

DISPOSITION AND DEVELOPMENT AGREEMENT
BY AND BETWEEN
SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION
AND
USA PROPERTIES FUND, INC.

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DISPOSITION AND DEVELOPMENT AGREEMENT

This Disposition and Development Agreement (“Agreement”) is entered into as of the _____ day of _____, 2021 (“Effective Date”) by and between the SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION, a public body, corporate and politic (the “Commission”) and USA PROPERTIES FUND, INC. (the “Developer”). The Commission and the Developer (sometimes individually referred to herein as a “Party” and collectively referred to herein as the “Parties”) hereby agree as follows:

1. SUBJECT OF AGREEMENT

1.1 Purpose of Agreement

The purpose of this Agreement is to facilitate the development of certain property (the “Site”) situated within the City of Santa Rosa. The development shall consist of not less than one hundred sixty-four (164) residential dwelling units, with eighty-one (81) of the units restricted for rental and occupancy by “Eligible Tenants” at an “Affordable Rent,” (as those terms are defined in Section 1.4 below) and related improvements (collectively the “Project”).

The Commission financial assistance, in the form of a making of a residual receipts loan in the amount of the residual land value of the Site, in this Agreement shall be utilized to effectuate a portion of the Commission’s overall affordable housing program. The conveyance to Developer of the Site and the Developer’s development thereon of an affordable rental housing project and subsequent occupancy thereof by households of limited incomes, all as provided in this Agreement, are in the vital and best interests of the Commission and the health, safety and welfare of Sonoma County residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements under which the Project has been undertaken.

1.2 The Site

The “Site” is currently owned by the Commission and consists of that certain real property located at 2150 West College Avenue (Assessor Parcel No. 010320029) in the City of Santa Rosa, County of Sonoma. The Site is zoned as residential. The Site is depicted on the Site Map, which is attached hereto and incorporated herein as Attachment No. 1. The legal description of the Site is set forth on Attachment No. 2, which is attached hereto and incorporated herein by this reference.

1.3 Parties to the Agreement

A. The Commission

The Commission is a public body, corporate and politic, exercising governmental functions and powers pursuant to Health and Safety Section 34110 *et seq.* The principal office of the Commission is located at 1440 Guerneville Road, Santa Rosa, CA 95403, or such other address as Commission shall hereafter designate in writing to Developer.

B. The Developer

The Developer is USA Properties Fund, Inc., a California corporation. The principal office and mailing address of the Developer for purposes of this Agreement is 3200 Douglas Blvd., Suite 200, Roseville, CA 95661.

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

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

1.4 Definitions

“Acquisition Assistance” means financial assistance from the Commission, in an amount which is the Purchase Price of the Site. The Acquisition Assistance shall be provided to Developer at the Close of Escrow, in the form of the Commission Loan.

“Affordable Rent” means the amount of monthly rent, including a reasonable utility allowance, that does not exceed the maximum allowable rent to be charged by Developer and paid by Moderate Income Households, as the case may be, occupying the Units as determined pursuant to the rules and regulations of TCAC.

“Affiliate” means, with respect to any entity, (1) any officer, director, employee, trustee, shareholder, manager, member, partner or relative within the second degree of kindred of the entity in question; or (2) any other entity who, directly or indirectly (including through one or more intermediaries), controls, is controlled by, or is under common control with, such entity. For purposes of this definition, “control,” when used with respect to any specified entity, will mean the power, direct or indirect, to direct or cause the direction of the management and policies of such entity, whether through ownership of voting securities or partnership or other ownership interests, by contract or otherwise; and the terms “controlling” and “controlled” will have correlative meanings.

“AMI” means the median family income (adjusted for family size) for the Sonoma County area as annually established by TCAC. If TCAC ceases annually to publish median incomes, the Commission shall reasonably determine an adequate substitute manner for determining the AMI.

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

“Appraisal” means an appraisal performed in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). The interest appraised in each appraisal shall be a fee

simple interest in the Site. The Appraisal of the Site shall determine the "fair market value" or the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, as enumerated in the Appraisal Institute's definition of "fair market value" taking into account the existing zoning of the Site. Each appraisal shall include industry-standard information and analysis to support such current fair market value determination.

"Appraiser" means an appraiser selected by the Commission, with the consent of the Developer, which consent will not be unreasonably delayed, withheld or denied.

"Assignment Agreement" means an Assignment and Assumption Agreement that may be entered into between Developer and a limited partnership to be formed for the purpose of owning the Site, developing the Project and securing an Investor Limited Partner.

"City" means the City of Santa Rosa, a California municipal corporation, having its offices at 100 Santa Rosa Ave., Santa Rosa, CA 95404. The City is not a party to this Agreement and shall have no obligations hereunder.

"Close of Escrow" or "Closing Date" shall have the meaning ascribed in Section 2.3 hereof.

"Commission Affordable Rental Housing Agreement" means a Regulatory Agreement and Declaration of Covenants and Restrictions, to be recorded as a covenant against the Site, in form and substance to be agreed to by the Parties on or before the date shown in the Schedule of Performance.

"Commission Deed of Trust" means a Deed of Trust with Assignment of Rents to secure a Commission Note, in form and substance to be agreed to by the Parties on or before the date shown in the Schedule of Performance.

"Commission Loan" means, collectively (i) the seller carryback loan made by the Commission to the Developer in the amount of the appraised value of the Site and (ii) if applicable, any Commission Loan which may derive from Low Moderate Income Housing Asset Funds, Community Development Block Grant funds, funds pursuant to the HOME Investment Partnerships Program (42 U.S.C. 12701, et seq.), funds from the County Fund for Housing, or any other source of funds administered by the Commission for development of the Project, as described in the Financing Plan.

"Commission Note" means a Promissory Note, in form and substance to be agreed to by the Parties on or before the date shown in the Schedule of Performance, in favor of Commission, evidencing the Commission Loan.

"Commission Title Policy" means the ALTA Lender's Policy of Title Insurance that the Commission shall obtain from the Title Company, together with such endorsements as may be reasonably requested by Commission with liability in the amount of the Commission Loan, covering the Site, showing title vested in Developer, and insuring the validity and priority of, respectively, the Commission Deed of Trust, Option Agreement, Commission Regulatory Agreement, Memorandum, and Notice of Affordability Restrictions, subject only to the exceptions authorized by this Agreement.

“Commission’s Conditions to Closing” means the conditions set forth in Section 2.4.A of this Agreement, which must be satisfied, or waived by the Commission in its sole and absolute discretion, on or before the Outside Closing Date.

“Construction Lender” means the first trust deed lender that provides the Construction Loan. The Construction Lender may or may not also be the Take-Out Lender. The Construction Lender shall be an Institutional Lender or a governmental entity.

“Construction Loan” means a loan to finance residential construction for the Project.

“Days” means calendar days and the statement of any time period herein shall be calendar days, and not business days, unless otherwise specified.

“Developer” means USA Properties Fund, Inc., a California corporation, or a limited partnership formed by Developer, in which Developer or an affiliate of Developer retains a general partner interest, and which assumes all Project assets and liabilities from Developer.

“Developer Fee” means funds paid to the Developer as compensation for developing the Project, as specified in Section 3.4 of the Agreement.

“Developer’s Conditions to Closing” shall have the meaning ascribed in Section 2.4.B.

“Developer Title Policy” shall have the meaning ascribed in Section 2.6 hereof.

“Effective Date” means the later of the dates this Agreement is executed on behalf of Commission and Developer, which date shall be inserted in the preamble of this Agreement.

“Eligible Tenant” means a household which qualifies as a Moderate Income Household.

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

“Environmental Response Costs” means any and all costs associated with Environmental Response Actions including, without limitation, any and all fines, penalties and damages.

“ERNA” means the Exclusive Right to Negotiate Agreement entered into between the Commission and Developer, dated as of February 14, 2019, the first amendment to the ERNA dated February 1, 2020 and the second amendment to the ERNA dated July 14, 2020.

“Escrow” is defined in Section 2.2A

“Escrow Agent” means First American Title Insurance Company, Attention Brian Serikaku.

“Evidence of Financing” means evidence that the Developer has, or will have, prior to the Close of Escrow, the financial capability necessary for the development of the Project on the Site pursuant to this Agreement. The evidence of financing shall be submitted by the Developer to the Executive Director within the time set forth in the Schedule of Performance and shall include all of the requirements set forth in Section 4.7 of this Agreement.

“Executive Director” means the individual duly appointed to the position of Executive Director of the Commission, or his or her authorized designee. Whenever an administrative action is required by the Commission to implement the terms of this Agreement, the Commission’s Executive Director, or his or her authorized designee, shall have authority to act on behalf of the Commission, except with respect to matters reserved for the Commission Board’s determination.

“Extremely Low Income Household” means a household at or below 35% of AMI as determined in accordance with TCAC rules and regulations.

“Financing Plan” means the Developer’s plan for financing the acquisition of the Site and the development of the Project, which is attached hereto and incorporated herein as Attachment No. 4. Developer may only make material revisions to the Financing Plan with the Commission’s prior written approval.

“Force Majeure Events” means strikes, acts of God, shortages of labor or materials, enemy action, riot, civil commotion or unrest, fire, earthquake, casualty, pandemic or other events beyond the reasonable control of a party.

“Governmental Requirements” means all present and future laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Site is located, and any other state, county, city, political subdivision, agency, Commission, instrumentality or other entity exercising jurisdiction over the Site.

“Grant Deed” shall have the meaning ascribed in Section 2.1 hereof.

“Hazardous Materials” means any substance, material or waste which is (1) defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” or “restricted hazardous waste” under any provision of California law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (7) defined as a “hazardous substance” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903) or its implementing regulations; (8) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601); or (9) determined by a California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property. Notwithstanding the foregoing, “Hazardous Materials” shall not include such products in quantities as are customarily used in the construction, maintenance, rehabilitation, management, operation and residence of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of

other comparable residential developments, or substances commonly ingested by a significant population living within the community, including without limitation alcoholic beverages, aspirin, tobacco and saccharine.

“Indemnitees” shall have the meaning ascribed in Section 2.9.F hereof.

“Institutional Lender” means a state or federally chartered financial institution, insurance company, or other lender who routinely provides financing to Tax Credit transaction in California which is capable of providing service or otherwise aiding in the financing of the Project based on the reasonable determination of the Commission and the Developer.

“Investor Limited Partner” means one or more persons or entities who (i) is/are an experienced limited partner and investor in multifamily housing developments receiving low income housing tax credits issued by the State of California or the United States federal government and (ii) has obtained or is contractually obligated to obtain a limited partnership or limited liability company membership interest in the Developer whereby it/they will receive ninety percent (90%) or more of the Tax Credits generated in connection with the Project. Commission shall have the right to reasonable prior approval of the identity of the Investor Limited Partner and of the terms and conditions of the Partnership Agreement or other agreement specifying the terms and conditions of the Investor Limited Partner’s investment in the Developer, including but not limited to, the terms and conditions concerning timing and amounts of cash contributions toward Project development costs in return for an interest in the owner of the Project and the right to receive Tax Credits to the extent any such terms materially deviate from those approved in the Financing Plan.

“Low Income Household” means a household at or below 60% of AMI as determined in accordance with TCAC rules and regulations.

“Management Agent” means a management agent retained by the Developer and approved by the Commission in accordance with the provisions of Section 5.2 of this Agreement and the Commission Regulatory Agreement

“Management Unit” means the two (2) Units in the Project that may be occupied by on-site management and staff as required by TCAC. The Management Unit shall not be restricted.

“Memorandum” means a Memorandum of Disposition and Development Agreement, in form and substance to be agreed to by the Parties on or before the date shown in the Schedule of Performance, which is required to be recorded against the Site at the Close of Escrow.

“Moderate Income Household” means a household at or below 80% of AMI as determined in accordance with TCAC rules and regulations.

“Notice of Affordability Restrictions” means a Notice of Affordability Restrictions on Transfer of Site, in form and substance to be agreed to by the Parties on or before the date shown in the Schedule of Performance, which is required to be recorded against the Site at the Close of Escrow.

“Option Agreement” shall have the meaning ascribed in Section 6.6 hereof.

“Outside Closing Date” means the date that is five (5) years from the Effective Date.

“Partnership Agreement” means the agreement governing the limited partnership entity that may comprise the Developer, as such agreement may be amended from time to time, so long as consistent with the requirements of this Agreement.

“Phase 1” means the Phase I Environmental Site Assessment conducted by the Developer.

“Project” means the construction on the Site of an affordable rental housing development with not less than one hundred sixty-four (164) Units of which eighty-one (81) shall be restricted for rental to and occupancy by Eligible Tenants, and related interior and exterior improvements, including, but not limited to, management office space and community recreational space. The Project is more particularly described in the Scope of Development.

“Project Budget” means that certain budget attached hereto and incorporated herein as Attachment No. 7 which budget may not be materially changed prior to Closing without the prior approval of the Commission Executive Director, which approval shall not be unreasonably withheld (a material change is one or more change(s) that cause the total Project cost to increase or decrease by a cumulative amount of ten percent (10%)) or more from what is shown in Attachment No. 7).

“Project Entitlements” shall have the meaning ascribed in Section 4.4 hereof.

“Project Financing Disbursement Agreement” means an agreement among the Commission, Developer, Construction Lender, and Investor Limited Partner on the order of disbursement of the Project financing and the method and manner of disbursement of the Commission Loan.

“Project Pro forma” means the financial information attached hereto and incorporated herein as Attachment No. 8, which is Developer’s best estimate of the costs to develop the Project and costs of ongoing operations based on the information available to Developer as of the Effective Date. The Project Pro forma shall not undergo material change without the prior approval of Commission’s Executive Director, which approval shall not be unreasonably withheld (a material change is one or more change(s) that causes the difference between the “Annual Project Revenue” and “Operating Expenses” (as those terms are defined in the Commission Note) shown on Project Pro forma to increase or decrease by a cumulative amount of ten percent (10%) or more from what is shown in Attachment No. 8).

“Purchase Price” means the fair market value of the Site as determined by an Appraisal.

“PV Rebate” shall mean, to the extent applicable, a rebate from the California Energy Commission, to be obtained by Developer after completion of the Project.

“Schedule of Performance” means that certain Schedule attached hereto and incorporated herein as Attachment No. 5. The Schedule of Performance shall be periodically updated by the Developer, subject to the reasonable approval of the Commission, the account for changes in circumstances surrounding the development of the Project.

“Scope of Development” means that certain Scope of Development attached hereto and incorporated herein as Attachment No. 3, which describes the scope and quality of the rental apartment development to be constructed by Developer pursuant to the terms and conditions of this Agreement.

“Site” shall have the meaning ascribed in Section 1.2 hereof and is the real property located at 2150 West College Avenue (Assessor Parcel No. 2010-320-029) in the City of Santa Rosa, County of Sonoma and owned by the Commission. The Site is depicted on the Site Map, which is attached hereto and incorporated herein as Attachment No. 1. The legal description of the Site is set forth on Attachment No. 2, which is attached hereto and incorporated herein by this reference.

