemental Operating Expense Reserve, it shall submit a written request to the County and CalHFA for consent to a disbursement from the Supplemental Operating Expense Reserve including the specific expenses for which the disbursement is requested. The County and CalHFA shall approve or disapprove such request within ten (10) business days of receipt of the written request; such approval shall not be unreasonably withheld.

(d) In no event shall any of the Supplemental Operating Expense Reserve funds be used to pay for any partnership fees or asset management fees of the Partnership.

(e) The Supplemental Operating Expense Reserve is intended to assure the long-term affordability of the Affordable Development and shall not be transferable and must remain with the Affordable Development for the Term of this Agreement. If the Partnership re-syndicates the tax credit financing any time during the Term of this Agreement, the Affordable Developer shall be required to either: (i) allow the Supplemental Operating Expense Reserve to remain with the Affordable Development; or (ii) repay any amounts remaining in the Supplemental Operating Expense Reserve as of the date of the re-syndication to the County.

ARTICLE 5.
PREDISPOSITION REQUIREMENTS

Section 5.1 Conditions Precedent to Conveyance.

The requirements set forth in this Article are conditions precedent to the County's obligations to lease the Affordable Development Parcel to the Affordable Developer and the Library Parcel to the Library Developer and the County's obligation to lease the Affordable Development Parcel and Library Parcel shall be subject to the satisfaction of all such conditions precedent at the times specified in the Schedule of Performance. The requirements of this

Article 5 are applicable to the Affordable Developer only with regards to the Affordable Development and to the Library Developer only with regards to the Library Development.

Section 5.2 Land Use Approvals.

The Developers acknowledge that execution of this Agreement by the County, and the County's approvals obtained pursuant to this Agreement are with regard to this Agreement only and do not constitute approval by the County in its typical regulatory or administrative capacity of any required permits, applications, allocations or maps, are not a substitute for the County's typical application, allocation, mapping, permitting, or approval process, and in no way limit the discretion of the County in the permit, applications, allocation, mapping or approval process. In addition to complying with the terms and conditions of this Agreement, the Developers must comply with the County's and other government entities' regulatory and administrative processes.

Section 5.3 Conceptual Site Plan.

The Developers have submitted and the County has approved the Conceptual Site Plan, attached hereto as Exhibit A-2, incorporated herein by this reference. The Conceptual Site Plan will serve as a basis for the development of the precise plans and the Plans and Specifications and the application for the other Governmental Approvals.

Section 5.4 Creation of Parcels, Subdivision Approval and Recordation.

(a) No later than the date set forth in the Schedule of Performance, the Developers, in cooperation with the County, shall prepare and submit a condominium, parcel or subdivision map (including any necessary condominium plan) which upon recordation will be the "Final Map." The Developers shall cause the Final Map to be recorded concurrently with the Close of Escrow, or prior to such closing if an earlier recordation is required.

(b) Recordation of the Final Map will create the Affordable Development Parcel, the Library Parcel and the Phase II Development Parcel as legal parcels (including without limitation, condominium parcels) and the final legal description for the various parcels shall be by reference to the parcels as shown in the recorded Final Map.

Section 5.5 Other Governmental Approvals.

(a) As of the date of this Agreement, the Developers have submitted preliminary plan check application for building permits, allowing for the construction of the Phase I Development called for in the Plans and Specifications (collectively the "Governmental Approvals"). The Developer shall diligently pursue and obtain building permits and Governmental Approvals for the Phase I Development, and no later than the date set forth in the Schedule of Performance, the Developers shall deliver evidence to the County that the Developers are entitled to issuance of a building permit for the Phase I Development upon payment of permit fees.

Section 5.6 Financing Plan.

(a) As a condition precedent to the first draw request for the County Loan, the Developers shall have submitted and received approval from the County for any amendments to the Approved Financing Plan, containing the following with regards to the Phase I Development:

(i) An updated "sources and uses" breakdown of the costs of constructing the Phase I Development in accordance with this Agreement. The sources and uses shall include all assumptions for all debt and equity financing, shall show the timing of uses of each source of financing and shall break down which expenses each source of financing is funding. The sources and uses shall detail the amount of the Developer Fee, if any, which may not exceed the amount set forth in Section 3.8.

(ii) An operating proforma for the first thirty (30) years of operation of the Affordable Development pursuant to the terms of this Agreement and the Regulatory Agreement, including funding for the provision of resident services.

(iii) Copies of all required funding commitments for loans, grants, or other financial assistance to assist in financing the construction and permanent financing for the Affordable Development, (including, but not limited to, a preliminary tax credit reservation and an executed commitment letter from an equity investor acceptable to the County for the Tax Credit Funds), certified by the Affordable Developer to be true and correct copies thereof;

(iv) A certified financial statement or other financial statement in such form reasonably satisfactory to the County evidencing other sources of capital sufficient to demonstrate that the Affordable Developer has adequate funds available and is committing such funds to cover the difference, if any, between costs of development and construction of the Affordable Development Improvements and other financial documentation stating the amount available to the Affordable Developer from external sources;

(v) Any other information that is reasonably necessary to the County in determining that the Affordable Developer has the financial capability to pay all costs of constructing the Affordable Development Improvements.

(b) Upon receipt by the County of the updates to the Approved Financing Plan, the County shall promptly review the updates to the Approved Financing Plan and shall approve or disapprove it within fifteen (15) days after submission if it conforms to the provisions

of this Agreement. The County's review of the updates to the Approved Financing Plans shall be limited to determining if the contemplated financing will be reasonably available, if the financing contemplated in the Approved Financing Plans would provide sufficient funds to undertake and complete construction of the Phase I Development, and determining if the updates to the Approved Financing Plan are consistent with the terms of this Agreement. In no event shall the County approve an amendment to the Approved Financing Plan that includes encumbrance of the Library Developer's leasehold interest in the Library Parcel. If the County disapproves an update to the Approved Financing Plan, the County shall specify in writing the reasons for the disapproval. The Developers shall thereafter resubmit a revised Financing Plan to the County for its approval within fifteen (15) days after the County's notification of disapproval. The County will either approve or disapprove the revised update to the Approved Financing Plan within fifteen (15) days after resubmission by the Developers.

(c) Written consent of the County shall be required to amend the Approved Financing Plans. The Developers shall submit any material revision to the Approved Financing Plan to the County for its review and approval. Any proposed revisions to the Approved Financing Plan shall be considered and approved or disapproved by the County in the same manner and according to the same timeframe set forth in subsection (b) above. Until a proposed amendment or revision to the Approved Financing Plan is approved in writing by the County, the Approved Financing Plan shall govern the financing of the Phase I Development.

(d) The Affordable Developer shall submit any required amendments to the Approved Financing Plan including but not limited to any material amendments or modifications to the development budget, investor commitment letter, or the commitment letter from any other lender, to the County for approval within fifteen (15) days of the date the Affordable Developer receives information indicating that actual costs of the Affordable Development vary or will vary from the line item costs shown on the approved Financing Plan.

Section 5.7 Evidence of Availability of Funds.

No later than the date set forth in the Schedule of Performance, the Developers shall submit to the County evidence reasonably satisfactory to the County that the financing and funding identified in the Approved Financing Plan will be available following the Close of Escrow for the construction of the Phase I Development.

Section 5.8 Evidence of Insurance.

(a) No later than the date set forth in the Schedule of Performance, the Developers shall furnish to the County evidence of the insurance coverage meeting the requirements of Section 8.11 below ("Evidence of Insurance Coverage").

(b) The County shall review and reasonably approve or disapprove of the evidence of insurance coverage not less than ten (10) business days after submission of complete information in the form required by County. If the County disapproves the evidence of insurance coverage, it shall specify in writing the reasons for such disapproval. The Developers shall resubmit the information required within ten (10) business days of the notification of disapproval. The County shall either approve or disapprove the submitted revised evidence of insurance within ten (10) business days of the date such revised information is received by the

County. No work shall be initiated on the Phase I Development prior to receipt of the County's approval of insurance required by this Section.

Section 5.9 Reciprocal Easement Agreement.

(a) No later than the date set forth in the Schedule of Performance, and as a condition precedent to the execution of the Housing Lease and the Library Lease, the Developers and the County shall execute a Reciprocal Easement Agreement, in the form approved by the County and the Developers. The Reciprocal Easement Agreement shall be recorded concurrently with the Close of Escrow against the Affordable Development Parcel and the Library Parcel.

(b) Although the Phase I Development and the Phase II Development are separate developments, to the extent that there are any common facilities between the Phase I and Phase II Developments, the Developers hereby acknowledge and agree to fully cooperate with the County and the developer of the Phase II Development and, if necessary, to execute and record any necessary easement agreements to accommodate such shared facilities.

Section 5.10 Library Facility Lease.

(a) Prior to or concurrently with the Close of Escrow, the Library Developer and the County shall execute the Library Facility Lease for the County's lease of the interior space of the Library Improvements from the Library Developer. The Library Facility Lease shall be in a form attached hereto as Exhibit J, incorporated herein by this reference:

(b) The rent paid by the County to the Library Developer under the Library Facility Lease shall be used by the Library Developer solely to pay the costs to maintain the Library Improvements pursuant to the Library Lease and for deposit into any reserve accounts required under the Library Facility Lease.

(c) Upon the execution of the Library Facility Lease and for the entire term thereof, the County shall be entitled to operate the public library in the leased space and shall be entitled to all revenue generated from such operation.

(d) The County shall be responsible for the day-to-day operation of the interior of the library space, including without limitation, routine janitorial duties, maintenance, insurance and taxes.

(e) The Library Developer shall be responsible for the maintenance of the exterior of the Library Improvements pursuant to the terms of the Library Lease, including without limitation, routine janitorial duties, maintenance, insurance and taxes. Other than as specified in the Library Facility Lease, the Library Developer shall have no responsibility for the maintenance of any portion of the Library Improvements leased to the County under the Library Facility Lease.

(f) From and after the time a Certificate of Occupancy is issued for the Phase I Development, the Library Improvements shall constitute a part of and be affixed to the Library

Parcel. The parties agree to make any necessary amendments to the legal description of the Library Lease to reflect the terms of this Agreement.

Section 5.11 Tax Credit Reservation; Other Financing.

(a) The Affordable Developer intends to utilize Tax Credit Funds to partially finance the Development, which are subject to a competitive application process implemented by TCAC. Receipt by the Affordable Developer of a Tax Credit Reservation pursuant to this Section shall be a condition precedent to the County's obligation to execute the Housing Lease. To satisfy the requirements of this Section, the Tax Credit Reservation shall be for an amount sufficient to meet the requirements of the Final Financing Plan to be approved by the County pursuant to Section 5.6.

(b) Tax Credit Funds. The Affordable Developer shall submit a timely and complete application for the Tax Credit Reservation to TCAC in the 2014 first round of TCAC preliminary reservations. If the Affordable Developer does not receive a Tax Credit Reservation in the 2014 first round, then the Affordable Developer shall submit a timely and complete application for the Tax Credit Reservation to TCAC in the 2014 second round of TCAC preliminary reservations. If the Affordable Developer does not receive a Tax Credit Reservation in the 2014 second round, then the Affordable Developer shall submit a timely and complete application for the Tax Credit Reservation to TCAC in the 2015 first round of TCAC preliminary reservations. If the Affordable Developer does not receive a Tax Credit Reservation in the first round of the 2015 TCAC application cycle, then the County and the Affordable Developer will confer in good faith for a period not to exceed sixty (60) days to determine if the Developer should submit a further application to TCAC in a subsequent preliminary reservation round or if a feasible and mutually acceptable alternate arrangement can be made to finance development of the Affordable Development Improvements. If no agreement is reached between the County and the Affordable Developer within such sixty (60) day period regarding the alternative financing structure for the construction of the Improvements, this Agreement may be terminated by written notice from the County to the Affordable Developer. Any agreements that are reached between the parties regarding an alternative financing plan for the construction of the Improvements shall be memorialized in an implementation agreement to this Agreement.

(c) Upon an award of the Tax Credit Reservation from TCAC, the Affordable Developer shall exercise diligent good faith efforts to obtain a funding commitment from the Investor for the Tax Credit Funds. Such funding commitment shall be in a form reasonably acceptable to the County. Procurement of the Tax Credit Reservation and an acceptable funding commitment for the Tax Credit Funds shall be a condition precedent to the County's obligation to convey the Affordable Development Parcel to the Affordable Developer pursuant to the Housing Lease.

Section 5.12 Other Approved Financing.

(a) Project Based Housing Vouchers. The Affordable Developer and the County will cooperate in attempting to secure a Housing Assistance Payment Basic Contract with the Housing Authority of the County of San Bernardino to secure not less than eleven (11) "Project Based Housing Vouchers" for the Affordable Development. The County and the Affordable Developer expect that that Project Based Housing Vouchers will provide assistance

for six (6) 2-bedroom units and five (5) 3-bedroom units at the Affordable Development for not less than two (2) consecutive fifteen (15) years terms. If the Affordable Developer is unable to secure the Project Based Housing Vouchers, then the County and the Affordable Developer will confer in good faith for a period not to exceed sixty (60) days to determine a feasible and mutually acceptable alternate arrangement can be made to finance development of the Affordable Development Improvements. Any agreement that is reached between the parties regarding an alternative financing plan for the construction of the Affordable Development Improvements shall be memorialized in an implementation agreement to this Agreement.

(b) Other Financing. As set forth in the Schedule of Performance, in addition to the Tax Credit Funds all other financing necessary to construct the Affordable Development Improvements, as required and approved by the County in the Final Financing Plan, shall be closed by the Affordable Developer prior to, or simultaneously with, the execution of the Housing Lease by the County. The Affordable Developer shall also submit to the County evidence reasonably satisfactory to the County that any conditions to the release or expenditure of funds described in the Financing Plan for the Affordable Development as the sources of funds to pay the costs of constructing the Affordable Development Improvements have been met or will be met upon the execution of the Housing Lease and subject to the Affordable Developer's satisfaction of standard disbursement preconditions required to be satisfied on a periodic basis, for constructing the Affordable Development Improvements. Submission by the Affordable Developer, and approval by the County, of such evidence of funds availability shall be a condition precedent to the County's obligation to execute the Housing Lease and leasing the Affordable Development Parcel to the Affordable Developer.