“Take-Out Lender” means the lending institution that makes the Take-Out Loan. The Take-Out Lender may or may not also be the Construction Lender. The Take-Out Lender shall be an Institutional Lender or a governmental entity.

“Take-Out Loan” means the long-term loan made by the Take-Out Lender to Developer in order to take out the Construction Loan.

“Tax Credit Program” means the low-income housing tax credit program authorized pursuant to Internal Revenue Code Section 42, California Health and Safety Code Sections 50199.6-50199.19, Revenue and Taxation Code Sections 17057.5, 17058, 23610.4, 23610.5, and applicable federal and State regulations such as 4 California Administrative Code Sections 10300-10340.

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

“Tax Credit Regulatory Agreement” means that certain regulatory agreement to be recorded against the Site as a condition of the receipt by the Project of an allocation by TCAC of Tax Credits.

“TCAC” means the California Tax Credit Allocation Committee.

“Term” means the term of this Agreement, which shall consist of the period commencing on the date of execution of this Agreement and continuing until the later of (i) fifty-five (55) years following the date that the Take-Out Loan is recorded and at least seventy-five percent (75%) of the Units have been rented to and are occupied by Eligible Tenants at the applicable income level and for the applicable Affordable Rent; and (ii) repayment in full of the Commission Loan, including all interest due thereon.

“Title Company” means First American Title Company.

“Unit” and “Units” means each of the one hundred sixty-four (164) rental dwelling units developed as part of the Project.

“Very Low Income Household” means a household at or below 50% of AMI as determined in accordance with TCAC rules and regulations.

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

The qualifications and identity of the Developer are of particular interest to the Commission. It is because of these qualifications and identity that the Commission has entered into this Agreement with the Developer. Consequently, except as otherwise provided for herein, no person, whether a voluntary or involuntary successor of Developer, shall acquire any rights or powers under this Agreement nor shall the Developer assign all or any part of this Agreement, the Site, or the Commission Regulatory Agreement without the prior written approval of the Commission. A voluntary or involuntary sale or transfer of any interest in the Developer or the Site during the term of this Agreement shall be deemed to constitute an assignment or transfer for the purposes of this Section 1.5, and the written approval of the Commission shall be required prior to effecting such an assignment or transfer. During the term of this Agreement and the Commission Regulatory Agreement the Developer shall not, except as permitted by this Agreement, assign or attempt to assign this Agreement or any rights or duties herein, nor make any total or partial sale, transfer, conveyance, or assignment of the whole or any part of the Site or any of the improvements thereon, nor take any action that results in a change in the ownership or with respect to the identity of the parties in control of the Developer, without the prior written approval of the Commission.

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

- (a) the conveyance or dedication of any portion of the Site to the City of Santa Rosa, or other appropriate governmental entity, including public utilities, where the granting of such easements permits or facilitates the development of the Project on the Site;
- (b) the mortgage, deed of trust, sale and leaseback, or other form of conveyance required for any reasonable method of financing or refinancing the development of the Project on the Site that is set forth in the Financing Plan (including the refinancing of any loan contemplated therein) or has otherwise been approved, in writing, by the Executive Director;
- (c) the transfer of the Site or Project or any part or interest therein from the Developer to a limited partnership controlled by Developer or an affiliate of Developer as its general partner (the “Tax Credit Limited Partnership”);
- (d) the admission of one or more Investor Limited Partner to a Tax Credit Limited Partnership and the transfer to an Investor Limited Partner interest therein;
- (d) the transfer by the Investor Limited Partner of a limited partnership interest to (i) an entity that has the same general partner or managing member as the Investor Limited Partner or (ii) any general partner (or affiliate thereof) of the Tax Credit Limited Partnership;

(e) the removal by the Investor Limited Partner of the general partner for a default under the Partnership Agreement, provided the replacement general partner is approved, in writing, by the Commission; or

(f) the transfer of the Site or Project or any part or interest therein from the Tax Credit Limited Partnership to Developer or an entity owned and controlled by Developer, and an assumption of the Commission Loan by such transferee at, before or after the end of the fifteen (15)-year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986 (26 U.S.C. Section 42 (i)(1)), pursuant to an option agreement as described in the Partnership Agreement (the "Partnership Agreement Option Agreement"), provided that the transferee expressly assumes the obligations of the Developer under this Agreement, the Commission Deed of Trust, the Commission Note, the Option Agreement, and the Commission Regulatory Agreement, utilizing a form of assignment and assumption agreement approved by Commission counsel;

Notwithstanding anything in this Section 1.5 to the contrary, in the absence of specific written agreement by Commission, no transfer or assignment by Developer or any successor in interest to Developer, whether or not requiring the approval by Commission, shall be deemed to relieve Developer or any successor party from the obligation to timely complete development of the Project, and no transfer or assignment by Developer or any successor in interest to Developer shall be effective unless and until the transferor and transferee execute and deliver to Commission an Assignment Agreement in a form and with content reasonably acceptable to Commission's legal counsel.

This Section 1.5 shall not be applicable to the leasing of individual Units to Eligible Tenants (including the leasing of the Management Units to employees of the Management Agent) made in accordance with this Agreement and the Commission Regulatory Agreement and no Assignment Agreement shall be required in connection therewith.

1.6 Representations by the Developer

The Developer represents and warrants to the Commission as follows:

i. The Developer is a corporation in good standing under the laws of the State of California and has duly authorized, executed and delivered this Agreement and any and all other agreements and documents required to be executed and delivered by the Developer in order to carry out, give effect to, and consummate the transactions contemplated by this Agreement. This Agreement is enforceable against the Developer in accordance with its terms.

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

iii. There are no pending or, so far as is known to the Developer, threatened, legal proceedings to which the Developer is or may be made a party to or to which it or any of its property is or may become subject, which have not been fully disclosed in the material submitted to the Commission, which will materially adversely affect the ability of the Developer to carry out its obligations hereunder.

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

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

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

vii. No representation, warranty, or covenant of Developer in this Agreement, or in any document or certificate furnished or to be furnished to Commission pursuant to this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

viii. All financial information delivered to Commission, including, without limitation, information relating to the financial condition of Developer and the Project, accurately represents such financial condition and has been prepared in accordance with accepted accounting principles consistently applied, unless otherwise noted in such information. Developer shall notify Commission in writing of any material changes to such information delivered to the Commission.

ix. The Developer has, and will as required by its obligations hereunder, dedicate, allocate and otherwise make available, sufficient financial and other resources to perform its obligations under this Agreement.

Each of the foregoing items i to ix, inclusive, shall be deemed to be an ongoing representation and warranty and shall survive the Close of Escrow for the Site. The Developer shall advise the Commission in writing if there is any material change pertaining to any matters set forth or referenced in the foregoing items i to ix, inclusive.

1.7 Representations by the Commission

The Commission represents and warrants to Developer as follows:

i. Commission is a public body, corporate and politic, which is authorized to transact business pursuant to Health and Safety Code Section 34143. Commission has full right, power and lawful authority to transfer the Site as provided herein and the execution, performance, and delivery of this Agreement by Commission has been fully authorized by all requisite actions on the part of Commission. The parties who have executed this Agreement on behalf of Commission are authorized to bind Commission by their signatures hereto.

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

iii. There are no pending or, so far as is known to Commission, threatened, legal proceedings to which Commission is or may be made a party or to which it or any of its property is or may become subject, which will materially adversely affect the ability of Commission to carry out its obligations hereunder.

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

v. To Commission's knowledge, the Site is not currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation.

vi. Commission is not the subject of a bankruptcy proceeding.

vii. To Commission's knowledge, no Hazardous Materials (as defined in Section 2.9 below) other than those identified in the Phase I, are now or have been released, used, or stored on or within any portion of the Site in violation of applicable laws or regulations governing the release, use, or storage of Hazardous Materials, and there has not been any federal, state, or local enforcement, clean-up, removal, remedial, or other governmental or regulatory actions instituted or completed affecting the Site.

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

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

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

As used in this Section 1.7, the term “knowledge” or “known” means the actual (not constructive or imputed) knowledge of the Commission Executive Director, without any investigation or inquiry or duty of investigation or inquiry.

2. CONVEYANCE OF THE SITE

2.1 Acquisition of the Site; Purchase Price

The Developer shall acquire a fee simple title to the Site pursuant to a grant deed in form and substance to be agreed to by the Parties on or before the date shown in the Schedule of Performance (“Grant Deed”). The purchase price for the Site (the “Purchase Price”), which shall be financed pursuant to the Commission Loan, is the Appraised Value of the Site as established by an Appraisal conducted by an MAI prior to Developer making application to the TCAC.

2.2 Escrow

A. Opening of Escrow. Commission and Developer agree to open an escrow (the “Escrow”) with First American Title Company (the “Escrow Agent”), by the time established therefor in the Schedule of Performance. This Agreement constitutes Commission’s and Developer’s escrow instructions for the Commission’s sale and Developer’s purchase of the Site and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of the Escrow. The Escrow Agent is hereby empowered to act under this Agreement, and the Escrow Agent, upon indicating within five (5) days after the opening of the Escrow its acceptance of the provisions of this Article 2, in writing, delivered to the Commission and the Developer, shall carry out its duties as Escrow Agent hereunder. In the event of any conflict or inconsistency between the additional escrow instructions required by the Escrow Agent and the provisions of this Agreement, the provisions of this Agreement shall supersede and control. Any amendment of the escrow instructions set forth or described herein shall be in writing and signed by both Commission and Developer. At the time of any authorized amendment to the escrow instructions, the Escrow Agent shall agree, by signing below an appropriate statement on such an amendment, to carry out its duties as Escrow Agent under such an amendment. All communications from the Escrow Agent to Commission or Developer shall be in writing and directed to the addresses and in the manner established in Section 7.1 of this Agreement for notices, demands, and communications between Commission and Developer.

B. Deposits Into Escrow. Commission and Developer shall deposit the following documents and pay into the Escrow the following fees, charges and costs promptly after the Escrow Agent has notified the Commission of the total amount of such fees, charges and costs, but not earlier than five (5) days prior to the scheduled date for the Close of Escrow:

1. Developer shall deposit the amount of One Hundred Dollars (\$100) as a good faith deposit (the “Deposit”). In the event the Escrow closes, the Deposit shall be applied towards Developer’s closing costs;

2. Developer shall pay the Escrow fee;

3. Developer shall pay the costs, if any, of drawing the Grant Deed;

4. Developer shall pay recording fees, if any;
5. Commission and Developer shall pay their respective Notary fees;
6. Developer shall pay all costs for the Developer Title Policy; and
7. Developer shall pay for any transfer tax and any state, county or city documentary stamps.

Commission shall deposit with the Escrow Agent the fully executed Grant Deed, Commission Deed of Trust, Option Agreement, Commission Regulatory Agreement, Notice of Affordability Restrictions, and Memorandum. Developer shall deposit with the Escrow Agent the full executed Commission Loan Documents.

C. Escrow Officer Obligations. The Escrow Officer shall notify the Commission and Developer when all outstanding documents, including the Grant Deed, Commission Deed of Trust, Option Agreement, Commission Regulatory Agreement, Notice of Affordability Restrictions, and Memorandum have been executed and submitted to Escrow by the applicable party.

Upon confirmation by the Escrow Agent that all of the Commission's Conditions to Closing and all of the Developer's Conditions to Closing have been satisfied, or waived by the appropriate party, the Escrow Agent shall record the following documents in the following order of recordation: (1) Grant Deed, (2) Commission Deed of Trust, (3) Option Agreement, (4) Commission Regulatory Agreement, (5) Memorandum, and (6) Notice of Affordability Restrictions. The date such documents are recorded shall be referred to herein as the "Close of Escrow" or the "Closing Date."

All funds received in the Escrow shall be deposited by the Escrow Agent, with other escrow funds of the Escrow Agent in an interest-earning general escrow account or accounts with any state or national bank doing business in the State of California. Such funds may be transferred to any other general escrow account or accounts. All disbursements shall be made by check of the Escrow Agent.

Any amendment to these escrow instructions shall be in writing and signed by the Commission. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

2.3 Conveyance of Title and Delivery of Possession

Provided that the Developer is not in default under this Agreement and all of Commission's Conditions to Closing and Developer's Conditions to Closing have occurred, and subject to any mutually agreed upon extensions of time, Commission shall convey to the Developer title to the Site. The Commission and the Developer agree to perform all acts necessary to conveyance of title on or before the Outside Closing Date.

Exclusive possession, free of all tenancies, shall be delivered to the Developer concurrently with the conveyance of title at the Close of Escrow, except that limited access may be permitted before the Close of Escrow as permitted in Section 2.9 of this Agreement. .

2.4 Conditions to Close of Escrow

A. Commission's Conditions to Closing. The Commission's obligation to convey the Site to Developer and the closing of the Escrow shall, in addition to any other condition set forth herein in favor of the Commission, be conditional and contingent upon the satisfaction, or waiver by the Commission in its sole and absolute discretion, on or before the Outside Closing Date, of each and all of the following conditions (collectively, "Commission's Conditions to Closing"):

i. Developer shall have delivered to Commission or deposited into Escrow the Commission Deed of Trust, duly executed and acknowledged by Developer, the Commission Regulatory Agreement, duly executed and acknowledged by Developer, the Option Agreement, duly executed and acknowledged by Developer, the Notice of Affordability Restrictions, duly executed and acknowledged by Developer, and the Memorandum, duly executed and acknowledged by Developer, and all other sums and documents required of Developer by this Agreement;

ii. Developer shall have submitted to the Executive Director an authorizing resolution of Developer approving this Agreement and the transactions contemplated hereby;

iii. Developer shall have submitted to the Executive Director the evidence of insurance required pursuant to Section 4.9 of this Agreement;

iv. Developer shall have submitted to the Executive Director the financial statements required by Section 3.7, and the Executive Director shall have approved the same;

v. Developer shall have submitted to the Executive Director Developer's Evidence of Financing, in accordance with Section 4.7 herein, and the Executive Director shall have approved the same;

vi. Developer shall have conducted a Phase I Environmental Site Assessment to identify potential environmental concerns that would need to be remediated prior to development activity on the Site;

vii. Developer shall have obtained all of the Project Entitlements;

viii. Developer shall have executed and delivered to Commission the Commission Note and the Assignment of Architectural Agreements and Plans and Specifications, in the form attached to the Commission Note as Exhibit "B" (the "Assignment of Plans") concurrently with Developer's execution of this Agreement, and Developer shall not be in default of any term or condition thereof;

ix. On the Closing Date, the Title Company shall be irrevocably committed to issue the Commission Title Policy;

x. The Project Financing Disbursement Agreement shall have been fully executed, and shall provide disbursement of the Commission Loan prior to disbursement of the Construction Loan;

xi. All representations of Developer contained herein shall be true and correct in all material respects;

xii. Escrow Agent holds and will deliver to Commission the instruments and funds to be delivered to Commission under this Agreement; and

xiii. Developer is not in material default of any term or condition of this Agreement.