Section 5.13 Water Impact Payment.

(a) The Affordable Developer intends to pay a water impact charge, estimated at **One Million Four Hundred Sixty Three Thousand Four Hundred Ten Dollars** (\$1,463,410), to assist with the design and construction of the Water Improvements needed to be built to provide water service to the Development. If and to the extent the water impact fees exceed One Million Four Hundred Sixty Three Thousand Four Hundred Ten Dollars (\$1,463,410), any additional fees or costs associated with the water impact fees shall be paid by the Affordable Developer with assistance to be provided by the County under the terms and conditions to be determined by the County Executive Officer. The Affordable Developer shall provide copies of all documents related to the payment of the water impact charge and the construction of the Water Improvements. The County and the Affordable Developer agree and acknowledge that to the extent the Affordable Developer receives a reimbursement of unspent contingency costs associated with the Water Improvements and any discounts or rebates of any of the water impact fees, the entire sum returned to the Affordable Developer shall be payable directly to the County or if necessary used by the Affordable Developer to fund the sewer impact charge pursuant to Section 5.14.

(b) No later than March 1, 2014, the Affordable Developer shall make the water impact fee payment to Fontana Water Company. Failure of the Affordable Developer to make the water impact fee payment shall constitute a Developer Event of Default pursuant to Section 10.3.

(c) As a condition precedent to the County's execution of the Leases, construction of the Water Improvements shall have been completed.

Section 5.14 Sewer Impact Payment.

(a) The Affordable Developer intends to pay a sewer impact charge, estimated at Two Million Twelve Thousand Five Hundred Ninety Dollars (\$2,012,590), to assist with the design and construction of the Sewer Improvements needed to be built to provide sewer service to the Development. If and to the extent the sewer impact charge exceeds Two Million Twelve Thousand Five Hundred Ninety Dollars (\$2,012,590) any additional fees or costs associated with the sewer impact fee shall be paid by the Affordable Developer with assistance to be provided by the County under the terms and conditions to be determined by the County Executive Officer. The Affordable Developer shall provide copies of all documents related to the payment of the sewer impact charge and the construction of the Sewer Improvements. The County and the Affordable Developer agree and acknowledge that to the extent the Affordable Developer receives a reimbursement of unspent contingency costs and any discounts or rebates of any of the sewer impact charges the sum returned to the Affordable Developer shall be payable directly to the County or if necessary used by the Affordable Developer to fund the water impact charge pursuant to Section 5.13.

(b) No later than March 1, 2014, the Affordable Developer shall make the sewer impact charge payment to Sewer District County Service Area 70, Zone BL (Bloomington). Failure of the Affordable Developer to make the sewer impact fee payment shall constitute a Developer Event of Default pursuant to Section 10.3.

(c) As a condition precedent to the County's execution of the Leases, construction of the Sewer Improvements shall have been completed.

ARTICLE 6.
LEASE OF PROPERTY

Section 6.1 Leases.

(a) Provided the pre-disposition requirements set forth in Article 5 and the additional closing conditions set forth in Section 6.3 have been satisfied, the County shall lease the Affordable Development Parcel to the Affordable Developer and the Library Parcel to the Library Developer, pursuant to the terms, covenants, and conditions of this Agreement and the Leases.

Section 6.2 Opening Escrow.

The Parties shall establish the Escrow with the Title Company. The Parties shall execute and deliver all written instructions to the Title Company to accomplish the terms hereof, which instructions shall be consistent with this Agreement. Upon request by the Developers, the Title Company may be changed to a company requested by the Developers, provided (a) the title company is approved by the County and (b) the Developers shall pay all title insurance and escrow costs of the new title company.

Section 6.3 Closing.

(a) The Close of Escrow shall occur within thirty (30) days following the date on which all conditions precedent to conveyance set forth in Article 5 have been satisfied, but in no event later than the date set forth in the Schedule of Performance, and only in the event that all conditions precedent to conveyance set forth in Article 5 have been satisfied or waived by the County.

(b) Closing on Leases. In addition to the conditions precedent set forth in Article 5, the following conditions shall be satisfied prior to or concurrently with, and as conditions of, execution of the Leases unless waived in writing by the County and the Developers:

(i) The Title Company has caused the Final Map to be recorded in the Official Records;

(ii) The Affordable Developer shall provide the County with a certified copy of a partnership authorizing resolution, approving this Agreement, the Housing Lease, and the conditions and covenants set forth in this Agreement and the Housing Lease.

(iii) The Library Developer shall provide the County with a certified copy of a limited liability company authorizing resolution, approving this Agreement, the Library Lease, and the conditions and covenants set forth in this Agreement and the Library Lease.

(iv) The Grantee shall provide the County with a certified copy of the Grantee's organizational documents and an authorizing resolution authorizing execution of the First Amendment to Disposition Agreement and the transactions contemplated by this Agreement, and any agreements required pursuant to this Agreement.

(v) The Developers shall have furnished the County with evidence of the insurance coverage meeting the general insurance requirements set forth in Section 8.11.

(vi) The Affordable Developer shall have executed and delivered to the Housing Lease, the Memorandum of Housing Lease, the Promissory Note, the Leasehold Deed of Trust, the Regulatory Agreement, and the Reciprocal Easement Agreement and any other documents and instruments required to be executed and delivered, all in a form and substance satisfactory to the County.

(vii) The Memorandum of DDA, the Memorandum of Housing Lease, the Leasehold Deed of Trust, the Regulatory Agreement, and Reciprocal Easement Agreement shall have been, or concurrently with the Close of Escrow will be, recorded against the Affordable Developer's interest in the Affordable Development Parcel, as liens subject only to the exceptions authorized by the County.

(viii) The Library Developer shall have executed and delivered to the County the Library Lease, the Memorandum of Library Lease, and the Reciprocal Easement Agreement and any other documents and instruments required to be executed and delivered, all in a form and substance satisfactory to the County.

(ix) The Memorandum of DDA, the Memorandum of Library Lease, and the Reciprocal Easement Agreement shall have been, or concurrently with the Close of Escrow be, recorded against the Library Developer's interest in the Library Parcel.

(x) The Developers shall have obtained issuance of building permits and all Governmental Approvals necessary for construction of the Phase I Development by paying the required building permit fees.

(xi) The Water Improvements and Sewer Improvements shall have been fully constructed and installed.

(xii) The Title Company is prepared and fully authorized to record the Leasehold Deed of Trust and is unconditionally and irrevocably committed to issuing an ALTA 2006 LP-10 Lender's Policy of insurance insuring the lien priority of the Leasehold Deed of Trust in the amount of the County Loan, subject only to such liens approved by the County in the Financing Plan and such exceptions and exclusions as may be reasonably acceptable to the County and containing such endorsements as the County may reasonably require.

(xiii) The Title Company is unconditionally and irrevocably committed to issuing an ALTA 2006 Owner's Policy of insurance to the County, subject only to such liens approved by the County and such exceptions and exclusions as may be reasonably acceptable to the County and containing such endorsements as the County may reasonably require.

(xiv) There shall exist no condition, event or act which would constitute a breach or default under this Agreement.

(xv) All representations and warranties of the Developers contained in any part of this Agreement shall be true and correct in all material respects.

Section 6.4 Condition of Title.

(a) Affordable Development Parcel. Upon the Close of Escrow, the Affordable Developer shall have insurable leasehold interest to the Affordable Development Parcel which shall be free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except:

- (i) applicable building and zoning laws and regulations;
- (ii) the provisions of the Reciprocal Easement Agreement;
- (iii) the provisions of the Housing Lease;

- (iv) the provisions of the Regulatory Agreement;
- (v) the provisions of this Agreement;
- (vi) the Leasehold Deed of Trust;
- (vii) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Memorandum of the Housing Lease;
- (viii) the liens of any loan approved by the County in the Financing Plan, in such priority as approved in writing by the County pursuant to Section 3.10 above; and
- (ix) exceptions , , and as listed in the Preliminary Title Report dated as of .

(b) Library Parcel. Upon the Close of Escrow, the Library Developer shall have insurable leasehold interest to the Library Parcel which shall be free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except:

- (i) applicable building and zoning laws and regulations;
- (ii) the provisions of this Agreement;
- (iii) the provisions of the Reciprocal Easement Agreement;
- (iv) the provisions of the Library Lease;
- (v) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Memorandum of the Library Lease; and
- (vi) exceptions , , and as listed in the Preliminary Title Report dated as of .

Section 6.5 Condition of Affordable Development Parcel.

(a) **"AS IS" CONVEYANCE. THE AFFORDABLE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE COUNTY IS CONVEYING AND THE DEVELOPER IS OBTAINING THE LEASEHOLD INTEREST IN THE AFFORDABLE DEVELOPMENT PARCEL ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT THE DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE COUNTY AS TO ANY MATTERS CONCERNING THE AFFORDABLE DEVELOPMENT PARCEL, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE AFFORDABLE DEVELOPMENT PARCEL (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC**

ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER; (C) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE AFFORDABLE DEVELOPMENT PARCEL; (D) THE DEVELOPMENT POTENTIAL OF THE AFFORDABLE DEVELOPMENT PARCEL AND THE AFFORDABLE DEVELOPMENT PARCEL'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE AFFORDABLE DEVELOPMENT PARCEL FOR ANY PARTICULAR PURPOSE; (E) THE ZONING OR OTHER LEGAL STATUS OF THE AFFORDABLE DEVELOPMENT PARCEL OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE AFFORDABLE DEVELOPMENT PARCEL; (F) THE COMPLIANCE OF THE AFFORDABLE DEVELOPMENT PARCEL OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY; (G) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE AFFORDABLE DEVELOPMENT PARCEL OR THE ADJOINING OR NEIGHBORING PROPERTY; AND (H) THE CONDITION OF TITLE TO THE AFFORDABLE DEVELOPMENT PARCEL. THE DEVELOPER AFFIRMS THAT THE DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE COUNTY OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE AFFORDABLE DEVELOPMENT PARCEL FOR ANY PARTICULAR PURPOSE, AND THAT THE COUNTY MAKES NO WARRANTY THAT THE AFFORDABLE DEVELOPMENT PARCEL IS FIT FOR ANY PARTICULAR PURPOSE. THE DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE AFFORDABLE DEVELOPMENT PARCEL AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE AFFORDABLE DEVELOPMENT PARCEL (INCLUDING, WITHOUT LIMITATION, WHETHER THE AFFORDABLE DEVELOPMENT PARCEL IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). THE DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE AFFORDABLE DEVELOPMENT PARCEL'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

(b) Survival. The terms and conditions of this Section shall expressly survive the Close of Escrow, shall not merge with the provisions of the Housing Lease, or any other closing documents and shall be deemed to be incorporated by reference into the Housing Lease.

The County is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Affordable Development Parcel furnished by any contractor, agent, employee, servant or other person. The Affordable Developer acknowledges that the lease payments pursuant to the Housing Lease reflect the "as is" nature of this conveyance and any faults, liabilities, defects or other adverse matters that may be associated with the Affordable Development Parcel. The Affordable Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with the Affordable Developer's counsel and understands the significance and effect thereof.

(c) Acknowledgment. The Affordable Developer acknowledges and agrees that: (i) to the extent required to be operative, the disclaimers of warranties contained in this Section are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements; and (ii) the disclaimers and other agreements set forth in such sections are an integral part of this Agreement, that the lease payments pursuant to the Housing Lease have been adjusted to reflect the same and that the County would not have agreed to convey the Affordable Development Parcel to the Affordable Developer pursuant to the Housing Lease without the disclaimers and other agreements set forth in this Section.

(d) Release of the County. The Affordable Developer, on behalf of itself and anyone claiming by, through or under the Affordable Developer hereby waives its right to recover from and fully and irrevocably releases the County, the County and their council members, board members, employees, officers, directors, representatives, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that the Affordable Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to: (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Affordable Development Parcel, or its suitability for any purpose whatsoever; (ii) any presence of Hazardous Materials; and (iii) any information furnished by the Released Parties under or in connection with this Agreement.

(e) Scope of Release. The release set forth in this Section includes claims of which the Affordable Developer is presently unaware or which the Affordable Developer does not presently suspect to exist which, if known by the Affordable Developer, would materially affect the Affordable Developer's release of the Released Parties. The Affordable Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Affordable Developer agrees, represents and warrants that the Affordable Developer realizes and acknowledges that factual matters now unknown to the Affordable Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Affordable Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Affordable Developer nevertheless hereby intends to release, discharge and acquit the County from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Affordable Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the

Affordable Developer and anyone claiming by, through or under the Affordable Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

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

Affordable Developer's Initials: _____

(f) Notwithstanding the foregoing, the Affordable Developer's release of the County shall not apply to, nor shall the County be released from, the County's actual fraud or misrepresentation.

Section 6.6 Condition of Library Parcel.

(a) **"AS IS" CONVEYANCE. THE LIBRARY DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE COUNTY IS CONVEYING AND THE DEVELOPER IS OBTAINING THE LEASEHOLD INTEREST IN THE LIBRARY PARCEL ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT THE DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE COUNTY AS TO ANY MATTERS CONCERNING LIBRARY PARCEL, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE LIBRARY PARCEL (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER; (C) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING LIBRARY PARCEL; (D) THE DEVELOPMENT POTENTIAL OF LIBRARY PARCEL AND LIBRARY PARCEL'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF LIBRARY PARCEL FOR ANY PARTICULAR PURPOSE; (E) THE ZONING OR OTHER LEGAL STATUS OF LIBRARY PARCEL OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF LIBRARY PARCEL; (F) THE COMPLIANCE OF LIBRARY PARCEL OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY; (G) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT LIBRARY PARCEL OR THE ADJOINING OR NEIGHBORING PROPERTY; AND (H) THE CONDITION OF TITLE TO LIBRARY PARCEL. THE LIBRARY DEVELOPER AFFIRMS THAT THE LIBRARY DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE COUNTY OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH LIBRARY**

PARCEL FOR ANY PARTICULAR PURPOSE, AND THAT THE COUNTY MAKES NO WARRANTY THAT LIBRARY PARCEL IS FIT FOR ANY PARTICULAR PURPOSE. THE LIBRARY DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO LIBRARY PARCEL AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF LIBRARY PARCEL (INCLUDING, WITHOUT LIMITATION, WHETHER LIBRARY PARCEL IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). THE LIBRARY DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO LIBRARY PARCEL'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

(b) Survival. The terms and conditions of this Section shall expressly survive the Close of Escrow, shall not merge with the provisions of the Library Lease, or any other closing documents and shall be deemed to be incorporated by reference into the Library Lease. The County is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Library Parcel furnished by any contractor, agent, employee, servant or other person. The Library Developer acknowledges that the lease payments pursuant to the Library Lease reflect the "as is" nature of this conveyance and any faults, liabilities, defects or other adverse matters that may be associated with the Library Parcel. The Library Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with the Library Developer's counsel and understands the significance and effect thereof.

(c) Acknowledgment. The Library Developer acknowledges and agrees that: (i) to the extent required to be operative, the disclaimers of warranties contained in this Section are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements; and (ii) the disclaimers and other agreements set forth in such sections are an integral part of this Agreement, that the lease payments pursuant to the Library Lease have been adjusted to reflect the same and that the County would not have agreed to convey the Library Parcel to the Library Developer pursuant to the Library Lease without the disclaimers and other agreements set forth in this Section.

(d) Release of the County. The Library Developer, on behalf of itself and anyone claiming by, through or under the Library Developer hereby waives its right to recover from and fully and irrevocably releases the County, the County and their council members, board members, employees, officers, directors, representatives, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that the Library Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to: (i) the condition

(including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Library Parcel, or its suitability for any purpose whatsoever; (ii) any presence of Hazardous Materials; and (iii) any information furnished by the Released Parties under or in connection with this Agreement; provided however, in no event shall the foregoing release extend to any obligations or activities undertaken by the tenant pursuant to the terms and conditions of the Library Facility Lease during the term of the Library Facility Lease.

(e) Scope of Release. The release set forth in this Section includes claims of which the Library Developer is presently unaware or which the Library Developer does not presently suspect to exist which, if known by the Library Developer, would materially affect the Developer's release of the Released Parties. The Library Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Library Developer agrees, represents and warrants that the Library Developer realizes and acknowledges that factual matters now unknown to the Library Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Library Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Library Developer nevertheless hereby intends to release, discharge and acquit the County from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Library Developer, on behalf of itself and anyone claiming by, through or under the Library Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Library Developer and anyone claiming by, through or under the Library Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

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

Library Developer's Initials: _____

(f) Notwithstanding the foregoing, the Library Developer's release of the County shall not apply to, nor shall the County be released from, the County's actual fraud or misrepresentation.

Section 6.7 Costs of Escrow and Closing.

Ad valorem taxes, if any, shall be prorated as of the Close of Escrow. The Developers shall pay the cost of title insurance, transfer tax, Title Company document preparation, recordation fees and the escrow fees of the Title Company, if any, and any additional costs to close the Escrow.

ARTICLE 7.
CONSTRUCTION OF IMPROVEMENTS

Section 7.1 Construction Pursuant to Plans.

Unless modified by operation of Section 7.4, the Developers shall cause the Phase I Development to be constructed substantially in accordance with the Conceptual Site Plans and Plans and Specifications and the terms and conditions of the land use permits and approvals and building permits, including any variances granted. The Developers shall cause all construction work performed in connection with this Agreement to be performed in compliance with: (1) 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, including the prevailing wage provisions; and (2) 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. Each element of the construction work shall proceed only after procurement of each permit, license, or other authorization that may be required for such element by any governmental agency having jurisdiction, and the Developers shall be responsible to the County for the procurement and maintenance thereof, as may be required of the Developers and all entities engaged in work on the Affordable Development Improvements and Library Improvements. The requirements of this Article 7 are applicable to the Affordable Developer only with regards to the Affordable Development and to the Library Developer only with regards to the Library Development.

Section 7.2 Building Permits.

Within the time specified in the Schedule of Performance, and prior to the Commencement of Construction and as required pursuant to Section 5.5 above, the Developers shall obtain building construction permits for the Phase I Development. The applications for building and construction permits shall be consistent with and incorporate the approved Plans and Specifications.

Section 7.3 Construction of Improvements.

(a) The Developers shall construct the Phase I Development as detailed in the Plans and Specifications and complete construction within the time specified in Section 7.6 below.

Section 7.4 Change in Construction of Improvements.

(a) Change to Affordable Development Improvements. If the Affordable Developer desires to make any material change in the Affordable Development Improvements which are not substantially consistent with the Plans and Specifications, the Affordable Developer shall notify the County for its approval. No change which is required for compliance with building codes or other government health and safety regulations shall be deemed material.

(b) Change to Library Development Improvements. If the Library Developer desires to make any material change in the Library Improvements which are not substantially

consistent with the Plans and Specifications, the Developer shall submit the proposed change to the County for its approval pursuant to the terms of the Library Lease.

(c) Upon receipt by the County of proposed material changes in the Affordable Development Improvements or the Library Improvements, the County shall promptly review the requested changes and shall approve or disapprove of proposed changes within ten (10) days following receipt of such request. If the County rejects a proposed change, County shall specify in writing the reasons for the disapproval. If rejected within such time period, the previously approved Plans and Specifications shall continue to remain in full force and effect. The Affordable Developer shall revise the disapproved changes so as to remove the reasons for disapproval and submit those revised changes to the County for approval. The process for revision and review of the changes shall continue until the County has approved the changes.

Section 7.5 Commencement of Construction.

(a) The Developers shall commence construction of the Phase I Development no later than the date set forth in the Schedule of Performance (which is contemplated to be within one hundred eighty (180) days from the award of a tax credit allocation from TCAC pursuant to 5.11 above) but in no event later than December 1, 2015, unless the County and the Affordable Developer agree to extend such date as a result of the meet and confer required under Section 5.11(b).

(b) Subject to the cure rights set forth in Article 10, failure by the Developers to commence construction of the Phase I Development within such time periods shall constitute a Default within the meaning and with the effect set forth in Article 10.

Section 7.6 Completion of Construction.

(a) The Developers shall diligently prosecute to completion the construction of the Phase I Development no later than the date set forth in the Schedule of Performance, but in no event later than December 1, 2017, unless the County and the Affordable Developer agree to extend such date as a result of the meet and confer required under Section 5.11(b).

(b) Subject to the cure rights set forth in Article 10, failure by the Developers to complete construction of the Phase I Development within such time periods shall constitute a Default within the meaning and with the effect set forth in Article 10.

Section 7.7 Course of Construction.

(a) Once the Developers commence construction of the Phase I Development, the Developers shall not halt or cease construction for a period of more than thirty (30) consecutive days.

Section 7.8 Construction Contract.

(a) No later than the date set forth in the Schedule of Performance, the Developers shall submit to the County for its limited approval the proposed construction contract for the Phase I Development. The County's review and approval shall be limited exclusively to a

determination whether: (i) the guaranteed maximum construction cost or stipulated sum set forth in the construction contract is consistent with the Approved Financing Plan; (ii) the construction contract is with VCC, LLC, or an alternative contractor approved by the County, and the County hereby approves VCC, LLC as the contractor; (iii) the construction contract contains provisions consistent with Sections 7.9 through 7.11 of this Agreement; and (d) the construction contracts require a retention of ten percent (10%) of hard costs until completion of the Phase I Development; or as approved by the County at its sole discretion, provided that that Affordable Developer may release retention for the following trades prior to completion of the Phase I Development: grading, foundations, framing, sewer and water.

(b) The County's approval of the construction contract for the Phase I Development shall in no way be deemed to constitute approval of or concurrence with any other term or condition of the construction contract, except as such term or condition may be required by this Agreement.

(c) Upon receipt by the County of the proposed construction contract, the County shall promptly review same and approve it within ten (10) days if the contract satisfies the limited criteria set forth above. If the construction contract is not approved by the County, the County shall set forth in writing and notify the Developers of the County's reasons for withholding such approval. The Developers shall thereafter submit a revised construction contract for County approval, which approval shall be granted or denied in ten (10) days in accordance with the criteria and procedures set forth above. Any construction contract executed by the Developers for the Phase I Development shall be in a form approved by the County.

(d) Developers and their contractors shall use best efforts to coordinate with the local County Workforce Development Department (WDD) and any other entity identified by the County (including but not limited to the Housing Authority), to maximize the practicable opportunity to participate in the construction of the Development. Developers shall, at a minimum, make contact with the County WDD and provide project information for local hire opportunities. Documentation of such notifications must be maintained by Developers and available to the County as requested.

Section 7.9 Prevailing Wage Requirement.

(a) To the extent required by law, in the construction of the Phase I Development, the Developers shall pay and shall cause the contractor and subcontractors pay the higher of: (1) the general prevailing rate of per diem wages, as determined by the U.S. Labor Department pursuant to the federal Davis-Bacon Act (40 U.S.C. 3141-3148) and implementing rules and regulations; and (2) prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"). In the construction of the Phase I Development, the Developers shall comply with the other applicable provisions of Labor Code Sections 1720 et seq., including but not limited to the hiring of apprentices as required by Labor Code Sections 1775 et seq., and the implementing regulations of the DIR. The Developers shall and shall cause the contractor and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to the Federal Davis-Bacon Act or Labor Code Sections 1720 et seq., and that apprentices have been employed as required by Labor Code Section 1777.5 et seq., and shall, from time to time upon the request of the County provide to the County such records and

other documentation reasonably requested by the County. Copies of the currently applicable per diem prevailing wages are available from the County. During the construction of the Phase I Development, the Developers shall post at the Affordable Development Parcel and Library Parcel, the applicable prevailing rates of per diem wages.

(b) The Developers shall indemnify, protect, hold harmless and defend (with counsel reasonably selected by the County) the County, its governing board members, officers, representatives, agents, assigns and employees 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 the Developers, or its contractor or subcontractors) to pay prevailing wages as determined pursuant to the prevailing wage provisions of the federal Davis-Bacon Act and Labor Code Sections 1720 et seq., to hire apprentices in accordance with Labor Code Sections 1777.5 et seq., and the implementing regulations of the DIR or comply with the other applicable provisions of Labor Code Sections 1720 et seq., and the implementing regulations of the DIR in connection with the initial construction of the Phase I Development or any other work undertaken or in connection with Phase I Development and the Affordable Development Parcel and Library Parcel.

(c) The prime contractor and all subcontractors shall be required to pay their laborers and mechanics employed under this Agreement, a wage not less than minimum wage classification, as specified in the applicable Federal law when the contract amount for the prime contract exceeds \$2,000. The prime contractor is responsible for ensuring subcontractor compliance with Davis-Bacon Act and related requirements. Federal Labor Standards Provisions (HUD 4010) apply to the Phase I Development. A weekly certified payroll submitted through LCP Tracker (as defined in Exhibit M) is required during the term of construction of the Phase I Development. Payment of disbursement components may be delayed when certified payrolls are not properly submitted.

(d) For purposes of this Section, the "initial construction" of the Phase I Development shall mean the work required in order to construct such improvements and obtain the Certificate of Completion for the Phase I Development.

Section 7.10 Equal Opportunity.

During the construction of the Phase I Development there shall be no discrimination on the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry, or source of income, in the hiring, firing, promoting or demoting of any person engaged in the construction work.

Section 7.11 Construction Responsibilities.

(a) It shall be the responsibility of the Developers to coordinate and schedule the work to be performed so that commencement and completion of construction for all improvements required to be built pursuant to this Agreement will take place in accordance with this Agreement.

(b) The Developers shall be solely responsible for all aspects of the Developers' conduct in connection with the Phase I 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, but excluding work completed in connection with the installation of the Water Improvements and Sewer Improvements. Any review or inspection undertaken by the County with reference to the Phase I Development is solely for the purpose of determining whether the Developers are properly discharging their obligations to the County, and should not be relied upon by the Developers or by any third parties as a warranty or representation by the County as to the quality of the design or construction of the Phase I Development.

Section 7.12 Certificates of Completion.

(a) Promptly after completion of the Phase I Development, and upon written request from the Developers, in accordance with those provisions of this Agreement relating solely to the obligations of the Developers to construct the Phase I Development; and the County's determination that the Developers' various obligations with regards to completion of the Phase I Development under this Agreement have been met; the County will provide the Developers with one or more Certificates of Completion for the Phase I Development. If upon the written request from a Developer, the County determines, at its sole discretion, that the requesting Developer(s) is/are not entitled to a Certificate of Completion, the County shall within twenty (20) days of such request, provide such Developer(s) with a written response stating with specificity the obligations required to be completed as a condition for issuing the Certificate of Completion. If the County fails to issue or fails to provide a written response stating with specificity the reasons the County will not issue a Certificate of Completion to a requesting Developer within twenty (20) days of a request hereunder, then the requesting Developer shall be deemed to be entitled to receive such Certificate of Completion.

(b) Such Certificates of Completion shall be conclusive evidence that the covenants in this Agreement with respect to the obligations of each Developers to construct their portions of the Phase I Development described in such certificates and the dates for the beginning and completion thereof have been met; provided, however, such certifications shall not be conclusive evidence regarding Developers' satisfaction of the prevailing wage requirements of Section 7.9 above. Such Certificates of Completion shall be in such form as will enable them to be recorded among the official records of the County. Such certifications and determinations shall not constitute evidence of compliance with or satisfaction of any obligation of the Developers to any holder of a deed of trust securing money loaned to finance any portion of Phase I Development or any part thereof and shall not be deemed a notice of completion under the California Civil Code.