B. Developer's Conditions to Closing. Developer's obligation to acquire the Site from Commission and the closing of the Escrow shall, in addition to any other condition set forth herein in favor of the Developer, be conditional and contingent upon the satisfaction, or waiver by the Developer in its sole and absolute discretion, on or before the Outside Closing Date, of each and all of the following conditions (collectively, "Developer's Conditions to Closing"):

i. Commission has deposited into Escrow the Grant Deed and any Commission Loan Documents to which the Commission is a party, duly executed and acknowledged by Commission, and all other sums and documents required of Commission by this Agreement;

ii. On the Closing Date, the Title Company shall be irrevocably committed to issue the Developer Title Policy insuring fee title to the Site is vested in Developer;

iii. Developer shall have obtained all of the Project Entitlements;

iv. Escrow Agent holds and will deliver to Developer the instruments to be delivered to Developer under this Agreement;

v. Developer has approved the environmental condition of the Site and agrees to acquire the Site in its present condition;

vi. Developer has received a reservation of Tax Credits;

vii. Developer shall have obtained Developer's Evidence of Financing in accordance with Section 4.7 herein;

viii. The Construction Loan shall close concurrently with the Close of Escrow; and

ix. Commission is not in material default of any term or condition of this Agreement.

C. Waiver. Commission may at any time or times, at its election, waive any of the conditions set forth in Section 2.4.A above to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by Commission and delivered to Developer. Developer may at any time or times, at its election, waive any of the conditions set forth in Section 2.4.B above to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by Developer and delivered to Commission.

D. Failure of Conditions Precedent; Termination. In the event that by the Outside Closing Date each of the conditions set forth in Section 2.4.A is not fulfilled, or waived by Commission pursuant to Section 2.4.C, Commission may, at its option, terminate this Agreement and the Escrow opened hereunder, thereby releasing the parties from further obligations hereunder. In the event that by the Outside Closing Date each of the conditions set forth in Section 2.4.B are not fulfilled, or waived by Developer pursuant to Section 2.4.C, Developer may, at its option, terminate this Agreement and the Escrow opened hereunder, thereby releasing the parties from further obligations hereunder. In the event this Agreement is terminated, all documents and funds delivered by Developer to Commission or Escrow Agent shall be returned immediately to Developer and all documents and funds delivered by Commission to Developer or Escrow Agent shall be returned immediately to Commission. Nothing in this Section 2.4.D shall be construed as (i) releasing any party from liability for any default of its obligations hereunder or breach of its representations and warranties under this Agreement occurring prior to the termination of this Agreement and/or the Escrow to be opened hereunder, or (ii) releasing the Developer from its indemnifications obligations hereunder, all of which shall survive termination of this Agreement.

2.5 Condition of Title.

The Commission shall convey to the Developer fee simple title to the Site free and clear of all recorded liens, encumbrances, encroachments, assessments, possessory interests, leases and taxes except the provisions of the Grant Deed, the Commission Deed of Trust, the Commission Regulatory Agreement, the Option Agreement, the Memorandum, the Notice of Affordability Restrictions and the standard printed conditions and exceptions contained in the American Land Title Association (ALTA) standard owner's policy of title insurance that is regularly issued by the Title Company in transactions similar to the one contemplated by this Agreement, as approved by Developer pursuant to this Section 2.4. Prior to the Effective Date, Commission has caused the Title Company to deliver to Developer a standard preliminary title report with respect to the Site as Order No. 4906-3688662, together with legible copies of the documents underlying the exceptions set forth in said report (collectively, the "Title Report"). Developer has approved of the condition of title as reflected in the Title Report.

2.6 Title Insurance

Concurrently with recordation of the Grant Deed, the Escrow Agent shall instruct the Title Company to provide and deliver to the Developer an ALTA standard form policy of title insurance that does not require a survey, together with such endorsements as may be reasonably requested by Developer, issued by the Title Company insuring that the title is vested in the Developer, or its assignee, as applicable, in the condition reflected in the Title Report (the "Developer Title Policy").

The Title Company shall provide the Commission with a copy of the Developer Title Policy. The Developer shall pay all costs of the Developer Title Policy.

Commission shall obtain from the Title Company an ALTA lender's policy of title insurance, together with such endorsements as may be reasonably requested by Commission with liability in the amount of the Commission Loan, covering the Site, showing title vested in Developer, and insuring the validity and priority of, respectively, the Commission Deed of Trust, Option Agreement, Commission Regulatory Agreement, Memorandum, and Notice of Affordability Restrictions, subject only to the exceptions set forth on the Title Report or otherwise authorized by this Agreement (the "Commission Title Policy").

2.7 Taxes and Assessments

Ad valorem taxes and assessments, if any, on the Site, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period commencing prior to conveyance of title shall be borne by the Commission. All ad valorem taxes and assessments levied or imposed for any period commencing after close of the Escrow shall be paid by the Developer.

2.8 Conveyance Free of Possession and Improvements

The Site shall be conveyed free of any possession or right of possession by any person except that of the Developer and the easements and other encumbrances of record as set forth on the Title Report (subject to Developer's right to review the condition of title pursuant to Section 2.5).

2.9 Inspections; Condition of Site

A. Right of Entry

i. In connection with Developer's due diligence investigations of the Site, Commission hereby grants to Developer, and its affiliates, agents, contractors and employees, a license (the "License") to enter upon the Site in order to conduct any and all inspections, investigations, tests and studies (including, without limitation, architectural inspections, engineering tests, soils, seismic and geologic reports and environmental testing) with respect to the Site ("Due Diligence Investigations") as Developer may reasonably elect to make, all at Developer's sole cost and expense. Developer shall notify the Commission Executive Director, which may be by written or telephonic notice, prior to a planned entry on the Site and provide information to the Commission Executive Director as to the purpose of the planned entry and the estimated time for completing the particular Due Diligence Investigation. All Due Diligence Investigations performed on the Site shall be undertaken in conformance with all applicable laws and requirements, including obtaining any and all permits, and the City's Municipal Code, including but not limited to the City's Noise Ordinance. Developer acknowledges that the Site is adjacent to a residential area and so no Due Diligence Investigations shall be performed other than between the hours of 8 a.m. and 5 p.m. Monday through Saturday except as otherwise permitted or limited by the Commission Executive Director.

ii. Commission may revoke this License (i) upon written notice to Developer if, in the reasonable judgment of the Commission Executive Director, such revocation

is necessary to protect public health, safety, or welfare; or (ii) upon five (5) business days' written notice to Developer that Developer is in violation of the terms of this Agreement or of any applicable law, statute, ordinance, rule, or regulation pertaining to the Due Diligence Investigations or Developer's entry upon the Site pursuant to this Agreement, if Developer has failed to cure such violation within that period of five (5) business days following Developer's receipt of notice from Commission.

iii. The License shall terminate and be void as of the termination of this Agreement.

iv. Developer shall cause to have its Due Diligence Investigations conducted in accordance with all laws applicable thereto, and in a good and workmanlike manner.

B. Lien Free. Developer shall keep the Site free and clear of any mechanic's or materialmen's liens arising out of Developer's Due Diligence Investigations. The provisions of this paragraph shall survive the termination of this Agreement for any reason whatsoever.

C. Obligations Upon Expiration/Termination. Upon the earlier of (i) the termination of the License, or (ii) the termination of this Agreement, Developer shall promptly (a) repair any damage to the Site caused by Developer's or any of its representatives' entry thereon, and (b) remove Developer's or any of its representatives' personal property from the Site. The provisions of this paragraph shall survive the expiration or early termination of this Agreement for any reason whatsoever.

D. Insurance

i. Without limiting Developer's indemnification obligations as set forth in this Agreement, Developer, prior to any entry on the Site by Developer or its employees, agents, representatives, consultants, or contractors, shall procure and maintain, at its sole cost and expense, for the period of such entry, policies of insurance in conformance with the Commission's requirements set forth in Attachment 11.

a. Commission reserves the right at any time during the term of this Agreement to reasonably change the amounts and types of insurance required by giving Developer not less than thirty (30) days advance written notice of such change.

ii. Prior to any entry onto the Site by Developer or its employees, agents, representatives, consultants, or contractors, Developer shall provide the Commission Executive Director with Certificates of Insurance evidencing the above insurance coverages and said Certificates of Insurance have been reasonably approved by Commission. Said Certificates are to reflect that the insurer will provide ten days written notice to Commission of any cancellation of coverage and if the Accord certificate form is used the word "endeavor to" shall be stricken from the insurer's written notification section. In the event any of said policies of insurance are reduced in limits or cancelled for any reason, Developer shall, prior to the cancellation date, submit new evidence of insurance, in conformance with this paragraph.

iii. Developer shall not enter upon the Site for the purpose of the Due Diligence Investigations until Developer has provided the Commission Executive Director with the required Certificate of Insurance and the Commission Executive Director has approved same.

iv. The provisions of any workers' compensation or similar act shall not limit the obligations of Developer under this Agreement. Developer expressly agrees not to use any statutory immunity defenses under such laws with respect to Commission or its officers, officials, members, employees, agents, representatives, or volunteers acting in an official capacity.

v. Developer agrees to provide immediate notice to Commission of any claim or loss against Developer arising out of any acts or omissions of Developer under this Agreement. Commission assumes no obligation or liability by such notice, but has the right to monitor the handling of any such claim or claims if they are likely to involve the Commission or any officer, official, member, employee, agent, representative, or volunteer acting in an official capacity.

E. "As Is". Prior to the close of Escrow, the Developer was provided the opportunity to investigate the Site, and has approved the physical condition of the Property. The Commission has provided the Developer with all information of which it has actual knowledge concerning the physical condition of the Site, including, without limitation, information about any "Hazardous Materials," as defined herein. The Developer acknowledges and agrees that any portion of the Site that it acquires from the Commission pursuant to this Agreement shall be purchased "AS IS" "WHERE IS" "WITH ALL FAULTS," in its current physical condition, with no warranties of any kind or nature, express or implied, except those warranties set forth in Section 1.7 above, as to the physical condition thereof, the presence or absence of any latent or patent condition thereon or therein, including, without limitation, any Hazardous Materials thereon or therein, and any other matters affecting the Site. The Developer specifically acknowledges and agrees that the Commission is selling and the Developer is buying the Site (and all improvements thereon) 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 (except as expressly set forth in this agreement) or implied, from the Commission as to any matters concerning the Site, including without limitation: (a) the quality, nature, adequacy and physical condition of the Site (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 Site; (d) the development potential of the Site, and the use, habitability, merchantability, or fitness, suitability, value or adequacy of the Site for any particular purpose; (e) the zoning or other legal status of the Site or any other public or private restrictions on the use of the Site; (f) the compliance of the Site 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 Site or the adjoining or neighboring property; and (h) the condition of title to the site. The Developer affirms that the Developer has not relied on the skill or judgment of the Commission or any of its agents, employees or contractors to select or furnish the Site for any particular purpose, and that the Commission makes no warranty that the Site 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 Site and shall rely upon its own investigation of the physical, environmental, economic and legal condition of the Site (including, without limitation, whether the Site 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 Site'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.

F. Indemnity. The Developer agrees, from and after the date of recordation of the Grant Deed, to defend (by counsel reasonably satisfactory to the Commission), indemnify, protect and hold harmless the Commission and its respective officers, directors, members, beneficiaries, employees, agents, attorneys, representatives, legal successors and assigns (collectively, the "Indemnitees") from, regarding and against any and all liabilities, obligations, orders, charges, decrees, judgments, liens, demands, actions, "Environmental Response Actions" (as defined in hereon), claims, losses, damages, fines, penalties, expenses, "Environmental Response Costs" (as defined in Section 2.9.I below), administrative and judicial proceedings, remedial action requirements, enforcement actions of any kind, or costs of any kind or nature whatsoever, together with fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), (collectively, "Claims") occurring during and caused by Developer's use and occupancy of the Site, and resulting from or in connection with the actual or claimed generation, storage, handling, treatment, transportation, use, presence, placement, migration, removal, release, storage, decontamination, cleanup, and/or disposal of Hazardous Materials at, on, in, beneath or from the Site after the Close of Escrow, unless (i) caused by the negligence or willful misconduct of an Indemnatee, (ii) related to the underground storage tank identified in the Phase I, or (iii) related to the existence, prior to any removal activities of Developer, of the asbestos concrete pipe identified in the Phase 1 (but not if any such Claims were, directly or indirectly, caused by the Developer, including during Developer's removal thereof) (the "Exempted Claims"). The Developer's defense, indemnification, protection and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim or demand regarding the Hazardous Materials, at the Developer's sole cost. The foregoing indemnity shall further apply to any residual contamination on or under the Project, 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 occurring after the Close of Escrow, and irrespective of whether any of such activities were or will be undertaken in accordance with all federal, state, and local laws, ordinances, regulations, orders, and directives pertaining to Hazardous Materials in, on, or under the Project or any portion thereof. The provisions of this section shall survive expiration of the Term, or the termination, of this Agreement, and shall remain in full force and effect.

G. Environmental Provisions. Developer hereby acknowledges and agrees that (i) this Section is intended as the Commission's written request for information (and Developer's response) concerning the environmental condition of the Site as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and

warranty) with respect to the environmental condition of the Site is intended by the parties to be an “environmental provision” for purposes of California Code of Civil Procedure Section 736.

H. Release and Waiver. Developer hereby releases and waives all rights, causes of action and claims the Developer has or may have in the future against the Indemnitees arising out of or in connection with any Hazardous Materials at, on, in, beneath or from the Site, other than any Exempted Claims, that occur after the Close of Escrow. In furtherance of the intentions set forth herein, the Developer acknowledges that it is familiar with California Civil Code Section 1542, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED THIS SETTLEMENT WITH THE DEBTOR.”

The Developer hereby waives and relinquishes any right or benefit which it has or may have under California Civil Code Section 1542, or any similar provision of the statutory or non-statutory law of any other applicable jurisdiction to the full extent that it may lawfully waive all such rights and benefits, with respect to Section 2.9.H of this Agreement.

Developer’s Initials: _____

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

3. FINANCING

As set forth in Sections 3.1-3.5 below and in the Financing Plan, Developer contemplates financing the acquisition of the Site and development of the Project thereon with a combination of funds from the proceeds of the following: Tax Exempt Bond Proceeds, Tax Credit syndication proceeds, the Commission Loan, CalHFA MIP loan proceeds and/or other sources as may be identified by the Developer. Developer shall utilize all of such funding exclusively for the development of the Project on the Site, and not for any other purpose.

3.1 Acquisition Assistance

The “Acquisition Assistance” is financial assistance from the Commission, in an amount which is the Purchase Price of the Site. The Acquisition Assistance shall be provided to Developer at the Close of Escrow, in the form of the Commission Loan.

3.2 Developer Fee

The Developer shall be entitled to a Developer Fee in an amount not exceeding the maximum amount allowed under the TCAC regulations effective at the time the Developer receives a Tax Credit reservation; provided, however, that the amount of the Developer Fee that can be paid to the Developer shall not exceed the maximum amount allowed by applicable TCAC guidelines or such greater amount allowed by any other funding source set forth in the Financing Plan if approved in writing by Commission. Except for the Developer Fee and the Partnership Management Fee, no compensation from any source shall be received by or be payable to the Developer or any affiliate of the Developer in connection with the provision of development and construction management services for the construction of the Project. This Section 3.2 shall not prohibit an Affiliate of Developer from acting as the general contractor for the Project and receiving any such fees allowable pursuant to TCAC guidelines subject to Commission approval.

3.3 Other Developer Financing for the Project

A. MIP Loan. Developer shall timely submit a complete application for the MIP Loan and shall diligently pursue the receipt of the same. If the Project does not qualify for an MIP Loan (or if the MIP Loan program is discontinued), Developer shall seek a replacement source for the MIP Loan.

B. Construction Loan. Developer shall obtain a Construction Loan in an amount that, when combined with the sum of the Tax Credits, the MIP Loan, and the Commission Loan(s) (if any) is sufficient to complete construction of the Project.

C. Tax Credits. Developer shall (i) prepare and submit a complete application to TCAC for an allocation of Tax Credits as soon as feasible following Developer's satisfaction of the conditions precedent to submit a competitive application to TCAC for Tax Credits following the Effective Date of this Agreement; and (ii) apply to reputable institutional investors qualified to act as the Investor Limited Partner. If Developer does not receive a reservation of Tax Credits by the Outside Closing Date, then Commission or Developer may terminate this Agreement pursuant to Section 2.4.D upon written notice to the other; provided, however, that Commission's Executive Director may, in her sole and absolute discretion, permit Developer to make additional reapplications. In the event there are subsequent applications for an allocation of Tax Credits, Commission reserves all rights to re-evaluate the amount of the Commission Loan, which evaluation shall be undertaken by the Executive Director and the Commission's financial advisor; therefore, the principal amount of the Commission Loan may change due to such re-evaluation, which would require further negotiations between the parties and the mutually agreeable amendment and/or restatement of this Agreement.

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

i. A true and correct copy of the preliminary reservation letter from TCAC, a copy of the final letter of intent from the Investor Limited Partner reflecting the total amount of the syndication proceeds and the timing of the payment of such proceeds.

ii. A complete copy of the Tax Credit Regulatory Agreement (4 California Administrative Code § 10340(c)). (As more fully discussed in Section 3.11 of the Commission Regulatory Agreement, should Commission be prevented by a final order of a court of competent jurisdiction, applicable and binding appellate opinion, or regulatory body with jurisdiction from enforcing, for any reason, the affordability restrictions set forth in this Agreement, Commission shall be a third-party beneficiary under said agreement and shall have full authority to enforce any breach or default by Developer thereunder in the same manner as though it were a breach or default under this Agreement.).

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

D. PV Rebate. To the extent applicable, Developer shall timely submit a complete application for the PV Rebate, if available, and shall diligently pursue the receipt of the same.

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

3.4 Project Budget; Project Pro Forma

The anticipated sources and uses of funds for the development of the Project are to be set forth in the Project Budget (Attachment No. 7). The financial projections for the Project are to be set forth in the Project Pro Forma (Attachment No. 8). Commission agrees and acknowledges that (i) the Project Budget and Project Pro Forma have been prepared by Developer based upon preliminary information regarding construction costs, financing availability and other matters and that they do not constitute a guaranty that the Project can be developed in accordance therewith and (ii) the Project Budget and Project Pro Forma will be subject to updates as allowed pursuant to this Agreement, provided, however, there shall be no change to the terms and conditions of the Commission Loan without the consent of the Commission.

3.5 Developer Submittals

Promptly upon Developer's receipt of a notification of an award of any of the financing described in the Financing Plan, Developer shall submit to the Commission copies of all of the correspondence and other documentation received in connection with the same.

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

4. DEVELOPMENT OF THE SITE

4.1 Scope of Development

The Project will be comprised of the construction of an affordable multifamily rental housing complex containing not less than one hundred sixty-four (164) apartment dwelling units, and shall include all of the on-site private improvements necessary for the development and all public improvements required pursuant to the conditions of approval issued with the Project Entitlement issued by the City, and shall be in accordance with all approved plans and permits, all as set forth in this Agreement and in the Scope of Development.

4.2 Plans, Drawings, and Related Documents

By the time set forth for the applicable items in the Schedule of Performance, the Developer shall prepare and submit to the City for its approval, and shall obtain the City's approval of, all plans, drawings, and documents for the Project in conformance with all requirements of the City and which contain the overall plan for development of the Site in sufficient detail to enable the City to evaluate the proposal for conformity to the requirements of the Santa Rosa Municipal Code and this Agreement. The Site shall be developed as established in this Agreement and the aforementioned documents, except as changes may be mutually agreed upon between the Developer and the Commission; provided that any changes shall be consistent with the material terms of this Agreement.

The landscaping and finish grading plans, if any finish grading plans are required by the City, shall be prepared by a professional landscape architect or registered civil engineer who may be the same firm as the Developer's architect or civil engineer.

During the preparation of all drawings and plans, staff of the Commission and the Developer shall hold regular progress meetings to coordinate the preparation of, submission to, and review of drawings, plans and related documents by, the City. The staff of the Commission and the Developer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the Commission can receive prompt consideration.

Developer acknowledges that execution of this Agreement by the Commission does not constitute approval by the City of any of the required permits or applications, and the City retains unfettered discretion in the processing of the same.

4.3 Review and Approval of Plans, Drawings, and Related Documents

The Commission shall have the right to review all plans and drawings which may be required by the City with respect to any permits and entitlements which are required to be obtained to develop the Project, including any changes therein.

During each stage of the processing of plans for the Project, the Commission shall have the right to require reasonable additional information. If the City determines that such a submittal is not complete or not in accordance with procedures, such tender shall not be deemed to constitute a submittal for purposes of satisfying the Schedule of Performance; provided, however, Developer shall prepare a detailed written report of any such deficiency or noncompliance with procedures

and Developer shall revise and resubmit such plans in accordance with the Schedule of Performance and such written report.

If the Developer desires to make any substantial changes in the construction plans for the Project after the approval thereof by the City, the Developer shall submit the proposed changes to the City for their approval.

4.4 Project Entitlements

Prior to, and as one of the Commission's Conditions to Close, as set forth in Section 2.4.A, Developer shall (i) obtain from the City of Santa Rosa approval for all plans, drawings, and related documents required for the Project, such that immediately after the Close of Escrow for the Site Developer shall be entitled to obtain grading and building permits for the Project; and (ii) obtain from the City of Santa Rosa all permits and entitlements necessary for the Project as required in this Agreement, by applicable State law, by City code, and all other applicable law, including but not limited to, Environmental Review, a Parking Exception (if applicable), Site Design, Architectural Review, any conditional use permit, any zone change, any variance, and any vacation of public rights of way, the approval of which by the City of Santa Rosa is subject to the City's legislative discretion (all of the foregoing, the "Project Entitlements"). Commission agrees to fully cooperate with, at no cost to Commission, Developer in its pursuit of Project Entitlements, subject to Commission's exercise of its legislative discretion and without any representation, warranty, or guaranty by Commission that the City will issue, or will issue with conditions, any Project Entitlement. Without limiting the generality of the foregoing, Commission shall review all submittals by Developer in a timely manner and shall provide Developer with all information, in Commission's possession or control that Developer may reasonably request in writing in connection with the Project Entitlements (or the pursuit thereof).

4.5 Cost of Development

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

4.6 Construction Schedule

The Developer shall commence and complete construction of the Project by the respective times established therefor in the Schedule of Performance in Attachment No. 5.

4.7 Evidence of Financing

Within the time set forth in the Schedule of Performance, and as a condition precedent to Commission's obligation to transfer the Site to Developer, Developer shall submit to the Executive Director evidence reasonably satisfactory to the Executive Director that Developer has, or will have, prior to the Close of Escrow, the financial capability necessary for the development of the Project on the Site pursuant to this Agreement. Such evidence of financial capability (collectively, the "Evidence of Financing") shall include all of the following:

Copies of executed letters of commitment or preliminary reservations or awards (if final commitment letters are not yet available) from the funding sources described in the Financing Plan in an amount sufficient, collectively, to complete construction of the Project, or reasonably final construction loan documents along with evidence reasonably satisfactory to the Executive Director that the sources of said financing intend to execute the same and provide an initial funding on or before the Close of Escrow. Any such agreement shall provide for notice of default to Commission, and the right to cure required by Section 4.21.

Evidence of sufficient take out financing, including both permanent loan and any other funds, in a form reasonably satisfactory to the Executive Director, such that the Executive Director can determine that sufficient funding for the Project will be available.

A true and correct copy of the preliminary reservation letter from TCAC, a copy of the final letter of intent from the Investor Limited Partner reflecting the total amount of the syndication proceeds and the timing of the payment of such proceeds, and evidence of the source and amount of any bridge financing that will be procured in an interim basis, and the terms under which the bridge financing is being provided.

A copy of Developer's most recently prepared Annual Financial Statement, and a copy of Developer's most recent internally prepared, unaudited financial statement, which shall include a balance sheet, income statement, statement of retained earnings, statement of cash flows, and footnotes thereto, prepared in accordance with generally accepted accounting principles consistently applied.

A copy of a fee-based construction contract or guaranteed maximum price construction contract between Developer and its general contractor for all of the improvements required to be constructed by Developer hereunder, certified by Developer to be a true and correct copy thereof; and

The Executive Director shall complete his or her review of and approve or disapprove Developer's Evidence of Financing within the time set forth in the Schedule of Performance. If the Executive Director shall disapprove such Evidence of Financing, he or she shall do so by written notice to Developer stating the reasons for such disapproval. In such event, Developer shall promptly resubmit its Evidence of Financing not less than thirty (30) days after receipt of the Executive Director's disapproval, the Executive Director shall reconsider such resubmittal within the same number of days allowed for the initial submittal, and the deadlines in the Schedule of Performance shall be extended accordingly.

4.8 Indemnity Requirements

The Developer shall indemnify, defend, and hold harmless the Indemnitees from all claims or suits for, and damages to, property and injuries to persons, including accidental death (including expert witness fees, reasonable attorneys' fees, and costs), which may be caused by any of the Developer's activities under this Agreement except to the extent caused by the negligence or willful misconduct by any of the Indemnitees.

4.9 Insurance Requirements

General. Commencing on the Effective Date hereof and ending on the expiration date of the Commission Regulatory Agreement, Developer shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to the Executive Director, policies of insurance in conformance with the Commission's requirements set forth in Attachment No. 11.

4.10 City and Other Governmental Commission Permits

Before commencement of construction or development of any buildings, structures or other works of improvement upon the Site or in connection with any off-site improvement, the Developer shall, subject to Section 4.4, at its own expense, secure or cause to be secured any and all permits which may be required by the City or any other governmental agent affected by such construction, development or work. Developer shall be obligated to pay all necessary fees and to timely submit to the City final drawings with final corrections to obtain building permits; the Commission will, without obligation to incur liability or expense therefor, use reasonable efforts to assist Developer in obtaining issuance of building permits and certificates of occupancy for construction that meet the requirements of the Santa Rosa Municipal Code.

4.11 Maintenance During Construction

Developer shall, prior to completion of construction, maintain all portions of the Site undergoing construction in a neat and orderly condition to the extent practicable and in accordance with industry health and safety standards.

4.12 Rights of Access

For purpose of assuring compliance with this Agreement, officers, directors, members, employees, representatives, and agents of the Commission shall have the right of access to the Site without charges or fees, at normal business hours and upon reasonably advanced written notice to Developer, during the Term of this Agreement for the purposes of this Agreement, including, but not limited to, (i) the inspection of the work being performed in constructing the Project, so long as they comply with all safety rules, and (ii) following completion of construction, to inspect the ongoing operation and management of the Project to determine the same is in conformance with the requirements of this Agreement and the Commission Regulatory Agreement. The Commission shall not cause any delay in the construction or operation of the Project by its entry pursuant to this Section 4.12 and shall at all time comply with all applicable laws, rules and regulations, including, without limitation, any such laws, rules and regulations relating to tenant's rights. The Developer acknowledges that the Commission is under no obligation to supervise, inspect, or inform the Developer of the progress of construction, or operations and the Developer shall not rely upon the Commission therefore. Any inspection by the Commission during the construction is entirely for its purposes in determining whether the Developer is in compliance with this Agreement and is not for the purpose of determining or informing the Developer of the quality or suitability of construction. The Developer shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers. Notwithstanding any provision of this Agreement to the contrary, Developer shall not bear any liability to the Commission for injury to

any Commission employee or representative occurring during the exercise of the Commission's right of entry pursuant to this Section 4.12, unless caused by the willful misconduct of the Developer.

4.13 Compliance with Local, State and Federal Laws

The Developer shall carry out, and shall ensure that its contracts and subcontractors carry out the Project in conformity with all applicable federal, state, and local laws, ordinances, regulations, and rules, including but not limited to the Americans With Disabilities Act (42 U.S.C. Section 12101, *et seq.*), California Government Code Section 4450, *et seq.*, California Government Code Section 11135, *et seq.*, the Unruh Civil Rights Act (California Civil Code Section 51, *et seq.*), and all applicable state and local labor and wage laws., now in force or that may be enacted hereafter.

4.14 Labor and Wage Standards.

The Developer shall perform under this Agreement and carry out its performance under this Agreement, including without limitation the construction of the Project, in conformity with all applicable federal, state, and local labor and wage standards, including, without limitation, any applicable provision the Sonoma Living Wage Ordinance (Sonoma Municipal Code Chapter 2.70), and all applicable federal and state labor and wage standards, as to the Site, provided, however, Developer and its contractors, successors, assigns, transferees, and lessees are not waiving their rights to contest any such laws, rules or standards.

Developer shall perform the contract in conformity with the Sonoma Living Wage Ordinance (Sonoma Municipal Code Chapter 2.70). Developer expressly acknowledges and agrees that this contract is subject to the provisions of the County of Sonoma Living Wage Ordinance (Article XXVI of Chapter 2 of the Sonoma County Code), requiring payment of a living wage to covered employees. Notwithstanding the foregoing, Developer and Commission agree and acknowledge that the obligations of this Section 4.14 shall terminate upon Developer's acquisition of the Site.

Developer acknowledges that the provision of the Acquisition Assistance, in combination with any other public funding Developer may obtain to develop the Project, constitutes financial assistance that may cause the Project to be a "public work" as defined in California Labor Code Section 1720(a) and (b). However, Commission and Developer acknowledge that as of date of approval of this Agreement the Project is exempt because the Site is being transferred at the fair market value per California Labor Code Section 1720(c)(5)(E) and therefor may not be considered a public "work." If and to the extent anything changes to the Project as currently proposed then California Labor Code Section 1720(a) and (b) may apply. Nothing in this Agreement constitutes a representation or warranty by the Commission that the Project is not subject to Labor Code Section 1720(a), and all applicable statutory and regulatory provisions related thereto. The Developer waives any right of reimbursement for any "increased costs" under Labor Code Section 1781 with respect to the Project. If required by applicable law, the Developer must pay, and shall cause the contractor and subcontractors, to pay prevailing wages in the construction of the Project as required by Labor Code, Division 2, Part 7, Chapter 1, commencing with Section 1720 *et seq.* If required by applicable law, the Developer must, and shall cause the contractor and subcontractors, to comply with all other applicable provisions of Labor Code Section 1720 *et seq.*

and implementing regulations of the California Department of Industrial Relations. The Developer expressly waives any right of reimbursement for any “increased costs” under Labor Code Section 1781 with respect to the Project. The Developer shall indemnify, protect, defend and hold harmless the Indemnitees, with counsel reasonably acceptable to the Commission, from and against any and all loss, liability, damage, claim, fines, penalties, cost, expense and/or “increased costs” (including reasonable attorneys’ fees, court and litigation costs, and fees of expert witnesses) arising out of the failure or alleged failure of any person or entity (including a Developer, its contractors and subcontractors) to pay prevailing wages pursuant to California Labor Code, Division 2, Part 7, Chapter 1, commencing with Section 1720 *et seq.*, and the implementing regulations of the California Department of Industrial Relations, in connection with Project. The indemnification provided herein survives the Term or termination of this Agreement.