Section 7.13 Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Phase I Development, 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 Phase I Development, then the Developers 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 from a surety acceptable to the County 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 the Developers fail to discharge any lien, encumbrance, charge, or claim in the manner required in this Section or obtain a surety bond, 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 the Developer's expense. Alternatively, the County may require the Developers 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 the Developers.

(c) The Developers shall file a valid notice of cessation or notice of completion upon cessation of construction of the Affordable Development Improvements or the Library Improvements 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 any portions of the Phase I Development. The Developers authorize the County, but 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 interest in the Phase I Development and the Property.

Section 7.14 Inspections.

The Developers shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection of the Affordable Development and the Library Development by the County and by public authorities during reasonable business hours upon forty-eight (48) hours' written notice for the purposes of determining compliance with this Agreement, provided, however, that nothing in this Agreement shall entitle the County to enter an occupied unit in the Affordable Development without notice to the tenant thereof, which the Affordable Developer shall deliver on behalf of the County, and permission from such tenant to the extent such permission is required by law. Such inspections do not relieve the Developers, or their contractors, from any applicable requirement to obtain other County inspections in connection with the construction of the Affordable Development Improvements or the Library Improvements.

Section 7.15 Progress Reports and Information.

(a) The Developers shall provide any information reasonably requested by the County in connection with the Phase I Development.

(b) Until such time as the Developers are entitled to issuance of a Certificate of Completion for the Phase I Development, the Developers shall provide the County with quarterly progress reports, or as reasonably requested by the County, regarding the status of the construction of the Phase I Development.

Section 7.16 Records.

(a) The Developers shall maintain complete, accurate, and current records pertaining to the construction work of their respective parts of the Phase I Development for a period of five (5) years after the creation of such records, and shall permit any duly authorized representative of the County to inspect and copy records upon reasonable notice to the Developers. Such records shall include all invoices, receipts, and other documents related to expenditures from the County Loan, the County Grant, and Library Funds, as applicable. Records must be kept accurate and current.

(b) The County shall notify the Developers of any records it deems insufficient. The Developers shall have thirty (30) calendar 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 thirty (30) days is reasonably necessary to correct the deficiency, then the Developers shall begin to correct the deficiency within thirty (30) days and complete the correction of the deficiency as soon as reasonably possible.

Section 7.17 Relocation.

From and after the Close of Escrow, if and to the extent that the conveyance of a leasehold interest in the Affordable Development Parcel or Library Parcel or the construction of the Phase I Development result in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then the Developers shall comply with all applicable local, state, and federal statutes and regulations, (including without limitation California Government Code Section 7260 et seq., and accompanying regulations) with respect to relocation planning, advisory assistance, and payment of monetary benefits. From and after the Close of Escrow, the Developers 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. The Developers shall defend (with counsel reasonably selected by the County) the County, its governing board members, officers, representatives, agents, assigns and employees against any claim for damages, compensation, fines, penalties, relocation payments or other amounts arising out of the failure or alleged failure of any person or entity (including the Developers or the County) to satisfy relocation obligations related to the development of the Phase I Development. This obligation to indemnify shall survive termination of this Agreement.

Section 7.18 Financial Accounting and Post-Completion Audits.

(a) No later than ninety (90) days following completion of construction of the Phase I Development and issuance of the Certificate of Completion, the Developers shall provide to County a financial accounting of all sources and uses of funds. No later than one hundred fifty (150) days following completion of construction of the Affordable Development Improvements, the Affordable Developer shall submit to the County a copy of the cost

certification report prepared by the Affordable Developer's accountant and submitted to TCAC showing the sources and uses of all funds utilized for the Affordable Development Improvements.

(b) The Developers shall make available for examination at reasonable intervals and during normal business hours to County all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Agreement, and shall permit County to audit, examine, and make excerpts or transcripts from such records upon reasonable prior notice to the Developers. The County, in its reasonable discretion, may make audits of any records related to the development or operation of the Phase I Development or the Affordable Developer's compliance with the County Documents.

Section 7.19 Library Facility Lease.

Prior to or concurrently with the Close of Escrow, the Library Developer and the County shall execute the Library Facility Lease, in the form approved by the County and the Library Developer pursuant to Section 5.10 above.

Section 7.20 Accessibility.

The Developers shall construct the Phase I Development in compliance with all applicable federal and state disabled persons accessibility requirements including but not limited to the Federal Fair Housing Act; Section 504 of the Rehabilitation Act of 1973 ("Section 504"); Title II and/or Title III of the Americans with Disabilities Act; and Title 24 of the California Code of Regulations (collectively, the "Accessibility Requirements"). In compliance with Section 504, the Developers shall provide the County with a certification from the architect that, to the best of the architect's knowledge, the Phase I Development complies with all federal and state accessibility requirements applicable to the Phase I Development. The Developers 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 the Developers, its architect, contractor and subcontractors) to construct the Phase I Development in accordance with the Accessibility Requirements. The requirements in this subsection survive repayment of the County Loan and the reconveyance of the Leasehold Deed of Trust.

ARTICLE 8.
ONGOING DEVELOPER OBLIGATIONS

Section 8.1 Applicability.

The conditions and obligations set forth in this Article 8 shall apply throughout the Term, unless a different period of applicability is specified for a particular condition or obligation. The Affordable Developer shall satisfy the obligations in this Article 8 only to the extent they pertain to the Affordable Development and the Library Developer shall satisfy the obligations in this Article 8 only to the extent they pertain to the Library Development.

Section 8.2 Use.

(a) The Affordable Developer hereby agrees that, for the entire Term, the Affordable Development will be used and continuously operated and maintained as multi-family and intergenerational rental housing to be made available to and occupied by extremely-low, low- and very-low income households at affordable housing cost in conformity with this Agreement and the Regulatory Agreement. In the event of a foreclosure of a Senior Lien, then the County and the entity acquiring the Affordable Development at foreclosure shall apportion the affordability targeting in a manner consistent with Health and Safety Code Section 34176.1. In no event will the occupancy requirements imposed after a foreclosure of the Construction Loan require the Affordable Developer's successor in interest to provide more than sixteen (16) extremely low income units (which the County has determined are the number of units necessary to satisfy the requirement that at least thirty percent of the County Grant funds are dedicated to Extremely Low Income Households) or require the Affordable Developer's successor in interest to provide less than eleven (11) low income units (which the County has determined are the number of units necessary to satisfy the requirement that not more than twenty percent of the County Grant funds are dedicated to households earning between 60%-80% of area median income).

(b) The Library Developer hereby agrees that, for the entire Term, the Library Development will be used in a manner consistent with the Library Lease or for any other County purpose approved in writing by the Library Developer, provided however that if use of the Library Development is not consistent with the Library Lease and such use is not caused by the Library Developer, then the Library Developer shall not be in default hereunder or under the Library Lease.

Section 8.3 Records. The Developers shall maintain complete, accurate, and current records pertaining to the operation of their respective Parts of the Phase I Development and that pertain to the surviving obligations under this Agreement for a period of five (5) years after the creation of such records and shall permit any duly authorized representative of the County to inspect and copy such records. Such records shall include all invoices, receipts, and other documents related to expenditures of proceeds from the various replacement and operating reserve accounts. Records must be kept accurate and current.

(b) The County shall notify the Developers, as applicable, of any records it deems insufficient. The Developers, as applicable, shall have thirty (30) calendar 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 thirty (30) days is reasonably necessary to correct the deficiency, then the Developers shall begin to correct the deficiency within thirty (30) days and correct the deficiency as soon as reasonably possible.

Section 8.4 Audits.

The Developers shall make available for examination at reasonable intervals and during normal business hours to the County all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Agreement, and shall permit the County to

audit, examine, and make excerpts or transcripts from such records. The County may make audits of any conditions relating to this Agreement.

Section 8.5 Maintenance Phase I Development.

(a) Affordable Development.

(i) The Affordable Developer agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, of the Affordable Development in good and sanitary condition and repair (and as to landscaping, in a healthy condition) consistent with quality affordable housing developments owned or operated by Related or Related Affiliates and in accordance with a Management Plan approved pursuant to Section 8.8 of this Agreement (including without limitation any landscape and signage plans), as the same may be amended from time to time, and all applicable laws, rules, ordinances, orders, and regulations of all federal, state, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials.

(ii) The Affordable Developer acknowledges the great emphasis the County places on quality maintenance to protect its investment and to provide quality low-income housing for area residents and to ensure that County-assisted affordable housing projects are not allowed to deteriorate due to deficient maintenance. In addition, the Affordable Developer shall keep the Affordable Development free from all graffiti, and any accumulation of shopping carts, debris or waste material. The Affordable Developer shall promptly make all repairs and replacements necessary to keep the Affordable Development in good and sanitary condition and repair (and as to landscaping, in a healthy condition) consistent with quality affordable housing developments owned or operated by Related or Related Affiliates and shall promptly eliminate all graffiti and replace dead and diseased plants and landscaping with comparable materials.

(iii) In the event that the Affordable Developer breaches any of the covenants contained in this Section and such default continues for a period of seven (7) days after written notice from the County with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from the County with respect to landscaping and 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 Affordable Development Parcel and perform or cause to be performed all such acts and work necessary to cure the default, or if a period longer than seven (7) and thirty (30) days is reasonably necessary to correct the deficiency, respectively, then the Developers shall begin to correct the deficiency within seven (7) and thirty (30) days, respectively, and correct the deficiency as soon as reasonably possible. Pursuant to such right of entry, the County shall be permitted (but is not required) to enter upon the Affordable Development Parcel and perform all acts and work necessary to protect, maintain, and preserve the Affordable Development Improvements and landscaped areas on the Affordable Development Parcel, and to attach a lien on the Affordable Development Parcel, or to assess the Affordable Development Parcel, 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,

including a ten percent (10%) administrative charge, which amount shall be promptly paid by the Affordable Developer to the County upon demand.

(iv) The conditions and obligations set forth in this Section shall run with the Affordable Development Parcel and shall apply for the entire Term of this Agreement.

(b) Library Development. The Library Developer shall maintain the Library Parcel as required under the Library Lease and subject to the specific requirements of the Library Facility Lease, provided however that if maintenance of the Library Development is not consistent with the Library Lease and such default is not caused by the Library Developer, then the Library Developer shall not be in default hereunder or under the Library Lease.

Section 8.6 Taxes and Assessments.

(a) Each Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to its respective portion of the Phase I Development or its respective leasehold interest in the Phase I Development; provided, however, that the Developers shall have the right to contest in good faith any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge against it, the Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest. The conditions and obligations set forth in this Section shall run with the Affordable Development Parcel and Library Parcel, respectively, and shall apply for the entire Term of this Agreement.

(b) The Parties acknowledge and agree that the Developers shall not be allowed to apply to the State Board of Equalization for or obtain a welfare exemption from property taxes under California Revenue and Taxation Code Section 214 for the Affordable Development or the Library Development, respectively.

Section 8.7 Hazardous Materials.

(a) No Hazardous Materials Activities.

(i) The Affordable Developer hereby represents and warrants to the County that, at all times from and after the Close of Escrow, the Affordable Developer shall not cause or permit the Affordable Development Parcel, or the Affordable Development Improvements thereon, to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.

(ii) The Library Developer hereby represents and warrants to the County that, at all times from and after the Close of Escrow, the Library Developer shall not cause or permit the Library Parcel or the Library Improvements thereon to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials. Notwithstanding anything to the contrary, the Library

Developer shall not be in default hereunder for any violation of this subsection caused by the County under the Library Facility Lease.

(b) Hazardous Materials Laws.

(i) The Affordable Developer hereby represents and warrants to the County that, at all times from and after the Close of Escrow, the Affordable Developer shall comply and cause the Affordable Development Parcel, and the Affordable Development Improvements thereon, to comply with Hazardous Materials Laws, including without limitation, those relating to soil and groundwater conditions.

(ii) The Library Developer hereby represents and warrants to the County that, at all times from and after the Close of Escrow, the Library Developer shall comply and cause the Library Parcel, and the Library Improvements thereon, to comply with Hazardous Materials Laws, including without limitation, those relating to soil and groundwater conditions. Notwithstanding anything to the contrary, the Library Developer shall not be in default hereunder for any violation of this subsection caused by the County under the Library Facility Lease.

(c) Notices. The Developers hereby respectively represent and warrant to the County that, at all times from and after the Close of Escrow, the Developers shall immediately notify the County in writing of: (i) the discovery of any Hazardous Materials on or under the Affordable Development Parcel or Library Parcel; (ii) any knowledge by the Developers that either the Affordable Development Parcel or Library Parcel does not comply with any Hazardous Materials Laws; (iii) any claims or actions pending or threatened against either of the Developers, the Affordable Development Parcel or Library Parcel, or the Affordable Development Improvements or Library Improvements by any governmental entity or agency or any other person or entity relating to Hazardous Materials Claims; and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Affordable Development Parcel or Library Parcel, that could cause the Affordable Development Parcel or Library Parcel, or any part thereof to be designated as "border zone property" under the provisions of California law, or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Affordable Development under any Hazardous Materials Laws. The County shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorney's fees in connection therewith paid by the responsible Developer, provided that no such payment of attorney's fees will be required if the Hazardous Materials Claims arise as a result of the activities of the County under the Library Facility Lease. The requirements under this subsection shall apply to the Affordable Developer only with regards to the Affordable Development and Affordable Development Parcel, and to the Library Developer only with regards to the Library Development and Library Development Parcel.

(d) Remedial Action. Without the County's prior written consent, which shall not be unreasonably withheld, the Developers shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Affordable Development or the Library Development (other than in emergency situations or as required by governmental

agencies having jurisdiction), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claims.