4.15 Anti-Discrimination

Pursuant to Section 33435 and 33050 of the California Community Redevelopment Law, the Developer for itself and its successors and assigns, agrees, that in the construction of the Project on the Site or other performance under this Agreement, the Developer shall not discriminate against any employee or applicant for employment on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code.

4.16 Taxes and Assessments

After the conveyance of title by Commission to Developer or its assignee, the Developer shall pay prior to delinquency all real estate taxes and assessments on the Site for any period subsequent to the conveyance of title and possession, so long as the Developer retains any ownership interest therein. The Developer shall remove or have removed any levy or attachment made on the Site or any part thereof, or assure the satisfaction thereof within a reasonable time but in any event prior to any sale or transfer of all or any portions thereof. Notwithstanding the above, the Developer shall have the right to contest the validity or amounts of any tax, assessment, or encumbrance available to the Developer in respect thereto, and nothing herein shall limit the remedies available to the Developer in respect thereto. Nothing in this Section 4.15 shall prohibit or in any way limited the Developer’s right to seek an abatement of real estate taxes pursuant to Section 214(g) of the California Revenue and Taxation Code or any other state, county or local ordinance allowing for the abatement of property tax for affordable housing developments.

4.17 Right of the Commission to Satisfy Other Liens on the Site After Title Passes

After the conveyance of title by Commission and prior to the completion of construction, and after the Developer has had written notice and has failed after a reasonable time, to challenge, cure, or satisfy any liens or encumbrances on the Site which are not otherwise permitted under this Agreement, the Commission shall have the right but no obligation to satisfy any such liens or encumbrances and receive immediate reimbursement of the costs thereof from the Developer. Notwithstanding the above, the Developer shall have the right to contest the validity or amounts of any tax, assessment, or encumbrance available to the Developer in respect thereto.

4.18 Limitation on Encumbrances

Except as otherwise permitted by this Agreement, including but not limited to Section 3.5, Developer shall not mortgage the Site or any portion thereof or any interest therein, any other mortgages or conveyances for financing that encumber the Site or any portion thereof, without the prior written approval of the Executive Director, which approval shall not be unreasonably withheld or delayed.

4.19 Holder Not Obligated to Construct Improvements

The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion, nor shall any covenant or any other provision in the Grant Deed for the Site, the Commission Regulatory Agreement or the Option Agreement be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by the City of Santa Rosa General Plan, any applicable specific plan, and applicable zoning, as the same may be amended from time to time.

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

Whenever the Commission shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction of the Project, the Commission shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement who has previously made a written request to the Commission therefor; provided, however, that the Commission shall have no liability to any such holder for failure by the Commission to provide notice to such holder. Each such holder shall (insofar as the rights of the Commission are concerned) have the right, 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 and to add the cost thereof to the security interest debt and the lien on its security interest. In the event there is more than one such holder, the right to cure or remedy a breach or default of the Developer under this Section 4.19 shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of the Developer under this Section 4.20. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the Commission by written agreement satisfactory to the Commission. The holder in that event must agree to complete, in the manner provided in this Agreement, the construction to which the lien or title of such holder relates and submit evidence satisfactory to the Commission that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing such improvements shall be entitled, upon written request made to the Commission, to a Release of Construction Covenants from the Commission.

4.21 Failure of Holder to Complete Improvements

In any case where, ninety (90) days after an uncured default by the Developer in completion of construction under this Agreement, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the Site has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, the Commission may purchase the mortgage, deed of trust or other security interest by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest. If the ownership of the Site has vested in the holder, the Commission, if it so desires, shall be entitled to a conveyance of the Site from the holder to the Commission upon payment to the holder of an amount equal to the sum of the following:

1. The unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
2. All expenses with respect to foreclosure, including reasonable attorneys' fees and trustee's fees;
3. The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Site or part thereof;
4. The costs of any authorized improvements made by such holder; and
5. An amount equivalent to the interest that would have accrued on the aggregate of the amounts in Subparagraphs 1-4 had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the Commission.

4.22 Right of Commission to Cure Mortgage, Deed of Trust or Other Security Interest Default.

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

5. USE OF THE SITE

5.1 Affordable Housing

Developer hereby covenants and agrees, for itself and its successors and assigns, to use and maintain the Site during the term of the Commission Regulatory Agreement only as a rental

apartment housing project with one hundred sixty-eight (164) Units, with eighty-one (81) of such Units to be rented to and occupied by Eligible Tenants at the applicable Affordable Rent, all as more fully described in the Commission Regulatory Agreement.

5.2 Management Agreement and Procedures

The Developer shall submit to the Commission for approval the proposed management agreement with the Management Agent and written guidelines or procedures for tenant selection, operation and management of the Project, implementation of the income certification, and reporting requirements of the Commission Regulatory Agreement. Commission shall review and approve, conditionally approve, or deny any proposed management agreement within fifteen (15) days after submittal. Any written disapproval shall specify the reasons for such disapproval. In the event the Commission disapproves of the written guidelines, the Developer shall thereafter submit revised guidelines and procedures to the Commission, and the same timelines and procedures for approval or disapproval shall apply to the revised guidelines and procedures as set forth above for the original submission. The Commission hereby approves USA Multifamily Management Inc. as the initial Management Agent.

5.3 Nondiscrimination

Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person, or group of persons on any basis listed in California Government Code Section 12955(a), as defined in Government Code Section 12925 *et seq.* and Section 12955 *et seq.*, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, nor shall Developer, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site, or any part thereof. The foregoing covenants shall run with the land.

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

A. In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. With respect to familial status, this covenant shall not be construed to apply to housing for older

persons, as defined in Section 12955.9 of the Government Code, nor shall it be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to this covenant. The foregoing covenants shall run with the land.”

B. In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: “That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased. With respect to familial status, this covenant shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code, nor shall it be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to this covenant. The foregoing covenants shall run with the land.”

C. In contracts pertaining to the realty: “There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. With respect to familial status, this covenant shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code, nor shall it be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to this covenant. The foregoing covenants shall run with the land.”

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Commission, its successors and assigns, and any successor in interest to the Site, together with any property acquired by the Developer pursuant to this Agreement, or any part thereof. The covenants against discrimination shall remain in effect in perpetuity. The Commission agrees that the provisions of this Section 5.4 shall not prevent the application of a preference for applicants living or working

in the City of Sonoma to the extent such a preference does not violate federal or state fair housing statutes and regulations.

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

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

5.5 Maintenance of the Site

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

5.6 Duty to Prevent Hazardous Materials Contamination

Developer shall take all reasonable precautions to prevent the release of any Hazardous Materials into the environment. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with the standards generally applied by apartment complexes in Sonoma County, California as respects the disclosure, storage, use, removal, and disposal of Hazardous Materials in, on, under or about the Site.

5.7 Obligation of Developer to Remediate Premises

Notwithstanding the obligation of Developer to indemnify Commission and its officers, officials, members, employees, agents, and representatives pursuant to Section 2.9.F, Developer shall, at its sole cost and expense, promptly take (i) all actions required by any federal, state, regional, or local governmental Commission or political subdivision or any Governmental Requirements, and (ii) all actions necessary to make full economic use of the Site for the purposes contemplated by this Agreement and the Commission Regulatory Agreement, which requirements or necessity arise from the presence upon, about or beneath the Site, prior to Commission's conduct of a foreclosure sale or acceptance of a deed in lieu thereof, of any Hazardous Materials or "Hazardous Materials Contamination" for which Developer is responsible. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Site, the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal or restoration work. As used in this Agreement, the term "Hazardous Materials Contamination" means the contamination (whether presently existing or hereafter occurring) of

the improvements, facilities, soil, groundwater, air or other elements on, in or of the Site by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time emanating from the Site.

5.8 Environmental Inquiries

Developer, when it has received any notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, or cease and desist orders related to Hazardous Materials or Hazardous Material Contamination, or when Developer is required to report to any governmental Commission any violation or potential violation of any Governmental Requirement pertaining to Hazardous Materials or Hazardous Material Contamination, shall concurrently notify Commission's Executive Director, and provide to him/her a copy or copies, of the environmental permits, disclosures, applications, entitlements or inquiries relating to the Site, the notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements, and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks, and Developer shall report to the Executive Director, as soon as possible after each incident, any unusual, potentially important incidents.

In the event of a responsible release of any Hazardous Materials into the environment, Developer shall, as soon as possible after it becomes aware of the release, furnish to the Executive Director a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of the Executive Director, Developer shall furnish to the Executive Director a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Site including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential.

6. **DEFAULTS AND REMEDIES**

6.1 Defaults – General

Subject to the extensions of time set forth in Section 7.3, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. If either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured or commenced to be cured by the defaulting party within thirty (30) days after service of the notice of default, the non-defaulting party shall be entitled to pursue whatever remedies to which such party is entitled under this Agreement.

6.2 Legal Actions

A. Specific Performance. The non-defaulting party, upon expiration of applicable notice and cure periods, shall be permitted, but not obligated, to commence an action for specific performance of the terms of this Agreement, or to cure, correct or remedy any default hereunder or to obtain any other legal or equitable remedy consistent with the purpose of this Agreement. In this regard, Developer specifically acknowledges that Commission is entering into

this Agreement for the purpose of assisting in the redevelopment of the Site and the provision of affordable housing and not for the purpose of enabling Developer to speculate in land. Commission shall also have the right to pursue damages for Developer's defaults but in no event shall Developer be entitled to damages of any kind from Commission, including, without limitation, damages for economic loss, lost profits, or any other economic or consequential damages of any kind.

B. Institution of Legal Actions; Attorney's Fees. Any legal actions must be instituted in the Superior Court of the County of Sonoma, State of California, or in the Federal District Court in the Northern District of California. In the event of any litigation between the parties hereto, the prevailing party shall be entitled to receive, in addition to the relief granted, its reasonable attorney's fees and costs and such other costs incurred in investigating the action and prosecuting the same, including costs for expert witnesses, costs on appeal, and for discovery.

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

D. Acceptance of Service of Process. In the event that any legal action is commenced by the Developer against the Commission, service of process on the Commission shall be made by personal service upon the Executive Director or in such other manner as may be provided by law.

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

6.3 Rights and Remedies Are Cumulative

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

6.4 Inaction Not a Waiver of Default

Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

6.5 Termination

A. Termination by the Developer. In the event that prior to the Close of Escrow:

- a. Commission is in material default of this Agreement, and any such failure is not cured within thirty (30) days, or for those defaults which cannot

reasonably be cured within thirty (30) days, commenced to be cured within said thirty (30) day period and thereafter diligently prosecuted to completion, after written demand by the Developer; or

b. the Commission fails to satisfy any or all of Developer's Conditions to Close by the time established therefor in the Schedule of Performance; then, at the option of the Developer, upon written notice thereof to the Commission, all provisions of this Agreement shall terminate and be of no further force and effect. Thereafter, except as provided in the next sentence, neither the Commission nor the Developer shall have any further rights against or liability to the other with respect to this Agreement. Nothing in this section shall be construed as (i) releasing any party from liability for any default of its obligations hereunder or breach of its representations and warranties under this Agreement occurring prior to the termination of this Agreement and/or the Escrow to be opened hereunder, or (ii) releasing the Developer from its indemnifications obligations hereunder, all of which shall survive termination of this Agreement.

B. Termination by the Commission. In the event that prior to the Close of the Escrow:

a. The Developer does not submit certificates of insurance, Evidence of Financing, construction plans, drawings and related documents, or any other submittals as required by this Agreement, in the manner and by the dates respectively provided in this Agreement therefor; or

b. The Developer fails to satisfy any or all of Commission's Conditions to Close by the time established therefor in the Schedule of Performance (including any extensions to the dates in the Schedule of Performance); or

c. Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the Commission in connection with this Agreement proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the Commission; then, at the option of the Commission, upon such written notice thereof to the Developer as may be set forth above, this Agreement shall be terminated. Thereafter, except as provided in the next sentence, neither party shall have any further rights or liability against the other under this Agreement. Nothing in this section shall be construed as (i) releasing any party from liability for any default of its obligations hereunder or breach of its representations and warranties under this Agreement occurring prior to the termination of this Agreement and/or the Escrow to be opened hereunder, or (ii) releasing the Developer from its indemnifications obligations hereunder, all of which shall survive termination of this Agreement.

In the event that at any time during the Term of this Agreement:

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

e. There is a change in the ownership of the Developer in violation of the provisions of Section 1.5 hereof; or

f. The Developer is in material default hereof, and such default or failure is not cured within thirty (30) days, or for those defaults which cannot reasonably be cured within thirty (30) days, commenced to be cured within said thirty (30) day period and thereafter diligently prosecuted to completion, after the date of written demand therefor by the Commission; or

g. A court having jurisdiction shall have made or entered any decree or order (1) adjudging the Developer or Developer's general partner to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for the 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, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of their properties, or (4) directing the winding up or liquidation of the Developer, if any such decree or order described in clauses (1) to (4), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period is permitted for cure under any other mortgage on the Site, in which event such lesser time period will apply under this subsection (f) as well; or prior to sooner sale pursuant to such sequestration, attachment, or execution. The occurrence of any decree or order in this subsection shall act to accelerate automatically, without the need for any action by the Commission, the indebtedness evidenced by the Commission Note; or

h. The Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Site, in which event such lesser time period shall apply under this subsection (g) as well) or prior to sooner sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the items or actions in this subsection shall act to accelerate automatically, without the need for any action by the Commission, the indebtedness evidenced by the Commission Note; or

i. The Developer shall have voluntarily suspended its business or, if the Developer is a partnership, the partnership shall have been dissolved or terminated; or

j. There shall occur any default declared by any lender under any loan document related to any loans, other than the Commission Loan(s), secured by a deed of trust on the Project, all cure periods provided by such loan document has expired without a remedy of default and the default has not been waived by the lender and, as a result, such lender has the right to accelerate repayment of such loan. The occurrence of any such default under this subsection shall act to accelerate automatically, without the need for any action by the Commission, the indebtedness evidenced by the Commission Note; then, at the option of the Commission, upon such written notice thereof to the Developer as may be set forth above, this Agreement shall be terminated. Thereafter, except as provided in the next sentence, neither party shall have any further rights or liability against the other under this Agreement. Nothing in this section shall be construed

as (i) releasing any party from liability for any default of its obligations hereunder or breach of its representations and warranties under this Agreement occurring prior to the termination of this Agreement and/or the Escrow to be opened hereunder, or (ii) releasing the Developer from its indemnifications obligations hereunder, all of which shall survive termination of this Agreement.