(e) Indemnity. Without limiting the generality of the indemnification set forth in Section 13.7 below and subject to subsection (f) below, the Affordable Developer (with respect to subsections (i), (iii) and (v) below) and the Library Developer (with respect to subsections (ii), (iv) and (vi) below) hereby respectively agree to indemnify, protect, hold harmless and defend (by counsel reasonably selected by the County) the County, its governing board members, officers, representatives, agents, assigns and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of: (i) the failure of the Affordable Developer or any other person or entity to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Affordable Development on or after the date of conveyance of the Affordable Development Parcel to the Affordable Developer; (ii) the failure of the Library Developer or any other person or entity to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Library Parcel (excluding interior portions of the Library Improvements under control of the County pursuant to the Library Facility Lease on and after the commencement of occupancy thereunder) on or after the date of conveyance of the Library Parcel to the Developer; (iii) the presence in, on or under the Affordable Development of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Affordable Development to the extent it arises on or after the date of conveyance of the Affordable Development Parcel to the Affordable Developer; (iv) the presence in, on or under the Library Improvements (excluding interior portions of the Library Improvements under control of the County pursuant to the Library Facility Lease on and after the commencement of occupancy thereunder) of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Library Parcel to the extent it arises on or after the date of conveyance of the Library Parcel to the Library Developer; (v) any activity carried on or undertaken on or off the Affordable Development, subsequent to the conveyance of the Affordable Development Parcel to the Affordable Developer, and whether by the Affordable Developer or any successor in title or any employees, agents, contractors or subcontractors of the Affordable Developer or any successor in title, or any third persons at any time occupying or present on the Affordable Development, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Affordable Development; or (vi) any activity carried on or undertaken on or off the Library Development (excluding interior portions of the Library Improvements under control of the County pursuant to the Library Facility Lease on and after the commencement of occupancy thereunder), subsequent to the conveyance of the Library Parcel to the Library Developer, and whether by the Library Developer or any successor in title or any employees, agents, contractors or subcontractors of the Library Developer or any successor in title, or any third persons at any time occupying or present on the Library Development, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located

or present on or under the Library Development. The foregoing indemnity shall further apply to any residual contamination on or under the Affordable Development or the Library Development (excluding interior portions of the Library Improvements under control of the County pursuant to the Library Facility Lease on and after the commencement of occupancy thereunder), or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The provisions of this subsection shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect. The requirements under this subsection shall apply to the Affordable Developer only with regards to the Affordable Development and Affordable Development Parcel, and to the Library Developer only with regards to the Library Development and Library Development Parcel. Notwithstanding anything to the contrary the Library Developer's indemnification requirements hereunder shall be subject to the terms and conditions imposed on the County under the Library Facility Lease.

(f) No Limitation. The Developers hereby acknowledges and agree that the Developers' duties, obligations and liabilities under this Agreement, including, without limitation, under subsection (b) above, are in no way limited or otherwise affected by any information the County may have concerning the Phase I Development and/or the presence within the Phase I Development of any Hazardous Materials, whether the County obtained such information from the Developer or from its own investigations, so long as the County made all legally required disclosures prior to the Close of Escrow.

Section 8.8 Management Plan and Procedures.

(a) No later than the date set forth in the Schedule of Performance, the Affordable Developer shall submit to the County an initial proposed Management Plan for the Affordable Development which shall identify the name and qualifications of a proposed management agent, and include a proposed management agreement and written guidelines or procedures for tenant selection, operation and management of the Affordable Development, and implementation of the income certification and reporting requirements of the Regulatory Agreement (collectively, the "Management Plan"). The County shall approve or disapprove the Management Plan in writing within fifteen (15) calendar days following the County's receipt of the complete Management Plan, which approval shall not be unreasonably denied. If the Management Plan is disapproved by the County, the County shall deliver a written notice to the Affordable Developer setting forth, in reasonable detail, the reasons for such disapproval. The Affordable Developer shall have fifteen (15) calendar days following the receipt of such notice to submit a revised Management Plan.

(b) The provisions of this Section relating to time periods for approval, disapproval, and resubmission of the new Management Plan shall continue to apply until the Management Plan has been approved by the County; provided, however, that if the County's reasonable approval of the Management Plan has not been obtained by the date set forth in the Schedule of Performance the County may terminate this Agreement. County approval of these documents shall be a condition precedent to County executing the Housing Lease leasing the Affordable Development Parcel to the Affordable Developer.

(c) The parties agree and acknowledge that the Management Plan may include management of Library Improvements in a manner consistent with the Library Lease and that the Library Developer will pay a pro-rata share of the costs of managing the Library Improvements from funds generated under the Library Facility Lease.

Section 8.9 Management Agent; Periodic Reports.

(a) Management Agent. The Affordable Development shall at all times be managed by an experienced Management Agent reasonably acceptable to the County, with demonstrated ability to operate residential facilities like the Affordable Development in a manner that will provide decent, safe, and sanitary housing. The County hereby approves of the John Stewart Company as the initial Management Agent for the Affordable Development. For any change in the Management Agent, the Affordable Developer shall submit for the County's approval the identity of any proposed Management Agent. The Affordable Developer 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 the Affordable Developer in writing.

(b) Performance Review. The County reserves the right to conduct a periodic review of the management practices and financial status of the Affordable Development within thirty (30) days after each anniversary of the issuance of the Certificate of Completion. The purpose of each periodic review will be to enable the County to determine if the Affordable Development is being operated and managed in accordance with the requirements and standards of this Agreement. The Affordable Developer shall cooperate with the County in such reviews.

(c) Books, Records and Reports. For purposes of such periodic reviews, the Affordable Developer and the Management Agent shall make available to the County for inspection all books and records with respect to the Affordable Development. In addition, the Affordable Developer shall provide the County with: (i) by not later than thirty (30) days prior to commencement of each calendar year, the annual budget for the upcoming calendar year; (ii) within ninety (90) days following the end of each calendar year, a report showing the actual income and expenditures with respect to the Affordable Development for the immediately preceding calendar year and the status of all reserve funds; and (iii) within one hundred twenty (120) days following the end of each calendar year, a copy of the Affordable Developer's federal income tax filings for the calendar year.

(d) Replacement of Management Agent. If, as a result of a periodic review, the County determines in its reasonable judgment that the Affordable Development is not being operated and managed in accordance with any of the requirements and standards of this Agreement and the Regulatory Agreement, the County shall deliver notice to the Affordable Developer of such operational issues which notice shall describe the County's findings with specificity and the County may in same notice, notify the Affordable Developer its intention to cause replacement of the Management Agent, subject to the rights of partners of the Partnership. Within thirty (30) days of receipt by the Affordable Developer of such written notice, County staff and the Developer, and any partners of the Partnership, shall meet in good faith to consider

methods for improving the financial and operating status of the Affordable Development, including, without limitation, replacement of the Management Agent.

If, after such meeting, County staff recommends in writing the replacement of the Management Agent, with the reasonable concurrence of the partners of the Partnership, the Affordable Developer shall promptly dismiss the then Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in subsection (a) above and approved by the County pursuant to subsection (a) above.

(e) Any contract for the operation or management of the Affordable Development entered into by the Affordable Developer shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute a Developer Event of Default under Section 10.3 of this Agreement, and the County may enforce this provision through legal proceedings as specified in Article 10.

(f) The parties agree and acknowledge that the Management Agent may also serve as the management agent of the Library Improvements as allowed under the Library Lease and the Library Facility Lease and subject to the standards set forth therein.

Section 8.10 Approval of Management Plan Modifications.

Pursuant to Section 8.8, the County is to review and approve the initial written Management Plan for the Affordable Development. Each year thereafter, within sixty (60) days of the end of the calendar year, the Affordable Developer shall submit to the County any proposed changes to the Management Plan. The County shall approve or disapprove the proposed changes to the Management Plan in writing within fifteen (15) calendar days following the County's receipt of the request to amend the Management Plan, which approval shall not be unreasonably denied. If the change to the Management Plan is disapproved by the County, the County shall deliver a written notice to the Affordable Developer setting forth, in reasonable detail, the reasons for such disapproval. The Affordable Developer shall have fifteen (15) calendar days following the receipt of such notice to submit a revised Management Plan modification in any way necessary to ensure that such policies comply with the provisions of this Agreement. The County's approval of the amendments to the Management Plan shall not be unreasonably withheld.

Section 8.11 Insurance Requirements.

(a) The Developers shall maintain the following insurance coverage throughout the Term of the Loan written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII". If the Developers use existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Developers agree to amend, supplement, or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

(b) Without in anyway affecting the indemnity herein provided and in addition thereto, the Developers shall secure and maintain the contract term the following types of insurance with limits as shown:

(i) Workers' Compensation/Employers Liability.

(1) Workers' Compensation A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Developers and all risks to such persons under this Agreement.

(2) If the Developers have no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

(3) With respect to Developers that are non-profit corporations organized under California or federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

(ii) Comprehensive General Liability. General Liability Insurance covering all operations performed by or on behalf of the Developers providing coverage for bodily injury and property damage with a combined single limit of not less than One Million Dollars (\$1,000,000), per occurrence. The policy coverage must include:

- (4) Premises operations and mobile equipment.
- (5) Products and completed operations.
- (6) Broad form property damage (including completed operations).
- (7) Explosion, collapse, and underground hazards.
- (8) Personal injury.
- (9) Contractual liability.
- (10) \$2,000,000 general aggregate limit.

(iii) Comprehensive Automobile Liability.

(1) Primary insurance coverage must be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol I (any auto).

(2) The policy must have a combined single limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

(3) If the Developers are transporting one or more non-employee passengers in performance of contract services, the automobile liability policy must have a combined single limit of Two Million Dollars (\$2,000,000) for bodily injury and property damage per occurrence.

(4) If the Developers own no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

(iv) Builders' Risk/Property Insurance. Builders' Risk insurance during the course of construction, and upon completion of construction, property insurance covering the Phase I 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 must be obtained if required by applicable federal regulations.

(v) Commercial Crime. Commercial crime insurance covering all officers and employees, for loss of Loan proceeds caused by dishonesty, in an amount approved by the County, naming the County a Loss Payee, as its interests may appear.

(c) The Developers shall cause any general contractor, agent, or subcontractor working on the Phase I Development under direct contract with the Developers or subcontract to maintain insurance of the types and in at least the minimum amounts described in subsections (i), (ii), and (iii) above, meeting all of the general requirements of subsections (e) and (f) below and naming the County as an additional insured. The Developers agree to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

(d) An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy must apply to bodily injury/property damage, personal Injury/advertising injury and must include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage must also apply to automobile liability.

(e) The required insurance must be provided under an occurrence form, and the Developers shall maintain the coverage described in subsections (a) continuously throughout the Term. 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 must be three times the occurrence limits specified above.

(f) Comprehensive General Liability and Comprehensive Automobile Liability insurance policies must be endorsed to name as an additional insured the County and its officers, agents, employees and members of the County Board of Supervisors. The additional insured endorsements must not limit the scope of coverage for the County to vicarious liability but must allow coverage for the County to the full extent provided by the policy. Such additional insured coverage must be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

(g) All policies and bonds are to contain (i) the agreement of the insurer to give the County at least thirty (30) days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change 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 the Developers 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) Construction contracts for projects over Three Million Dollars (\$3,000,000) and less than Five Million Dollars (\$5,000,000) require limits of not less than Five Million Dollars (\$5,000,000) in General Liability and Auto Liability coverage.

(i) The Developers shall require the carriers of required coverage's to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Developers and the Developers' employees or agents from waiving the right of subrogation prior to a loss or claim. The Developers hereby waive all rights of subrogation against the County.

(j) All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

(k) The Developers shall furnish Certificates of Insurance to the County Department administering the contract evidencing the insurance coverage prior to the Close of Escrow, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and the Developer shall maintain such insurance from the time the Developers commence performance of services hereunder until the completion of such services. Within fifteen (15) days following the close of Escrow, the Developers shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

(l) The Developers agree to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Developers and the County or between the County and any other insured or additional insured under the policy.

(m) Any and all deductibles or self-insured retentions in excess of Ten Thousand Dollars (\$10,000) shall be declared to and approved by the County's risk management agent.

(n) In the event that any policy of insurance required in this Section does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to obtain such insurance it deems necessary and any premiums paid by the County will be promptly reimbursed by the Developers or County disbursements to the Developers will be reduced to pay for the County purchased insurance.

(o) Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. The Developers agree to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

(p) Notwithstanding anything to the contrary, neither Developer shall be required to meet the insurance requirements under this Section with regards to those interior portions of the Library Improvements leased to the County pursuant to the Library Facility Lease.

Section 8.12 Safety Conditions.

(a) The Developers acknowledge that the County places a prime importance on the security of County assisted projects and the safety of the residents and surrounding community. The Developers agree to implement and maintain throughout the Term the following security measures in the Phase I Development:

(i) to the extent feasible employ defensible space design principles and crime prevention measures in the operation of the Phase I Development including but not limited to maintaining adequate lighting in parking areas and pathways; and

(ii) provide added security including dead-bolt locks and solid-core doors for every entry door in the Affordable Development.

(b) The County shall have the right to enter on the Affordable Development Parcel and Library Parcel and/or contact the San Bernardino County Sherriff Department if it

becomes aware of or is notified of any conditions that pose a danger to the peace, health, welfare or safety of the residents and/or the surrounding community, and to perform or cause to be performed such acts as are necessary to correct the condition.

(c) Nothing in this Section shall be read to require the Developers to address the safety conditions with regards to the premises leased to the County under the Library Facility Lease.

Section 8.13 Allowable Preferences.

Subject to all applicable laws, including but not limited to fair housing laws, and the rules and regulations imposed by TCAC on the low income housing tax credit program, the Affordable Developer shall give a preference in the rental of any of the units in the Affordable Development to eligible households displaced by activity of the County and the former Redevelopment Agency of the County of San Bernardino. The preferences stated in this Section are required by law and shall apply to the rentals of units in the Affordable Development throughout the Term of this Agreement.