6.6 Option Agreement

In addition to any rights and remedies available to Commission hereunder, Commission shall be entitled, in its sole and absolute discretion, to repurchase the Site, or a portion thereof, with all of the improvements thereon, from Developer in the event that, (i) Developer fails to commence construction of the Project within certain specified timeframes (“Repurchase Option I”), (ii) after commencement of construction, Developer fails to continuously proceed with, and complete, construction of the Project (“Repurchase Option II”) within certain specified timeframes, or (iii) Developer transfers or suffers an involuntary transfer of the Site, or a portion thereof, in violation of the terms hereof (“Repurchase Option III”). Said repurchase rights shall be as set forth in an option agreement to be recorded against the Site at the Closing, in form and substance to be agreed to by the Parties on or before the date shown in the Schedule of Performance (“Option Agreement”) and shall at all times be subordinate to any deed of trust recorded against the Site.

6.7 Right of Reverter and Power of Termination

In addition to any other rights and remedies available to Commission hereunder, Commission shall be entitled, in its sole and absolute discretion, to reenter and take possession of the Site, subject to all liens and other matters of record, with all of the improvements thereon, from Developer in the event that prior to Commission’s issuance of a Release of Construction Covenants for the Project, (i) Developer fails to commence construction of the Project within certain specified timeframes, or (ii) after commencement of construction, Developer fails to continuously proceed with, and complete construction of the Project within certain specified timeframes, or (iii) Developer transfers or suffers an involuntary transfer of the Site, or a portion thereof, in violation of the terms hereof. Said rights shall be as set forth in the Grant Deed pursuant to which Commission shall convey the Site to Developer and shall be at all times be subordinate to any deed of trust recorded against the Site.

6.8 Commission’s Option to Acquire Plans

Subject to the rights of any senior lenders, if this Agreement is terminated for any reason other than as a result of an Commission default, at the option of the Commission, which may be exercised in the Commission’s sole and absolute discretion, the Developer shall deliver to the Commission an executed assignment in a form reasonably acceptable to the Commission of the Developer’s right to use all plans, blueprints, drawings, sketches, specifications, tentative or final subdivision maps, landscape plans, utilities plans, soils reports, noise studies, environmental assessment reports, grading plans and any other materials relating to the construction of the Project on the Site (the “Plans”), together with copies of all of the Plans, as have been prepared for the development of the Site to date of the termination. Notwithstanding the foregoing, however, Developer does not covenant to convey to the Commission the copyright or other ownership rights of third parties. Commission understands and agrees that the assignment to Commission under this

Section 6.8 is subject and subordinate to any assignment which Developer may make to the Construction Lender, and Commission agrees to execute any documents required by such lender acknowledging and effectuating such subordination of Commission's rights in and to the assignment. Commission's acquisition or use of the Plans or any of them shall be without any representation or warranty by Developer as to the accuracy or completeness of any such Plans, and Commission shall assume all risks in the use of the Plans.

7. GENERAL PROVISIONS

7.1 Notices, Demands and Communications Between Parties

Written notices, demands and communications between the Commission and the Developer shall be sufficiently given if (i) delivered by hand, (ii) delivered by reputable same-day or overnight messenger service that provides a receipt showing date and time of delivery, or (iii) dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the Commission and the Developer at the addresses specified in Section 1.3.A and 1.3.B, respectively. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 7.1.

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

Copies of any such written notice, demand, or communication shall also be sent to the following entities:

If notice is sent to Commission, then to:	Office of County Counsel 575 Administration Drive #105A Santa Rosa, CA 95403 Attn: Alegria De La Cruz, Esq.
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If notice is sent to Developer, then to:	USA Properties Fund, Inc. 3200 Douglas Blvd., Suite 200 Roseville, CA 95661 Attn: Steven Gall, EVP
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And	Bocarsly Emden Cowan Esmail & Arndt LLP 633 West Fifth Street, Suite 6400 Los Angeles, CA 90071 Attn: Kyle Arndt
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7.2 Conflicts of Interest

No member, officer, official, or employee of the Commission shall have any personal interest, direct or indirect, in this Agreement, nor shall any member, official or employee

participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

7.3 Enforced Delay; Extension of Times of Performance

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor; subcontractor or supplier; acts or omissions of the other party; acts or failures to act of the City of Santa Rosa, or the Commission, or any other public or governmental agency or entity (except that the acts or failures to act of the Commission shall not excuse performance by the Commission); or any other causes beyond the control or without the default of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days after the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Commission and Developer. The Commission Executive Director shall also have the authority on behalf of Commission to administratively approve extensions of time not to exceed a cumulative total of two (2) years.

Notwithstanding the foregoing portion of this Section 7.3, the Developer is not entitled pursuant to this Section 7.3 to an extension of time to perform because of past, present, or future difficulty in obtaining suitable construction financing for the development of the Site, or because of economic or market conditions.

7.4 Provision Not Merged with Deeds

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

7.5 Non-Liability of Officials and Employees of the Commission

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

7.6 Parties Not Co-Venturers

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

7.7 Warranties

Except as otherwise set forth herein, the Commission expresses no warranty or representation to the Developer as to fitness or condition of the Site for the building or construction to be conducted thereon.

7.8 Interpretation; Entire Agreement, Waivers; Attachments

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

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

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

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

7.9 Time of Essence

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

7.10 No Brokers

Each party represents to the other party that it has not had any contact or dealings regarding the Site, 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. 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, 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.

7.11 Maintenance of Books and Records

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

7.12 Right to Inspect

Commission shall have the right, upon not less than three (2) business days' prior notice, at all reasonable times during business hours, to inspect the books and records of the Developer pertinent to the purposes of this Agreement. Said right of inspection shall not extend to documents privileged under attorney-client or other such privileges.

7.13 Binding Effect of Agreement

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their legal representatives, successors, and assigns. This Agreement shall likewise be binding upon and obligate the Site and the successors in interest, owner or owners thereof, and all of the tenants, lessees, sublessees, and occupants of such Site. Each and every contract, deed, or other instrument hereafter executed covering or conveying the Site shall be held conclusively to have been executed, delivered, and accepted subject to the terms and provisions hereof, regardless of whether such terms and provisions are set forth in such contract, deed, or other instrument, unless the Commission expressly releases the Site from the requirements of this Agreement.

7.14 Severability

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

7.15 Counterparts

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

7.16 Amendments to this Agreement

The Developer and the Commission agree to mutually consider reasonable requests for amendments to this Agreement which may be made by either of the Parties hereto, the Investor Limited Partner, or the Construction Lender, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein. The Commission's Executive Director shall have the authority to approve, on behalf of the Commission, amendments to this Agreement that would not substantially alter the basic business terms or substantially increase the cost or risk of this Agreement to the Commission. All other amendments shall require the action of the Commission Board. All amendments, including those authorized to be approved by the Commission's Executive Director, shall be in writing and shall be signed by authorized representatives of Commission and Developer. The Commission's Executive Director shall have the authority, on behalf of the Commission, to approve extensions of time in Developer's performance under this Agreement, including, but not limited to, times of performance set forth in the Schedule of Performance, for a cumulative period of up to two (2) years.

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

Dated: _____, 2021

SONOMA COUNTY COMMUNITY
DEVELOPMENT COMMISSION, a public
body corporate and politic

By: _____
Its: Barbie Robinson
Interim Executive Director

APPROVED AS TO FORM:

Aldo R. Mercado

Attorney for the Sonoma County Community
Development Commission

USA PROPERTIES FUND, INC., a
California corporation

Dated: _____, 2021

By: _____

Its:

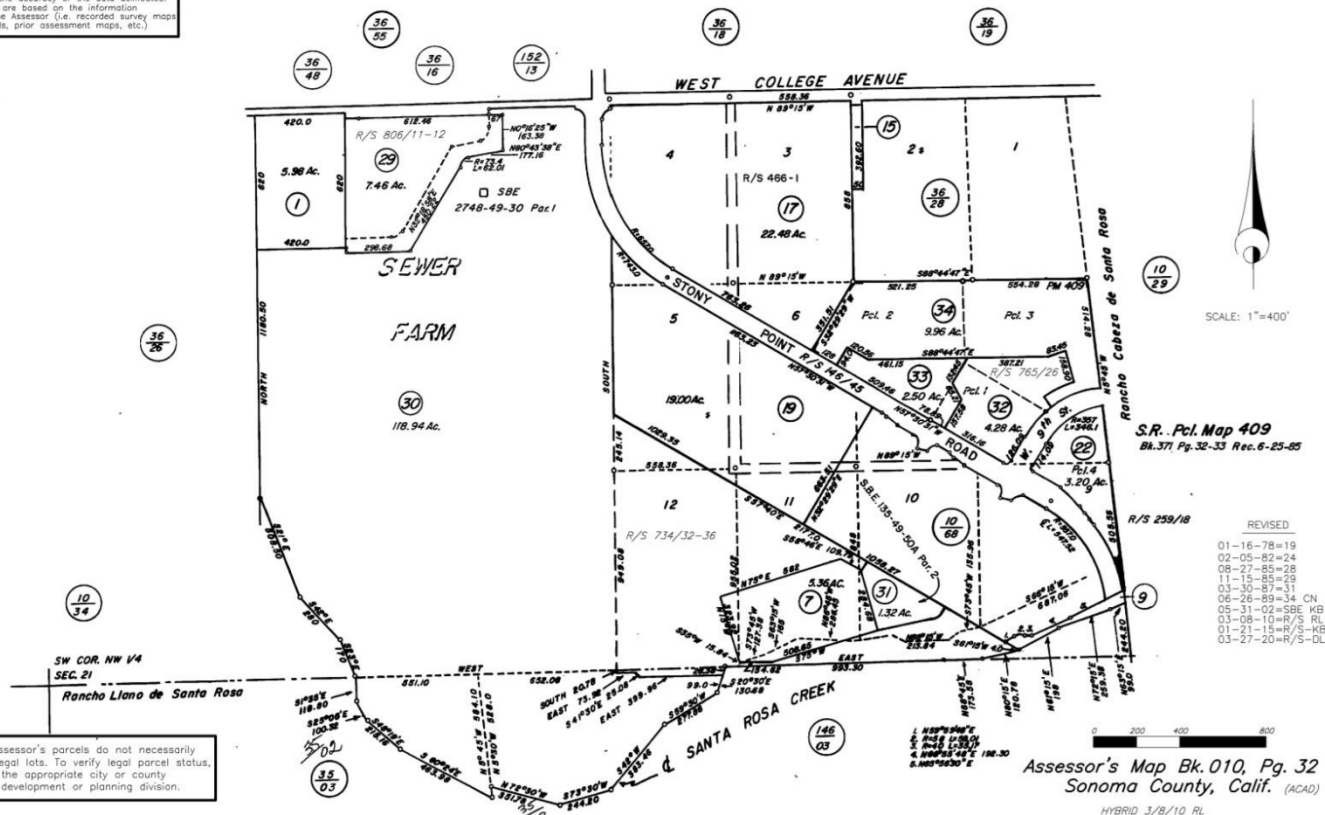


NOTE: This map was prepared for Assessment purposes only and does not indicate either parcel legality or a valid building site. No liability is assumed for the accuracy of the data reflected. The acreages are based on the information supplied to the Assessor (i.e. recorded survey maps, recorded deeds, prior assessment maps, etc.)

COUNTY ASSESSOR'S PARCEL MAP

TAX RATE AREA
4-002

010-32



Attachment 2. Legal Description

LEGAL DESCRIPTION

Real property in the City of Santa Rosa, County of Sonoma, State of California, described as follows:

PARCEL ONE:

BEING A PORTION OF THE LANDS OF THE CITY OF SANTA ROSA DESCRIBED IN AN INSTRUMENT RECORDED IN [BOOK 220 OF DEEDS, PAGE 272](#) OF OFFICIAL RECORDS OF SONOMA COUNTY, CALIFORNIA IN SECTION 21, TOWNSHIP 7 NORTH, RANGE 8 WEST, MOUNT DIABLO BASE & MERIDIAN, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A CITY MONUMENT FOUND AT THE INTERSECTION OF THE CENTERLINES OF WEST COLLEGE AVENUE AND STONY POINT ROAD, SAID MONUMENT BEARS NORTH 57° 29' 02" WEST, 25.44 FEET FROM CITY OF SANTA ROSA CONTROL MONUMENT G-138, AS SHOWN ON THAT RECORD OF SURVEY OF STONY POINT ROAD AND RECORDED IN [BOOK 146 OF MAPS, PAGE 46](#), SONOMA COUNTY RECORDS; THENCE FROM SAID POINT OF COMMENCEMENT AND ALONG THE CENTERLINE OF WEST COLLEGE AVENUE NORTH 89° 23' 26" WEST, 474.72 FEET TO A POINT, FROM WHICH POINT A 2-INCH IRON PIPE ON THE CENTERLINE OF WEST COLLEGE AVENUE, AND AT THE NORTHWEST CORNER OF THE ABOVE-MENTIONED SECTION 21, BEARS NORTH 89° 23' 26" WEST, 2116.40 FEET, AND SHOWN ON THAT SUBDIVISION MAP RECORDED IN [BOOK 252 OF MAPS, PAGE 27](#), SONOMA COUNTY RECORDS; THENCE SOUTH 0° 16' 05" EAST, 61.007 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL TO BE HEREIN DESCRIBED, THENCE SOUTH 0° 16' 05" EAST, 56.29 FEET; THENCE ON A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 59.60 FEET, THROUGH AN ANGLE OF 80° 59' 43", FOR A DISTANCE OF 84.25 FEET; THENCE SOUTH 80° 43' 38" WEST, 132.11 FEET; THENCE SOUTH 32° 18' 58" WEST, 449.83 FEET; THENCE ON A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 57.47 FEET; THROUGH AN ANGLE OF 58° 16' 31", FOR A DISTANCE OF 58.45 FEET; THENCE NORTH 89° 24' 30" WEST, 226.85 FEET TO THE EASTERLY LINE OF THE LANDS OF THE STATE OF CALIFORNIA, AS RECORDED IN [BOOK 1249, PAGE 307](#), SONOMA COUNTY RECORDS; THENCE ALONG SAID EASTERLY LINE NORTH 0° 00' 37" EAST, 552.04 FEET TO A POINT THAT BEARS SOUTH 0° 00' 37" WEST, 57.606 FEET FROM THE CENTERLINE OF WEST COLLEGE AVENUE; THENCE CURVING TO THE LEFT FROM A TANGENT WHICH BEARS SOUTH 84° 45' 53" EAST, THROUGH AN ARC OF 04° 37' 33" FOR A DISTANCE OF 84.21 FEET TO THE END OF THE CURVE; THENCE SOUTH 89° 23' 26" EAST 612.46 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