Section 8.14 Marketing Plan.

(a) No later than six (6) months prior to the projected date of the Completion of Construction of the Affordable Development Improvements, Affordable Developer shall submit to the County for approval its plan for marketing the Affordable Development to income-eligible households as required pursuant to the Regulatory Agreement, including information on affirmative marketing efforts and compliance with fair housing laws (the "Marketing Plan").

(b) Upon receipt of the Marketing Plan, the County will promptly review the Marketing Plan and will approve or disapprove it within fifteen (15) days after submission. If the Marketing Plan is not approved, Affordable Developer shall submit a revised Marketing Plan within fifteen (15) days. Affordable Developer shall follow this procedure for resubmission of a revised Marketing Plan until the Marketing Plan is approved by the County.

Section 8.15 Notice of Litigation.

(a) The Developers shall promptly notify the County in writing of any litigation related to the Phase I Development (except for litigation filed against the County in connection with its possession of specified portions of the Library Improvements under the Library Facility Lease), and any litigation related to the Developers for which the amount claimed or at issue is in excess of Fifty Thousand Dollars (\$50,000), and of any claims or disputes related to the Phase I Development that involve a material risk of litigation.

(b) The conditions and obligations set forth in this Section shall apply for the entire Term of this Agreement.

Section 8.16 Crime-Free Multi-Housing Unit Program Participation.

For the entire Term of this Agreement, the Affordable Developer shall cause the Management Agent to participate in the San Bernardino County Sheriff-Coroner Department's

Crime Free Multi-Housing Unit Program, wherein specialized training and other resources are provided to multi-family property owners and managers to reduce the potential for onsite criminal activity. Completion of the Department's four (4) training phases and a Final Certification (Phase V) shall be achieved and maintained by the Management Agent.

Section 8.17 Social Services.

(a) For the entire Term of this Agreement, the Affordable Developer shall contract with the County for the County to provide social services to the children residing in the Affordable Development. To satisfy the requirements of this Section, the County shall be required to provide social services programs that meet the rules and regulations imposed by TCAC and on the low income housing tax credit program.

(b) Annual Operating Expenses, as defined in Section 1.1 above, shall include an annual sum of Fifteen Thousand Dollars (\$15,000) for Resident Services or such other sum equal to the cost of all social services to be provided and included in the approved Financing Plan.

Section 8.18 Mandatory Language in All Subsequent Deeds, Leases and Contracts.

All deeds, leases or contracts made or entered into by the Developers, their successors or assigns, as to any portion of the Phase I Development shall contain therein the following language:

(a) In Deeds:

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

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(b) In Leases:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(c) In Contracts:

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

ARTICLE 9.
ASSIGNMENT AND TRANSFERS

Section 9.1 Definitions.

As used in this Article, the term "Transfer" means:

- (a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement or of the Affordable Development, the Library Development or any part thereof or any interest therein or any contract or agreement to do any of the same; or
- (b) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to any ownership interest in Developers or any contract or agreement to do any of the same; or
- (c) Any merger, consolidation, sale or lease of all or substantially all of the assets of the Developers; or
- (d) The leasing of part or all of the Affordable Development Parcel or the Affordable Development Improvements thereon; provided, however, that leasing of the Units included within the Affordable Development Improvements to tenant occupants in accordance with the Regulatory Agreement shall not be deemed a "Transfer" for purposes of this Article.
- (e) The leasing of part or all of the Library Parcel or the Library Improvements thereon; provided, however, that leasing of a portion of the Library Improvements to the County under the Library Facility Lease to the County shall not be deemed a "Transfer" for purposes of this Article.

Section 9.2 Purpose of Restrictions on Transfer.

This Agreement is entered into for the purpose of development and operation of the Phase I Development and its subsequent use in accordance with the terms hereof. The Developers recognize that the qualifications and identity of the Developers are of particular concern to the County, in view of:

- (a) The importance of the development of the properties to the general welfare of the community; and
- (b) The land acquisition assistance and other public aids that have been made available by law and by the government for the purpose of making such development possible; and
- (c) The reliance by the County upon the unique qualifications and ability of the Developers to serve as the catalyst for development of the Phase I Development and upon the continuing interest which the Developers will have in the Phase I Development to assure the

quality of the use, operation and maintenance of the Phase I Development, which are deemed critical by the County; and

(d) The fact that a change in ownership or control of the owner of the Affordable Development Parcel, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of the Affordable Developer or the degree thereof is for practical purposes a transfer or disposition of the Affordable Development Parcel;

(e) The fact that a change in ownership or control of the owner of the Library Parcel, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of the Library Developer or the degree thereof is for practical purposes a transfer or disposition of the Library Parcel;

(f) The fact that the Affordable Development Parcel and the Library Parcel are not to be acquired or used for speculation, but only for development and operation by the Developers in accordance with the Agreement;

(g) The importance to the County and the community of the standards of use, operation and maintenance of the Affordable Development Parcel and the Library Parcel; and

(h) The Developers further recognize that it is because of such qualifications and identity that the County is entering into this Agreement with the Developers and that Transfers are permitted only as provided in this Agreement.

Section 9.3 Prohibited Transfers.

(a) Affordable Development Parcel

(i) Except as expressly permitted in this Agreement, the Affordable Developer represents and agrees that the Affordable Developer shall not make or create, or suffer to be made or created, any Transfer, either voluntarily or by operation of law without the prior written approval of the County.

(ii) The limitations on Transfers set forth in this Section shall apply throughout the Term.

(iii) Any Transfer made in contravention of this Section shall be void and shall be deemed to be a default under this Agreement whether or not the Affordable Developer knew of or participated in such Transfer.

(b) Library Parcel

(i) Except as expressly permitted in this Agreement, the Library Developer represents and agrees that the Library Developer shall not make or create, or suffer to be made or created, any Transfer, either voluntarily or by operation of law without the prior written approval of the County.

(ii) The limitations on Transfers set forth in this Section shall apply throughout the Term.

(iii) Any Transfer made in contravention of this Section shall be void and shall be deemed to be a default under this Agreement whether or not the Library Developer knew of or participated in such Transfer.

Section 9.4 Permitted Transfers.

(a) Transfers of Affordable Development Parcel. Notwithstanding the provisions of Section 9.3, the following Transfers related to the Affordable Development Parcel shall be permitted and are hereby approved by the County, subject to the requirements of Section 9.5.

(i) Any Transfer creating a Security Financing Interest permitted pursuant to the Approved Financing Plan.

(ii) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest or as otherwise permitted under Article 11 for the Affordable Development Parcel.

(iii) The leasing of residential units within the Affordable Development in accordance with the Regulatory Agreement.

(iv) The granting of easements or permits to facilitate the development of the Phase I Development.

(b) Transfers to Tax Credit Investors. The County hereby approves a Transfer of a limited partnership interest in the Partnership to the Investor, or to an affiliate of the Investor (provided such affiliate provides documentation reasonably acceptable to the County that the affiliate has sufficient financial capability to provide the capital contributions set forth in the Financing Plan) and future transfers of such interest provided that: (i) the Partnership's partnership agreement provides for capital contributions of the limited partners consistent with Financing Plan and is first approved by the County in its reasonable discretion; (ii) all documents associated with the tax credit syndication of the Affordable Development are submitted to the County for approval prior to execution, which approval shall not be unreasonably withheld; and (iii) in subsequent transfers the Investor (or an affiliate of the Investor reasonably acceptable to the County) remains liable for all unpaid capital contributions. The Parties agree and acknowledge that Related or a County approved Related Affiliate shall remain the managing general partner of the Partnership throughout the Lease Term. In the event the managing general partner of the Affordable Developer is removed by the limited partner of the Affordable Developer for cause following default under the Affordable Developer's partnership agreement, the County hereby approves the transfer of the general partner interest to an entity selected by the limited partner and approved in advance and in writing by the County, which approval shall not be unreasonably withheld. The Transfer approved under this subsection (f) cannot be applied to the Library Parcel.

(c) Admission of Additional Partners. The County also hereby approves a future Transfer of a general partner interest in the Partnership: (1) to admit Housing Partners I, Incorporated or as may be required to secure Project Based Housing Vouchers; (2) to the Grantee (which is anticipated to be Housing Partners I, Incorporated) to effectuate the provision of Article 4 of this Agreement in accordance with the executed First Amendment to Disposition Agreement; and (3) to admit LaBarge Industries, Inc. into the Partnership. The County also hereby approves a future Transfer of a limited partner interest in the Partnership to P.A.T.H., a California nonprofit public benefit corporation.

(d) Transfer to Limited Partner Interest. The County also hereby approves future Transfers of the limited partner interest provided that: (i) such Transfers do not affect the timing and amount of the limited partner capital contributions provided for in the Affordable Developer's partnership agreement approved by the County; and (ii) in such Transfers, a wholly owned affiliate of the initial limited partner retains a membership or partnership interest and serves as a managing member or managing general partner of the successor limited partner. The Transfer approved under this subsection (f) cannot be applied to the Library Parcel. [

(e) Transfer to Affiliated Nonprofit. The County also hereby approves Transfer of the Affordable Development Parcel from the Affordable Developer to a Related Affiliate, and an assumption of the County Loan by such transferee, provided that (i) the transferee expressly assumes the obligations of the Affordable Developer under this Agreement and the County Loan Documents, utilizing a form of assignment and assumption agreement to be provided by the County, and (ii) all funds maintained in the Operating Reserve, the Supplemental Operating Expense Reserve, and the Replacement Reserve are transferred to the transferee with the Affordable Development and continue to be reserved solely to pay operating costs or replacement costs of the Affordable Development.

(f) Transfers of Library Parcel. Notwithstanding the provisions of Section 9.3, the following Transfers related to the Library Parcel shall be permitted and are hereby approved by the County, subject to the requirements of Section 9.5

(i) The leasing of a portion of Library Improvements to the County in the accordance with the Library Facility Lease.

(ii) The granting of easements or permits to facilitate the development of the Phase I Development;

(iii) all funds maintained in operating or replacement reserves under the Library Facility Lease are transferred to the transferee with the Library Development and continue to be reserved solely to pay operating costs or replacement costs of the Library Development.

Section 9.5 Effectuation of Certain Permitted Transfers.

(a) No Transfer of this Agreement permitted pursuant to Section 9.4 shall be effective unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an instrument in writing prepared by the County and in form recordable among the land records, shall expressly assume the obligations of the applicable Developer under this Agreement

and agree to be subject to the conditions and restrictions to which such Developer is subject arising during this Agreement, to the fullest extent that such obligations are applicable to the particular portion of or interest in the Affordable Development or the Library Development conveyed in such Transfer.

(b) Anything to the contrary notwithstanding, the holder of a Security Financing Interest whose interest shall have been acquired by, through or under a Security Financing Interest or shall have been derived immediately from any holder thereof shall not be required to give to County such written assumption until such holder or other person is in possession of the Affordable Development Parcel or entitled to possession thereof pursuant to enforcement of the Security Financing Interest.

(c) In the absence of specific written agreement by the County, no such Transfer, assignment or approval by the County shall be deemed to relieve either of the Developers or any other party from any obligations under this Agreement.

Section 9.6 Other Transfers with County Consent.

The County may, in its sole discretion, approve in writing other Transfers as requested by either of the Developers. In connection with such request, there shall be submitted to the County for review all instruments and other legal documents proposed to effect any such Transfer. If a requested Transfer is approved by the County such approval shall be indicated to the applicable Developer requesting the Transfer in writing. Such approval shall be granted or denied by the County within sixty (60) days of receipt by the County of such Developer's request for approval of a Transfer. Upon such approval, if granted, the transferee, by an instrument in writing prepared by the County and in form recordable among the land records, shall expressly assume the obligations of such Developer under this Agreement and agree to be subject to the conditions and restrictions to which such Developer is subject arising during this Agreement, to the fullest extent that such obligations are applicable to the particular portion of or interest in the Phase I Development conveyed in such Transfer. If and to the extent the County grants consent to a Transfer under this Section, such consent shall be deemed to have been given to the assignment of the applicable lease without the need for any additional consent.

ARTICLE 10. DEFAULT AND REMEDIES

Section 10.1 General Applicability.

The provisions of this Article shall govern the parties' remedies for breach or failure of this Agreement.

Section 10.2 Fault of County.

(a) Except as to events constituting a basis for termination under Section 10.3, the following events each constitute a "County Event of Default" and a basis for the Developers to take action against the County:

(i) The County, without good cause, fails to lease the Affordable Development Parcel to the Affordable Developer or the Library Parcel to the Library Developer within the time and in the manner set forth in Article 6 and the Developers are otherwise entitled by this Agreement to such conveyance; or

(ii) The County breaches any other material provision of this Agreement.

(b) Upon the happening of any of the above-described events, the Developers shall first notify the County in writing of its purported breach or failure, giving the County forty-five (45) days from receipt of such notice to cure or, if cure cannot be accomplished within forty-five (45) days, to commence to cure such breach, failure, or act. In the event the County does not then so cure within said forty-five (45) days, or if the breach or failure is of such a nature that it cannot be cured within forty-five (45) days, the County fails to commence to cure within such forty-five (45) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the Developers shall be afforded all the following remedies: (1) terminating in writing this Agreement (provided, however, that the indemnification obligations survive such termination); and (2) prosecuting an action solely for specific performance. In no event shall the Developers be entitled to consequential damages for an uncured County Event of Default. Notwithstanding anything to the contrary, Section 10.8 shall not apply to a County Event of Default.

Section 10.3 Fault of Developers.