BEING A PORTION OF THE LANDS OF THE CITY OF SANTA ROSA DESCRIBED IN AN INSTRUMENT RECORDED IN [BOOK 220 OF DEEDS, PAGE 272](#) OF OFFICIAL RECORDS OF SONOMA COUNTY, CALIFORNIA IN SECTION 21, TOWNSHIP 7 NORTH, RANGE 8 WEST, MOUNT DIABLO BASE & MERIDIAN, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A CITY MONUMENT FOUND AT THE INTERSECTION OF THE CENTERLINES OF WEST COLLEGE AVENUE AND STONY POINT ROAD, SAID MONUMENT BEARS NORTH 57° 29' 02" WEST, 25.44 FEET FROM CITY OF SANTA ROSA CONTROL MONUMENT G-138, AS SHOWN ON THE RECORD OF SURVEY OF STONY POINT ROAD AND RECORDED IN [BOOK 146 OF MAPS, PAGE 46](#), SONOMA COUNTY RECORDS; THENCE FROM SAID POINT OF COMMENCEMENT AND ALONG THE CENTERLINE OF WEST COLLEGE AVENUE NORTH 89° 23' 26" WEST, 474.72 FEET TO A POINT, FROM WHICH POINT A 2-INCH IRON PIPE ON THE CENTERLINE OF WEST

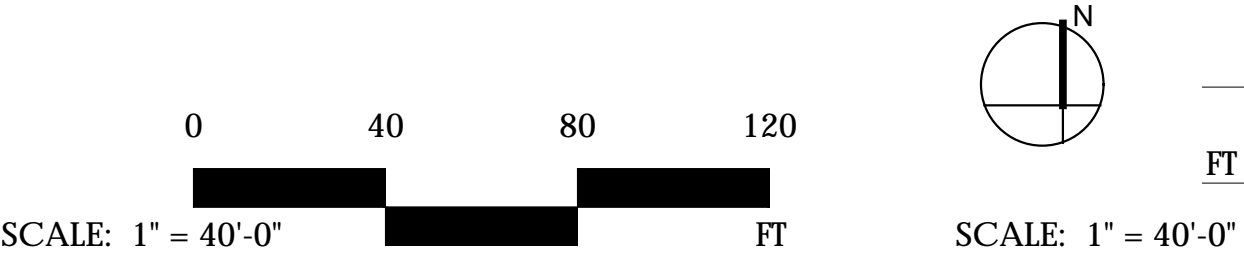
COLLEGE AVENUE, AND AT THE NORTHWEST CORNER OF THE ABOVE MENTIONED SECTION 21, BEARS NORTH 89° 23' 26" WEST, 2116.40 FEET, AND SHOWN ON THAT SUBDIVISION MAP RECORDED IN [BOOK 252 OF MAPS, PAGE 27](#), SONOMA COUNTY RECORDS; THENCE SOUTH 0° 16' 05" EAST, 61.01 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL TO BE HEREIN DESCRIBED; THENCE SOUTH 0° 16' 05" EAST, 56.29 FEET; THENCE ON A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 59.60 FEET, THROUGH AN ANGLE OF 80° 59' 50", FOR A DISTANCE OF 84.25 FEET; THENCE SOUTH 80° 43' 38" WEST, 132.11 FEET; THENCE SOUTH 32° 18' 58" WEST, 449.83 FEET; THENCE ON A TANGENT CURVE TO THE RIGHT WITH E RADIUS OF 57.47 FEET; THROUGH AN ANGLE OF 58° 16' 23", FOR A DISTANCE OF 58.45 FEET; THENCE NORTH 89° 24' 30" WEST, 226.85 FEET TO THE EASTERLY LINE OF THE LANDS OF THE STATE OF CALIFORNIA, AS RECORDED IN [BOOK 1249, PAGE 307](#), SONOMA COUNTY RECORDS; THENCE SOUTH 0° 00' 37" WEST, 62.01 FEET; THENCE SOUTH 89° 24' 30" EAST, 298.68 FEET; THENCE NORTH 32° 18' 58" EAST, 450.22 FEET TO A POINT ON A CURVE TO THE RIGHT HAVING A RADIUS OF 73.40 FEET THROUGH AN ANGLE OF 48° 24' 14" A DISTANCE OF 62.01 FEET, THENCE NORTH 80° 43' 38" EAST, 177.16 FEET; THENCE NORTH 0° 16' 25" WEST, 163.38 FEET; THENCE NORTH 89° 23' 26" WEST, 67.00 FEET TO THE TRUE POINT OF BEGINNING.

APN: 010-320-029

Attachment 3. Scope of Development

USA Properties Fund, Inc. (USA) proposes the redevelopment of 2150 West College Avenue, the former Sonoma County Water Agency property. USA's development proposal is for a 164-unit apartment home community on 5.79 acres. The community will consist of one-, two-, and three-bedroom units in three residential buildings with a community center, pool, and other amenities as shown in the attached site plan.

Through innovative design and creative site planning on this irregularly shaped 5.79 net acre parcel, College Creek Apartments supports the goals of the City and County by proposing an inclusive community. College Creek will provide housing opportunities for seniors, veterans, lower wage working families, and individuals with incomes ranging from 30% to 70% area median income.



PROJECT DATA 2/18/2020

SITE AREA 2150 W. COLLEGE AVE, SANTA ROSA, CA

GROSS: 324,957 SF 7.46 ACRES
NET: 249,163 SF 5.79 ACRES

NUMBER OF UNITS: 168 UNITS
DENSITY: 29.0 DU/AC

BUILDINGS A & B UNIT MIX		UNITS # BLDGS TOTAL		
A1	1 BR + 1BA	622 SF	12 UNITS	2 24
B1	2 BR + 2BA	897 SF	11 UNITS	2 22
B2	2BR + 2BA	953 SF	6 UNITS	2 12
TOTAL			29 UNITS	58 UNITS

BUILDINGS A & B AREAS		
NET RENTABLE AREA	46,098 SF	79.3% EFFICIENCY
AMENITIES (BIKES)	1,350 SF	
UTILITIES	714 SF	
CORRIDORS	9,036 SF	
STAIRS	924	
TOTAL AREA	58,122 SF	

BUILDING C UNIT MIX		# BLDGS TOTAL		
A1	1 BR + 1BA	622 SF	46 UNITS	1 46 UNITS
B1	2 BR + 2BA	897 SF	49 UNITS	1 49 UNITS
C1	3 BR + 2BA	1,141 SF	15 UNITS	1 15 UNITS
TOTAL			110 UNITS	110 UNITS

BUILDING C AREAS		
NET RENTABLE AREA	89,680 SF	75.5% EFFICIENCY
AMENITIES	4,124 SF	
MISC./UTILITIES	8,829 SF	
CORRIDORS	13,827 SF	
STAIRS	2,400 SF	
TOTAL AREA	118,860 SF	

PROJECT UNIT MIX			
A1	1 BR + 1BA	622 SF	70 UNITS 41.7%
B1	2 BR + 2BA	897 SF	71 UNITS 42.3%
B2	2 BR + 2BA	953 SF	12 UNITS 7.1%
C1	3 BR + 2BA	1,141 SF	15 UNITS 8.9%
TOTAL			168 UNITS 100.0%

PROJECT AREAS		
NET RENTABLE AREA	135,778 SF	
AMENITIES	4,124 SF	
MISC./UTILITIES	9,543 SF	
CORRIDORS	22,863 SF	
STAIRS	3,324 SF	
TOTAL AREA	175,632 SF	

PARKING		
PARKING REQUIRED	1.58 STALLS/UNIT (STATE DENSITY BONUS)	
1BR	1.00 PER UNIT=	70 STALLS
2BR	2.00 PER UNIT=	166 STALLS
3BR	2.00 PER UNIT=	30 STALLS
TOTAL REQUIRED		266 STALLS
STANDARD		102 STALLS
		170 STALLS
PARKING PROVIDED		272 STALLS
PARKING RATIO		1.62 STALLS/UNIT

15% EVSE(ELECTRIC VEHICLE SUPPLY EQUIPMENT) REQUIRED PER CALGREEN TIER 1

BICYCLE PARKING - CALGREEN TIER 1		
SHORT TERM	0.05 PARKING =	13.6 STALLS
LONG TERM	0.50 PER UNIT=	84 STALLS
TOTAL REQUIRED		98 STALLS

Property Name: College Creek				Number of Units: 164							
Street Address: 2150 West College				Total Rentable Sq.Ft.: 133,090							
State: California		County: Sonoma		Net Acreage: 5.79							
City: Santa Rosa		TCAC Region: Northern Region		Net Acre Density: 53							
Zip Code: 95401		CDLAC Region: Northern Region		SDDA/QCT: No							
Project Type: Large Family		Census tract:		Opportunity Map: Low							
Project Finance Structure: 4% TC / Bonds		Elevator: Elevator		Prevailing Wage: None							
Senior Lender:		Income Avg: Yes		Land Acquisition Date: 10/15/2021							
Other Debt:		Const. LC:		Finance Closing Date: 10/15/2021							
Bond Issuer: CMFA		Federal		State		Construction Start: 10/15/2021					
TC Investor:		\$	0.880	\$	0.75	Construction Period: 20 Months 6/15/2023 20					
						Rent-up Period: 9 Months 3/15/2024 29					
						Stabilization Period: 7 Months 10/15/2024 36					
Sources (Permanent)											
		Total	Per Unit	Rate	Fixed/Float	Term	Amort	YM Period	DCSR	LTV	LTC
Senior Loan:		\$ 27,500,000	\$ 167,683	4.300%	Fixed	18	40	17.5	1.15	80%	80%
NOI During Construction:		\$ 1,650,498	\$ 10,064								
Tax Credit Equity:		\$ 26,598,258	\$ 162,185	Interest Rate	Repay	Term	S/P	% of CF to Pay Sub		Pro-rata Share	
Developer's Fee Note: USA MFD		\$ 5,500,848	\$ 33,542	0.00%	Y	18	S	100%			
Subsidy Loans: CDC		\$ 4,428,000	\$ 27,000	3.00%	Y	55	S	50%			
Subsidy Loans:		\$ -	\$ -								
Total		\$ 65,677,604	\$ 400,473								
Uses											
		Total	Per Unit	50% Test				Construction Period Loans			
Property Acquisition:		\$ 4,428,000	\$ 27,000	Land + Depreciable Basis:		62,429,374		Const. Period TE Loan:		Taxable Bridge Loan:	
Construction (incl. Bonds):		\$ 32,035,199	\$ 195,337	50% of Land + Dep. Basis:		31,214,687		Floating		Floating	
Construction General Conditions:		\$ 1,700,000	\$ 10,366	Permanent TE Loan:		27,500,000		4.30%		4.75%	
Contractor Overhead & Profit:		\$ 2,784,928	\$ 16,981	Const. Period TE Loan:		5,600,000		36 Months		36 Months	
Construction Contingency:		\$ 2,402,640	\$ 14,650	Surplus/(Gap) to Meet 50%:		1,885,313		90%			
Financing Costs:		\$ 4,407,398	\$ 26,874			53.0%		90%			
Other Transaction Costs:		\$ 10,415,938	\$ 63,512	TCAC Cash Developer Fee Limits							
Developer's Fee/Overhead:		\$ 7,503,502	\$ 45,753	Max. Allowed per TCAC				3,760,000		50.1%	
Total		\$ 65,677,605	\$ 400,473	Minimum Amount to Defer				3,743,502			
Over/(Short)		\$ (0)		Additional Cash Avail/(Det. Req)				1,757,346			
Unit Mix & Affordability	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	Total Units		% of Affordable			
30% TCAC	0	6	6	5	0	17		10.4%			
40% TCAC	0	0	0	0	0	0		0.0%			
50% TCAC	0	16	16	11	0	43		26.4%			
60% TCAC	0	16	16	10	0	42		25.8%			
70% TCAC	0	26	19	16	0	61		37.4%			
Aff. Sub-total	0	64	57	42	0	163		100.0%			
Market	0	0	0	0	0	0					
Employee	0	0	1	0	0	1					
Total Units	0	64	58	42	0	164					

Attachment 5. Schedule of Performance		
Milestone	Responsible Party	Timing
Submit Tax Credit Application	USA	within 12 months of execution of DDA
Submit for plan check	USA	within 12 months of execution of DDA
Receive Tax Credit Reservation	USA	within 36 months of execution of DDA
Receive Building Permits	USA	within 42 months of execution of DDA
Deliver Draft/Final Commission Affordable Rental Housing Agreement	CDC	120/30 days prior to close of escrow
Deliver Draft/Final Commission Deed of Trust	CDC	120/30 days prior to close of escrow
Deliver Draft/Final Commission Note	CDC	120/30 days prior to close of escrow
Deliver Draft/Final Memorandum of Disposition and Development Agreement	CDC	120/30 days prior to close of escrow
Deliver Draft/Final Notice of Affordability Restrictions	CDC	120/30 days prior to close of escrow
Deliver Final Project Budget	USA	30 days prior to close of escrow
Deliver Final Project Pro forma	USA	30 days prior to close of escrow
Deliver Vacant Site	CDC	60 days from receipt of tax credits
Close of Escrow	USA	within 180 days of receipt of tax credit reservation
Construction Commencement	USA	within 180 days of receipt of tax credit reservation
Outside Closing Date	USA	within 48 months of execution of DDA
Construction Completion	USA	within 30 months of construction commencement

Attachment 6. Insurance Requirements

EXHIBIT D

CONTRACT INSURANCE REQUIREMENTS

With respect to performance of work under this Agreement, USA Properties shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

The Commission reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve USA Properties from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

Section I – Insurance to be maintained by USA Properties

USA Properties shall maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. The insurance shall be maintained for the Term of the Agreement specified in Section 1 of the Funding Agreement.

1. Workers Compensation and Employers Liability Insurance

- a) Required if USA Properties has employees as defined by the Labor Code of the State of California.
- b) Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c) Employers' Liability with limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d) *Required Evidence of Insurance*: Certificate of Insurance

If USA Properties currently has no employees as defined by the Labor Code of the State of California, USA Properties agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should any employees be engaged during the term of this Agreement or any extensions of the term.

2. General Liability Insurance

- a) Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b) Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The General Aggregate shall apply separately to each location. The required limits may be satisfied provided by a combination of General Liability Insurance and either Commercial Excess or Commercial Umbrella Liability Insurance. If USA Properties maintains higher limits than the specified minimum limits, the Commission requires and shall be entitled to coverage for the higher limits maintained by USA Properties.
- c) Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000, it must be approved in advance by the

Commission. USA Properties is responsible for any deductible or self-insured retention and shall fund it upon the Commission's written request, regardless of whether USA Properties has a claim against the insurance or is named as a party in any action involving the Commission or the County of Sonoma.

- d) The Commission and the County of Sonoma, their officers, agents and employees, 1440 Guerneville Road, Santa Rosa, CA 95403 shall be endorsed as additional insureds for liability arising out of USA Properties' ongoing operations. (ISO endorsement CG 20 26 or equivalent).
- e) The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f) The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- g) The policy shall cover inter-insured suits between an additional insured and USA Properties and include a "separation of insureds" or "severability" clause which treats each insured separately.
- h) *Required Evidence of Insurance:*
 - i. Copy of the additional insured endorsement or policy language granting additional insured status; and
 - ii. Certificate of Insurance.