Except as to events constituting a basis for termination under Section 10.2 and subject to the cure rights under Section 10.4, the following events each constitute a "Developer Event of Default" as to the Developer whose act or inaction results in the Developer Event of Default and a basis for the County to take action only against such Developer and not against the other Developer:

(a) Failure of a Developer to pay all amounts due under this Agreement within the times and in the manner specified herein, following written notice by the County of such failure and ten (10) days opportunity to cure;

(b) Failure of a Developer to exercise good faith and diligent efforts to satisfy, within the time set forth in the Schedule of Performance and in the manner set forth in Article 6, one or more of the conditions precedent to the County's obligation to convey the leasehold interest in the Affordable Development Parcel to the Affordable Developer pursuant to the Housing Lease or the Library Parcel to the Library Developer pursuant to the Library Lease;

(c) Failure or refusal by the Affordable Developer to execute the Housing Lease or the Library Developer to execute Library Lease within the time periods and under the terms set forth in Article 6;

(d) A Developer constructs or attempts to construct the Affordable Development Improvements or the Library Improvements, as applicable, in violation of Article 7;

(e) A Developer fails to commence or complete construction of the Affordable Development Improvements or Library Improvements, as applicable, within the times set forth in Article 7, or abandons or suspends construction of the Affordable Development Improvements or Library Improvements, as applicable, prior to completion of all construction;

(f) A Developer fails to duly perform, comply with, or observe any of the conditions, terms, or covenants of this Agreement;

(g) With respect to the Affordable Developer only, there shall occur any default by the Affordable Developer declared by any lender under any loan document related to any loans, secured by a deed of trust on the Affordable Development and all cure periods provided by such loan document have expired without a remedy of the default and the default has not been waived by the lender;

(h) A Transfer by a Developer occurs, either voluntarily or involuntarily, in violation of Article 9;

(i) Any representation or warranty by a Developer contained in this Agreement or in any application, financial statement, certificate or report submitted to the County in connection with this Agreement proves to have been incorrect in any material and adverse respect when made;

(j) With respect to the Affordable Developer only, a default occurs under the Housing Lease, the Leasehold Deed of Trust, the Promissory Note, or the Regulatory Agreement, as applicable;

(k) With respect to the Library Developer only, a default occurs under the Library Lease or the Library Facility Lease (excluding defaults caused by the County under such leases);

(l) A court having jurisdiction shall have made or entered any decree or order: (i) adjudging the Developers, or any of the Related Affiliates which are general partners or members of a Developer, to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking its reorganization of the Developers, or any of the Related Affiliates that are general partners or members of a Developer, or seeking any arrangement for the Developer, or any of the Related Affiliates that are general partners or members in a Developer, 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 the Developers, or any of the Related Affiliates that are general partners or members in a Developer, in bankruptcy or insolvency or for any of their properties; or (iv) directing the winding up or liquidation of a

Developer, 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) days; or the Developers 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;

(m) A Developer, or any of the Related Affiliates that are general partners or members in a Developer, shall have assigned their 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 thirty (30) days after such event or prior to sooner sale pursuant to such sequestration, attachment, or execution;

(n) A Developer: (1) has the operation of its business voluntarily or involuntarily suspended by the State of California, (2) voluntarily stops or terminates the operation of its business; or (3) if the Developer is a partnership, the partnership shall have the operation of the partnership voluntarily or involuntarily dissolved, suspended or terminated by the State of California; or

(o) There shall be filed any claim of lien (other than liens approved in writing by the County) against the Affordable Development Parcel or the Library Parcel, respectively, or any part thereof, or any interest or right made appurtenant thereto, and the continued maintenance of said claim of lien or notice to withhold for a period of thirty (30) days without discharge or satisfaction thereof or provision therefore (including, without limitation, the posting of bonds) satisfactory to the County.

Section 10.4 Remedies Against Developers.

(a) Upon the happening of any of the above-described events in Section 10.3 (other than 10.3(a) which shall be subject to the cure period stated therein), the County shall first notify the applicable Developer causing the Developer Event of Default in writing of its purported breach, failure or act above described, giving such Developer in writing forty-five (45) days from receipt of such notice to cure, or, if cure cannot be accomplished within said forty-five (45) days, to commence to cure such breach, failure, or act. In the event such Developer causing the Developer Event of Default fails to cure within said forty-five (45) days, or if such breach is of a nature that it cannot be cured within forty-five (45) days, such Developer causing the Developer Event of Default fails to commence to cure within said forty-five (45) days and diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the County shall be afforded all of its rights at law or in equity, including without limitation any or all of the following remedies:

(b) Developer Event of Default Prior to the Close of Escrow:

(i) Termination of this Agreement only as to the Developer causing the Developer Event of Default by written notice to the Developers; provided, however, that the County's remedies pursuant to this Agreement, the indemnification provisions in this Agreement shall survive such termination.

(ii) Take possession of the Water Improvements and Sewer Improvements.

(iii) Any of the remedies specified in Section 10.6.

(c) After the Close of Escrow:

(i) Termination of this Agreement only as to the Developer causing the Developer Event of Default and the Housing Lease and/or the Library Lease, as applicable, by written notice to the applicable Developer; provided, however, that the County's remedies pursuant to this Article 10 or any other County Document and the indemnification provisions of in this Agreement shall survive such termination;

(ii) Prosecuting an action for damages or specific performance;

(iii) Any of the remedies specified in Sections 10.5 and 10.6; and

(iv) Acceleration of the County Loan.

(d) Notwithstanding anything to the contrary, the County shall have no right to impose any of the remedies in this Section against the Affordable Developer or against the Affordable Development for Events of Default by the Library Developer, nor shall the County have the right to impose any of the remedies in this Section against the Library Developer or against the Library Development for Developer Events of Default by the Affordable Developer.

Section 10.5 Right to Cure at Developer's Expense.

The County shall have the right to cure any monetary default by the Developers under a loan or grant in connection with the Phase I Development. However, if a Developer is in good faith contesting a claim of default under a loan or grant and the County's interest under this Agreement is not imminently threatened by such default, in the County's sole judgment, the County shall not have the right to cure such default. Each Developer agrees to reimburse the County for any funds advanced by the County to cure a monetary default by such Developer upon demand therefore, together with interest thereon at the lesser of the rate of ten percent (10%) per annum or the maximum rate permitted by law from the date of expenditure until the date of reimbursement.

Section 10.6 Collateral Documents.

If this Agreement is terminated pursuant to Section 10.4, subject to the rights of senior lenders, then the Developers shall promptly deliver to the County, within ten (10) days of such termination, copies of all plans and specifications for the Phase I Development, all permits and approvals obtained in connection with the Phase I Development, and all applications for permits and approvals not yet obtained but needed in connection with the Phase I Development. As applicable, the delivery of the Collateral Documents shall be accompanied by any updates to the Assignment Agreement, in form reasonably satisfactory to the County, of the Developer's right, title and interest in the Collateral Documents; provided however, that any use of the Collateral Documents by the County or any other person shall be without liability of any kind to the

Developers and without any representation or warranty of the Developers or its employees as to the quality, validity, or usability of the Collateral Documents. Notwithstanding anything to the contrary above, the Affordable Developer shall deliver an assignment of contracts for the Water Improvements (and if applicable the Sewer Improvements) required under Section 3.6(b)(iv), which shall not be subordinated to any senior liens.

Section 10.7 Rights of Mortgagees.

Any rights of the County under this Article shall not defeat, limit or render invalid any Security Financing Interest permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of Security Financing Interests related to the Affordable Development.

Section 10.8 Remedies Cumulative.

No right, power, or remedy given to the County by the terms of this Agreement 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 by the terms of any such instrument, or by any statute or otherwise. Neither the failure nor any delay to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 10.9 Waiver of Terms and Conditions.

The County Administrator may at the County Administrator's discretion, as such discretion has been vested in the County Administrator by resolution of the Board of Supervisors, waive in writing any of the terms and conditions of this Agreement, the County Documents, without the Developers completing an amendment to this Agreement. No waiver of any default or breach by the Developers hereunder shall be implied from any omission by the County to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by the County to or of any act by the Developers requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under the County Documents, nor shall it invalidate any act done pursuant to notice of default, or prejudice the County in the exercise of any right, power, or remedy hereunder or under this Agreement, unless in the exercise of any such right, power, or remedy all obligations of the Developers to County are paid and discharged in full.

Section 10.10 Limited Liability of Tax Credit Investor. No Tax Credit Investor, nor any constituent partner, member, owner, officer, agent, employee, attorney or consultant of the Tax Credit Investor, including any person executing this instrument required under this Agreement, shall be liable personally under this Agreement (provided that the Tax Credit Investor is not

acting as a general partner of the Affordable Developer). No recourse shall be had against any Tax Credit Investor, or any constituent partner, member, owner, officer, employee or agent, as such, of the Tax Credit Investor or any successor whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise (provided that the Tax Credit Investor is not acting as the general partner of the Affordable Developer).

ARTICLE 11. SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 11.1 No Encumbrances Except for Development Purposes.

Notwithstanding any other provision of this Agreement, mortgages and deeds of trust, or any other reasonable method of security are permitted to be placed upon the Affordable Developer's leasehold interest in the Affordable Development Parcel but only for the purpose of securing loans approved by the County pursuant to the approved Financing Plan for the Affordable Development Parcel or otherwise approved in writing by the County for the Affordable Development Parcel. Mortgages, deeds of trust, or other reasonable security instruments securing loans approved by the County pursuant to the approved Financing Plan are each referred to as a "Security Financing Interest." The words "mortgage" and "deed of trust" as used in this Agreement include all other appropriate modes of financing real estate construction, and land development. In no event shall a Security Financing Interest encumber the County's interest in the Affordable Development Parcel or the County's fee interest or the Developer's leasehold interest in the Library Parcel.

Section 11.2 Holder Not Obligated to Construct.

The holder of any Security Financing Interest authorized by this Agreement is not obligated to construct or complete any improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in the Housing Lease be construed so to obligate such holder. However, nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Affordable Development Parcel or any portion thereof to any uses, or to construct any improvements thereon, other than those uses of improvements provided for or authorized by this Agreement.

Section 11.3 Notice of Default and Right to Cure.

Whenever the County pursuant to its rights set forth in Article 7 of this Agreement delivers any notice or demand to the Affordable Developer with respect to the commencement, completion, or cessation of the construction of the Affordable Development Improvements, the County shall at the same time deliver to each holder of record of any Security Financing Interest creating a lien upon the Affordable Developer's leasehold interest in the Affordable Development Parcel or any portion thereof, and the Tax Credit Investor, a copy of such notice or demand. Each such holder shall (insofar as the rights of the County are concerned) have the right, but not the obligation, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the Affordable Development Parcel which is subject to the lien of the Security Financing Interest held by such holder and to add the cost thereof to the security interest debt and the lien on its security interest.

Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Affordable Development Improvements (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Affordable Developer's obligations to the County relating to such improvements under this Agreement. The holder in that event must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates. Any such holder properly completing such improvements pursuant to this paragraph shall assume all rights and obligations of Affordable Developer under this Agreement and shall be entitled, upon completion and written request made to the County, to a Certificate of Completion from the County, in a form acceptable to the County.

Section 11.4 Failure of Holder to Complete Affordable Development Improvements.

In any case where six (6) months after default by the Affordable Developer in completion of construction of the Affordable Development Improvements under this Agreement, the holder of record of any Security Financing Interest, having first exercised its option to construct, has not proceeded diligently with construction, the County shall be afforded those rights against such holder it would otherwise have against Affordable Developer under this Agreement.

Section 11.5 Right of County to Cure.

In the event of a default or breach by the Affordable Developer of a Security Financing Interest prior to the completion of the Affordable Development Improvements, and the holder has not exercised its option to complete the Affordable Development called to be constructed on the Affordable Development Parcel, the County may cure the default, prior to the completion of any foreclosure. In such event the County shall be entitled to reimbursement from the Affordable Developer of all costs and expenses incurred by the County in curing the default. The County shall also be entitled to a lien upon the Affordable Development Parcel or any portion thereof to the extent of such costs and disbursements. The County agrees that such lien shall be subordinate to any Security Financing Interest, and the County shall execute from time to time any and all documentation reasonably requested by Affordable Developer to effect such subordination.

Section 11.6 Right of County to Satisfy Other Liens.

After the conveyance of the leasehold estate to the Affordable Development Parcel or any portion thereof and after the Affordable Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Affordable Development Parcel or any portion thereof, the County shall have the right to satisfy any such lien or encumbrances; provided, however, that nothing in this Agreement shall require the Affordable Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Affordable Developer in good faith shall contest the validity or amount therein and so long as such delay in payment shall not subject the Affordable Development Parcel or any portion thereof to forfeiture or sale.

Section 11.7 Holder to be Notified.

The provisions of this Article shall be incorporated into the relevant deed of trust or mortgage evidencing each Security Financing Interest to the extent deemed necessary by, and in form and substance reasonably satisfactorily to the County, or shall be acknowledged by the holder of a Security Financing Interest prior to its coming into any security right or interest in the Affordable Development Parcel.

Section 11.8 Estoppel Certificates.

Either of the Developers or the County, may at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party: (i) this Agreement is in full force and effect and binding obligation of the parties, (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, such notice shall describe the nature and amount of any such default. A party receiving a request hereunder shall execute and return such certificate within twenty (20) days following receipt thereof. The County Executive Officer is authorized to execute any such estoppel certificate requested by a Developer hereunder.

ARTICLE 12.
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 12.1 Developer Representations and Warranties. Each Developer hereby represents and warrants, only as to itself and its obligations under this Agreement, to the County as follows:

(a) Good Standing. Each Developer is a duly organized, validly existing entity and is in good standing under the laws of the State of California and has the power and authority to lease its property and carry on its business as now being conducted.

(b) Corporate Authority. Each Developer has full power and authority to execute and deliver this Agreement, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement 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 each Developer, and all actions required under such Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement 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 each Developer enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement 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 County whatsoever binding on a Developer, or any provision of the organizational documents of such Developer, or will conflict with or constitute a breach of or a default under any agreement to which a Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of a Developer, other than liens established pursuant hereto.

(f) Compliance With Laws; Consents and Approvals. The construction of the Phase I 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 County.

(g) Pending Proceedings. No Developer is in material default under any law or regulation or under any order of any court, board, commission or County whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of a Developer, threatened against or affecting such Developer, at law or in equity, before or by any court, board, commission or County whatsoever which might, if determined adversely to the Developer, materially affect such Developer's ability to develop their respective portions of the Phase I Development.

(h) Title to Affordable Development Parcel. Upon the recordation of the Memorandum of Housing Lease, the Affordable Developer will have good and marketable leasehold title to the Affordable Development Parcel and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than those liens approved by the County, liens for current real property taxes and assessments not yet due and payable, and liens in favor of the County or approved in writing by the County.

(i) Title to Library Parcel. Upon the recordation of the Memorandum of Library Lease, the Library Developer will have good and marketable leasehold title to the Library Parcel and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than those liens approved by the County, liens for current real property taxes and assessments not yet due and payable, and liens in favor of the County or approved in writing by the County.

(j) Financial Statements. The financial statements of each Developer and other financial data and information furnished by each Developer to the County fairly 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 a Developer from that shown by such financial statements and other data and information.

(k) Sufficient Funds for Affordable Development. As to the Affordable Developer only, the Affordable Developer holds sufficient funds or binding commitments for sufficient funds to obtain the leasehold interest in the Affordable Development Parcel, and complete the construction of the Affordable Development Improvements in accordance with this Agreement.

(l) Taxes. From and after the Affordable Developer's acquisition of the Affordable Development Parcel and the Library Developer's acquisition of the Library Parcel, each Developer will timely file all federal and other material tax returns and reports required to be filed, and will timely pay all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon it or its income or its interest in 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 either Developer that could, if made, be reasonably expected to have a material adverse effect upon the, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of such Developer, taken as a whole, which would be expected to result in a material impairment of the ability of such Developer 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 such Developer of this Agreement or any other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement.

Section 12.2 Warranties. The County expresses no warranty or representation to the Developers as to fitness or condition of the Phase I Property for the building or construction to be conducted thereon.

Section 12.3 Effect of Representations and Warranties. All of the representations and warranties made by the Developers in this Agreement shall be true and correct in all material respects and throughout the Term of this Agreement as they pertain to each Developer's respective components of the Phase I Development and applicable entities. Each Developer shall indemnify and defend the County and its board members, employees, officers, directors, representatives, and agents against and hold the County, and its board members, employees, officers, directors, representatives, agents, assigns and employees harmless from all claims, demands, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees and disbursements, that may be suffered or incurred by the County if any representation or warranty made by such Developer in this Agreement was untrue or incorrect in any material respect when made or that may be caused by any breach of such Developers of any such representation or warranty. The foregoing indemnity shall survive the termination or expiration of this Agreement.

Section 12.4 County Representations and Warranties. The County hereby represents and warrants to the Developers as follows:

(a) Housing Successor. Pursuant to Health and Safety Code Section 34176, the County Board of Supervisors declared that the County elected to retain the housing assets and

functions previously performed by the former Redevelopment Agency of the County of San Bernardino effective February 1, 2012.

(b) Housing Asset Funds. To the best of the County's knowledge the Housing Asset Funds constitute "housing assets" as such term is defined in Health and Safety Code Section 34176(e) and to the best of the County's knowledge the County has the ability to use the Housing Asset Funds in a manner consistent with the affordable housing requirements of the Community Redevelopment Law as evidenced by communications from the California Department of Finance provided to the Developers.

ARTICLE 13.
GENERAL PROVISIONS

Section 13.1 Notices, Demands and Communications.

Formal notices, demands, and communications between the County and the Developers 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 personally, to the principal office of the County and the Developers as follows:

County: Department of Community Development and Housing
County of San Bernardino
385 North Arrowhead Ave Third Floor
San Bernardino, CA 92415-0043
Attn: Community Development and Housing Director

with a copy to:
Goldfarb & Lipman, LLP
1300 Clay Street, 11th Floor
Oakland, CA 94612
Attn: Rafael Yaquian

Affordable Developer:
Bloomington I Housing Partners
c/o The Related Companies of California, LLC
18201 Von Karman Avenue, Suite 900
Irvine, CA 92612
Attn: Frank Cardone

with a copy to:
Bocarsly Emden Cowan Esmail & Arndt, LLP
633 West Fifth Street, 70th Floor
Los Angeles, CA 90071
Attn: Lance Bocarsly

Grantee:

At the address provided in the First Amendment to Disposition Agreement

Library Developer:

Bloomington Library Developer, LLC
c/o The Related Companies of California, LLC
18201 Von Karman Avenue, Suite 900
Irvine, CA 92612
Attn: Frank Cardone

CalHFA:

California Housing Finance Agency
c/o MHSAs Program Officer
500 Capitol Mall, Suite 1400
Sacramento, CA 95814
CalHFA No.: [To be added at a later date]

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.

Section 13.2 Non-Liability of County Officials, Employees and Agents.

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

Section 13.3 Forced Delay.

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of god; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement); weather or soils conditions which, in the opinion of the Developers' contractor, will necessitate delays; inability to secure necessary labor, materials or tools; acts of the other party; acts or failure to act of any public or governmental County or entity (other than the acts or failure to act of the County); or any other causes (other than the Affordable Developer's inability to obtain financing for the Affordable Development Improvements) beyond the control or without the fault of the party claiming an extension of time to perform. 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) business days from the date the party seeking the extension first discovered the cause and such extension of time is not rejected in writing by the other party within ten (10) business days of receipt of the notice. Times of performance under this Agreement may also be extended in writing by the County and the Developers. In no event

shall the cumulative delays exceed one hundred eighty (180) days, unless otherwise agreed to by the Parties in writing.

Section 13.4 Inspection of Books and Records.

Upon request, the Developers shall permit the County to inspect at reasonable times and on a confidential basis those books, records and all other documents of the Developers necessary to determine the Developer's compliance with the terms of this Agreement. The Developers also has the right at all reasonable times to inspect the books, records and all other documentation of the County pertaining to its obligations under this Agreement.

Section 13.5 Provision Not Merged with Leases.

None of the provisions of this Agreement are intended to or shall be merged by any lease transferring title to any real property which is the subject of this Agreement from County to Developers or any successor in interest, and any such leases shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 13.6 Title of Parts and Sections.

Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

Section 13.7 General Indemnification.

The Developers agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the County) the County, its directors, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of the Developers' performance or non-performance under this Agreement, or any other agreement executed pursuant to this Agreement, or arising out of acts or omissions of any of the Developer's contractors, subcontractors, or persons claiming under any of the aforesaid, except as directly caused by the County's willful misconduct or gross negligence. The provisions of this Section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 13.8 Applicable Law.

This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 13.9 No Brokers.

Each party represents to the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee except as agreed to in writing by the County and the Developers. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or

communications, the party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified party's choice, and hold the indemnified party harmless from all expense, loss, damage and claims, including the indemnified party's attorneys' fees, if necessary, arising out of the broker's or finder's claim. The provisions of this Section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 13.10 Severability.

If any term, provision, covenant or condition 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 13.11 Venue.

In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the venue for such action shall be the Superior Court of the County of San Bernardino.

Section 13.12 Binding Upon Successors.

This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties hereto except that there shall be no Transfer of any interest by any of the parties hereto except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

The covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property. However, on the termination of this Agreement, such covenants and restrictions shall expire. Each and every contract, deed, or other instrument hereafter executed covering or conveying the Property shall 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 the Property from the requirements of this Agreement.

Section 13.13 Parties Not Co-Venturers.

Nothing in this Agreement is intended to or does establish the parties as partners, co-venturers, or principal and agent with one another.

Section 13.14 Time of the Essence.

In all matters under this Agreement, the parties agree that time is of the essence.

Section 13.15 Action by the County.

Except as may be otherwise specifically provided in this Agreement or any other of the County Documents, whenever any approval, notice, direction, finding, consent, request, waiver, or other action by the County is required or permitted under this Agreement or any other of the County Documents, such action shall be given, made, taken, refused, denied or withheld by the County Executive Officer, at the County Executive Officer's reasonable discretion (unless some other standard is expressly stated), or by any person who shall have been designated in writing to the Developers by the County Executive Officer, without further approval by the County Board. Any such action shall be in writing.

Section 13.16 Complete Understanding of the Parties.

This Agreement is executed in three (3) duplicate originals each of which is deemed to be an original. This Agreement and the attached exhibits constitute the entire understanding and agreement of the parties with respect to the matters set forth in this Agreement.

Section 13.17 Entry by the County.

The Developers shall permit the County, through its officers, agents, or employees, at all reasonable times to enter into the Development (a) to inspect the work of construction to determine that the same is in conformity with the requirements of this Agreement, and (b), following completion of construction, to inspect the ongoing operation and management of the Development to determine that the same is in conformance with the requirements of this Agreement. The Developers acknowledge that the County is under no obligation to supervise, inspect, or inform the Developers of the progress of construction, or operations and the Developers shall not rely upon the County therefore. Any inspection by the County during the construction is entirely for its purposes in determining whether the Developers are in compliance with this Agreement and is not for the purpose of determining or informing the Developers of the quality or suitability of construction. The Developers shall rely entirely upon their own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers.

Section 13.18 Amendments. No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties and approved by the Board of Supervisors.

Section 13.19 Operating Memoranda.

(a) The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation, and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance of those items covered in general terms under this Agreement. If and when, from time to time during the term of this Agreement, the Parties find that refinements or adjustments regarding details of performance are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, an "Operating Memorandum", and collectively, "Operating Memoranda") approved by the Parties which, after execution, shall be attached to this Agreement as addenda and become a part hereof.

(b) Operating Memoranda may be approved and executed on the County's behalf by the County Administrator, or the County Administrator's designee. Operating Memoranda shall not require prior notice or hearing, and shall not constitute an amendment to this Agreement. Any substantive or significant modifications to the terms and conditions of performance under this Agreement shall be processed as an amendment of this Agreement in accordance with Section 13.18 hereof, and must be approved by the Board of Supervisors.

Section 13.20 Multiple Originals, Complete Understanding of the Parties. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts. This Agreement and the attached Exhibits constitute the entire understanding and agreement of the Parties with respect to the matters set forth in this Agreement.

Section 13.21 Recordation of Agreement. A memorandum of this Agreement shall be recorded in the official records of the County at the time and in the manner specified in this Agreement.

Section 13.22 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.

Section 13.23 Mutual Cooperation.

The County and the Developers shall mutually cooperate with one another to facilitate the development of Phase I as contemplated by this Agreement.

Section 13.24 Survival Clause and Termination of Covenants.

The recordation of the Certificate of Completion for the Affordable Development or Library Development, pursuant to the terms of Section 7.12 above, shall be conclusive evidence that the covenants in this Agreement with respect to the obligations of each of the Developers to construct the portions of Phase I Development described in such certificates and the dates for the beginning and completion thereof have been met; provided, however, such certifications shall not be conclusive evidence regarding Developer's satisfaction of the prevailing wage requirements of Section 7.9 above.

Section 13.25 Separate Parcels.

The parties acknowledge and agree that that the Affordable Development and the Library Development will be separately owned, financed and developed, and that a default or Event of Default under this Agreement relating to one Developer or one Development shall not be considered a default or Event of Default relating to any other Development; in other words, there shall be no cross-defaults between the Affordable Development and the Library Development or between the ownership entities for the Affordable Development and the Library Development. The Affordable Developer shall be solely and exclusively responsible for the Affordable Development rights and obligations under this Agreement and the Library Developer shall be

solely and exclusively responsible for the Library Development rights and obligations under this Agreement.

IN WITNESS WHEREOF, the County, the Grantee and the Developers have executed this Agreement in triplicate on or as of the date first above written.

AFFORDABLE DEVELOPER:

Bloomington I Housing Partners, L.P., a California limited partnership

By: Related/Bloomington I Development Co., LLC, a California limited liability company, its general partner

By: _____
Frank Cardone, Vice President

LIBRARY DEVELOPER:

Bloomington Library Developer, LLC, a California limited liability company

By: _____
Frank Cardone, Vice President

COUNTY:

SAN BERNARDINO COUNTY, a political subdivision of the
State of California

By: _____
Janice Rutherford, Chair Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN
DELIVERED TO THE CHAIR OF THE BOARD

Laura H. Welch
Clerk of the Board of Supervisors
of the County of San Bernardino

By: _____
Deputy

APPROVED AS TO LEGAL FORM:
JEANE-RENE BASLE
County Counsel

By: _____
Michelle Blakemore
Chief Assistant County Counsel

EXHIBIT A-1

LEGAL DESCRIPTION OF THE PROPERTY

The land is situated in the State of California, County of San Bernardino, and is described as follows:

EXHIBIT A-2

CONCEPTUAL SITE PLAN

EXHIBIT B

SCHEDULE OF PERFORMANCE

[Insert Schedule of Performance]

EXHIBIT C

APPROVED FINANCING PLAN

EXHIBIT D-1
HOUSING LEASE

EXHIBIT D-2

LIBRARY LEASE

EXHIBIT E

REGULATORY AGREEMENT

EXHIBIT F
PROMISSORY NOTE

EXHIBIT G

LEASEHOLD DEED OF TRUST

EXHIBIT H-1

MEMORANDUM OF HOUSING LEASE

EXHIBIT H-2

MEMORANDUM OF LIBRARY LEASE

EXHIBIT I

FORM OF RESIDUAL RECEIPTS REPORT

EXHIBIT J

LIBRARY FACILITY LEASE

EXHIBIT K

SCOPE OF WATER IMPROVEMENTS
AND SEWER IMPROVEMENTS

EXHIBIT L

FORM OF FIRST AMENDMENT TO DISPOSITION AGREEMENT

EXHIBIT M

SPECIAL TERMS AND CONDITIONS

EXHIBIT N

COMPLETION GUARANTY AGREEMENT

EXHIBIT O

MEMORANDUM OF DDA

EXHIBIT P

FORM OF CERTIFICATE OF COMPLETION