3. Automobile Liability Insurance

- a) Minimum Limits: \$1,000,000 combined single limit per accident. The required limit may be satisfied by a combination of Automobile Liability Insurance and either Commercial Excess or Commercial Umbrella Liability Insurance.
 - b) Coverage shall cover all owned vehicles. If USA Properties currently owns no vehicles, USA Properties agrees to obtain such insurance should any vehicles be acquired during the term of this Agreement or any extensions of the term.
 - c) Insurance shall cover hired and non-owned vehicles.
- Required Evidence of Insurance:* Certificate of Insurance.

4. Professional Liability Insurance (Required if USA Properties' normal operations include professional services.)

- a) Minimum Limit: \$1,000,000 per claim.
- b) Any deductible or self-insured retention in excess of \$25,000 shall be disclosed.
- c) If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- d) *Required Evidence of Insurance:* Certificate of Insurance.

5. Standards for Insurance Companies

Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

6. Documentation

- a. The Certificate of Insurance must include the following reference: Project Name and Location(s).
- b. All required Evidence of Coverage shall be submitted prior to the execution of this

Agreement. USA Properties agrees to maintain current Evidence of Coverage on file with Commission for the required period of insurance.

- c. The name and address for Additional Insured endorsements and Certificates of Insurance is: *Sonoma County Community Development Commission and the County of Sonoma, their officers, agents and employees, 1440 Guerneville Road, Santa Rosa, CA 95403.*
- d. Required Evidence of Coverage shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. USA Properties shall provide immediate written notice if: (1) any of the required insurance policies are terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, USA Properties shall provide certified copies of required insurance policies within thirty (30) days.

7. Policy Obligations

USA Properties' indemnity and other obligations shall not be limited by the foregoing insurance requirements.

8. Material Breach

If USA Properties, for any reason, fails to maintain insurance coverage that is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. The Commission, at its sole option, may terminate this Agreement and obtain damages from USA Properties resulting from said breach. Alternatively, the Commission may purchase such required insurance, and without further notice to USA Properties, Commission may deduct from sums due to USA Properties any premium costs advanced by Commission for such insurance. These remedies shall be in addition to any other remedies available to Commission.

Section II – Insurance to be maintained by USA Properties' Contractors and Consultants

1. Workers Compensation and Employers Liability Insurance

- a) Required if Contractor or Consultant has employees.
- b) Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c) Employers Liability with limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d) *Required Evidence of Insurance: Certificate of Insurance.*

2. General Liability Insurance

- a) Commercial General Liability Insurance on a standard occurrence form, no less broad than ISO form CG 00 01.
- b) Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate.
- c) Subcontractor/consultant shall disclose any deductible or self-insured retention in excess of \$25,000 and such deductible or self-insured retention must be approved in advance by USA Properties. Subcontractor/consultant is responsible for any deductible or self-insured retention.
- d) USA Properties shall be endorsed as an additional insured for liability arising out of ongoing and completed operations by or on behalf of its Contractors and Consultants. Additional

insured status shall continue for one (1) year after completion of work.

- e) *Sonoma County Community Development Commission and the County of Sonoma, their officers, agents and employees, 1440 Guerneville Road, Santa Rosa, CA 95403* shall be endorsed as additional insureds for liability arising out of Contractors' and Consultants' ongoing operations. (ISO endorsement CG 20 26 or equivalent).
- f) The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- g) The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- h) The policy shall cover inter-insured suits between USA Properties' Contractors or Consultants and any additional insured, and shall include a "separation of insureds" or "severability" clause which treats each insured separately.
- i) *Required Evidence of Insurance:*
 - i. Copy of the additional insured endorsement(s) or policy language granting additional insured status;
 - ii. Copy of the endorsement or policy language indicating that coverage is primary and non-contributory; and
 - iii. Certificate of Insurance.

3. Automobile Liability Insurance

- a) Minimum Limits: \$1,000,000 combined single limit per accident.
- b) Insurance shall cover all owned vehicles (if the Contractor or Consultant owns vehicles).
- c) Insurance shall cover hired and non-owned vehicles.
- d) *Required Evidence of Insurance:* Certificate of Insurance.

4. Professional Liability Insurance (*Required for Consultants who provide professional services: architects, engineers, surveyors, environmental professionals.*)

- a) Minimum Limit: \$1,000,000.
- b) Any deductible or self-insured retention in excess of \$25,000 shall be disclosed.
- c) If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of work.
- d) *Required Evidence of Insurance:* Certificate of Insurance.

5. Standards for Insurance Companies

Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

6. Documentation

- a) All required Evidence of Contractors' and Consultants' Insurance shall be submitted to USA Properties work commences. Contractor/Consultant agrees to maintain current Evidence of Insurance on file with USA Properties for the required period of insurance.
- b) The name and address for Additional Insured endorsements and Certificates of Insurance is: *Sonoma County Community Development Commission and the County of Sonoma, their officers, agents and employees, 1440 Guerneville Road, Santa Rosa, CA 95403.*
- c) Contractor/Consultant shall provide immediate written notice to USA Properties if: (1) any of the required insurance policies are terminated; (2) the limits of any of the required policies

are reduced; or (3) the deductible or self-insured retention is increased.

- d) Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

Attachment 7. Project Budget

Uses of Funds - Basis Determination						College Creek
164 Units						
Property Acquisition:	Per Unit	Total Costs		Amortized and/or Expensed	Acquisition Basis	Const/Rehab Basis
Land:	\$ 27,000	\$ 4,428,000		\$ 4,428,000		
Total Acquisition:	\$ 27,000	\$ 4,428,000		\$ 4,428,000	\$ -	\$ -
Construction Costs:						
Off-site Improvements:		\$ 335,233		\$ -		\$ 335,233
On-site Improvements:		\$ 4,712,516		\$ 416,248		\$ 4,296,268
Common Area:		\$ 557,500		\$ -		\$ 557,500
Clubhouse:		\$ 911,125		\$ -		\$ 911,125
Residential:	\$ 155,603	\$ 25,518,825		\$ -		\$ 25,518,825
General Conditions:	\$ 85,000	\$ 1,700,000	5.31%	\$ 22,089		\$ 1,677,911
Overhead & Profit:		\$ 2,784,928	8.69%	\$ 36,186		\$ 2,748,742
Hard Cost Contingency:	7.5%	\$ 2,402,640		\$ -		\$ 2,402,640
Sub-Total Construction:		\$ 38,922,767				
Insurance / OCIP:	\$ 21.00	\$ 817,378		\$ -		\$ 817,378
Total Construction:	\$ 242,318	\$ 39,740,145		\$ 474,523		\$ 39,265,622
Financing Costs:						
Senior Loan:		\$ 343,250		\$ 311,468		\$ 31,782
Taxable Bridge Loan:		\$ 96,000		\$ 42,667		\$ 53,333
Interest During Construction:		\$ 1,889,492				\$ 1,889,492
Interest Prior to Conversion:		\$ 1,911,125		\$ 1,911,125		
Cost of Issuance:		\$ 167,531		\$ 167,531		\$ -
Total Financing Costs:		\$ 4,407,398		\$ 2,432,790		\$ 1,974,608
Other Transaction Costs:						
Market Study:		\$ 15,000		\$ -		\$ 15,000
Appraisal:		\$ 10,000		\$ -	\$ -	\$ 10,000
Development:		\$ 503,014		\$ -		\$ 503,014
Planning & Impact Fees:		\$ 5,467,844		\$ -		\$ 5,467,844
Building Permits:	\$ 1,902	\$ 312,000		\$ -		\$ 312,000
Architecture:		\$ 1,366,240		\$ -		\$ 1,366,240
Engineering:		\$ 443,162		\$ -		\$ 443,162
Developer Legal:		\$ 75,000		\$ 75,000	\$ -	\$ -
Title / Escrow / Organizational Costs:		\$ 37,500		\$ -		\$ 37,500
Property Taxes During Const:		\$ 16,400		\$ -		\$ 16,400
Audit / Accounting / Cost Cert:		\$ 25,000		\$ -		\$ 25,000
Office / Common Area / FF&E:		\$ 266,500		\$ -		\$ 266,500
Property Mgmt Start-up Costs:		\$ 25,000		\$ -		\$ 25,000
TCAC App/Allocation/Monitoring Fees:		\$ 91,251		\$ 91,251		\$ -
Operating Reserves:	3.00 mos.	\$ 599,189		\$ 599,189		\$ -
Construction Inspections:	\$ 1,800	\$ 36,000		\$ -		\$ 36,000
Promotion/Marketing:	305	\$ 50,000		\$ 50,000		\$ -
Soft Cost Contingency:		\$ 259,460	3.00%			\$ 259,460
Total Other Transaction Costs:		\$ 9,598,560		\$ 815,440	\$ -	\$ 8,783,120
Total Development Costs:		\$ 58,174,102		\$ 8,150,753	\$ -	\$ 50,023,350
Developer's Fee/Overhead:		\$ 7,503,502			\$ -	\$ 7,503,502
Total Development Costs:	\$ 400,473	\$ 65,677,605		\$ 8,150,753	\$ -	\$ 57,526,852

Property Name: College Creek				Number of Units: 164							
Street Address: 2150 West College				Total Rentable Sq.Ft.: 133,090							
State: California		County: Sonoma		Net Acreage: 5.79							
City: Santa Rosa		TCAC Region: Northern Region		Net Acre Density: 53							
Zip Code: 95401		CDLAC Region: Northern Region		SDDA/QCT: No							
Project Type: Large Family		Census tract:		Opportunity Map: Low							
Project Finance Structure: 4% TC / Bonds		Elevator: Elevator		Prevailing Wage: None							
Senior Lender:		Income Avg: Yes		Land Acquisition Date: 10/15/2021		Cum Months					
Other Debt:		Const. LC:		Finance Closing Date: 10/15/2021		0					
Bond Issuer: CMFA		Federal		Construction Start: 10/15/2021		0					
TC Investor:		State		Construction Period: 20 Months		6/15/2023 20					
		\$ 0.880 \$ 0.75		Rent-up Period: 9 Months		3/15/2024 29					
				Stabilization Period: 7 Months		10/15/2024 36					
Sources (Permanent)											
		Total	Per Unit	Rate	Fixed/Float	Term	Amort	YM Period	DCSR	LTV	LTC
Senior Loan:		\$ 27,500,000	\$ 167,683	4.300%	Fixed	18	40	17.5	1.15	80%	80%
NOI During Construction:		\$ 1,650,498	\$ 10,064								
Tax Credit Equity:		\$ 26,598,258	\$ 162,185	Interest Rate	Repay	Term	S/P	% of CF to Pay Sub		Pro-rata Share	
Developer's Fee Note: USA MFD		\$ 5,500,848	\$ 33,542	0.00%	Y	18	S	100%			
Subsidy Loans: CDC		\$ 4,428,000	\$ 27,000	3.00%	Y	55	S	50%			
Subsidy Loans:		\$ -	\$ -								
Total		\$ 65,677,604	\$ 400,473								
Uses											
		Total	Per Unit	50% Test				Construction Period Loans			
Property Acquisition:		\$ 4,428,000	\$ 27,000	Land + Depreciable Basis:		62,429,374		Const. Period TE Loan:		Taxable Bridge Loan:	
Construction (incl. Bonds):		\$ 32,035,199	\$ 195,337	50% of Land + Dep. Basis:		31,214,687		Floating		Floating	
Construction General Conditions:		\$ 1,700,000	\$ 10,366	Permanent TE Loan:		27,500,000		4.30%		4.75%	
Contractor Overhead & Profit:		\$ 2,784,928	\$ 16,981	Const. Period TE Loan:		5,600,000		36 Months		36 Months	
Construction Contingency:		\$ 2,402,640	\$ 14,650	Surplus/(Gap) to Meet 50%:		1,885,313		90%			
Financing Costs:		\$ 4,407,398	\$ 26,874			53.0%		90%			
Other Transaction Costs:		\$ 10,415,938	\$ 63,512	TCAC Cash Developer Fee Limits							
Developer's Fee/Overhead:		\$ 7,503,502	\$ 45,753	Max. Allowed per TCAC				3,760,000		50.1%	
Total		\$ 65,677,605	\$ 400,473	Minimum Amount to Defer				3,743,502			
Over/(Short)		\$ (0)		Additional Cash Avail/(Def. Req)				1,757,346			
Unit Mix & Affordability											
0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	Total Units		% of Affordable				
30% TCAC	0	6	6	5	0	17	10.4%				
40% TCAC	0	0	0	0	0	0	0.0%				
50% TCAC	0	16	16	11	0	43	26.4%				
60% TCAC	0	16	16	10	0	42	25.8%				
70% TCAC	0	26	19	16	0	61	37.4%				
Aff. Sub-total	0	64	57	42	0	163	100.0%				
Market	0	0	0	0	0	0					
Employee	0	0	1	0	0	1					
Total Units	0	64	58	42	0	164					

												Rent Advantage		Rent Subsidy Calculation				Notes
Max												% Below		Total Rent				
Unit Type	Affordability	Number of Units	Net SF	Ttl SF	Max Gross TC Rent	Max Gross Other	Utility Allow.	Max Net Rent	Acheivable Rent	Net Monthly Rent	Total Rent	Market Rent	Market Rents	Subsidy Units	Subsidy Rent	Difference	Subsidy Overhang:	
1 Bedroom	30% TCAC	6	596	3,576	\$ 639		\$ 39	\$ 600		\$ 600	\$ 3,600							
1 Bedroom	50% TCAC	16	596	9,536	\$ 1,065		\$ 39	\$ 1,026		\$ 1,026	\$ 16,416							
1 Bedroom	60% TCAC	16	596	9,536	\$ 1,278		\$ 39	\$ 1,239		\$ 1,239	\$ 19,824							
1 Bedroom	70% TCAC	23	596	13,708	\$ 1,491		\$ 39	\$ 1,452		\$ 1,452	\$ 33,396							
1 Bedroom	70% TCAC	3	645	1,935	\$ 1,491		\$ 39	\$ 1,452		\$ 1,452	\$ 4,356							
2 Bedroom	30% TCAC	6	840	5,040	\$ 767		\$ 55	\$ 712		\$ 712	\$ 4,272							
2 Bedroom	50% TCAC	16	840	13,440	\$ 1,278		\$ 55	\$ 1,223		\$ 1,223	\$ 19,568							
2 Bedroom	60% TCAC	16	840	13,440	\$ 1,534		\$ 55	\$ 1,479		\$ 1,479	\$ 23,664							
2 Bedroom	70% TCAC	11	840	9,240	\$ 1,789		\$ 55	\$ 1,734		\$ 1,734	\$ 19,074							
2 Bedroom	70% TCAC	8	892	7,136	\$ 1,789		\$ 55	\$ 1,734		\$ 1,734	\$ 13,872							
3 Bedroom	30% TCAC	5	1,067	5,335	\$ 886		\$ 71	\$ 815		\$ 815	\$ 4,075							
3 Bedroom	50% TCAC	11	1,067	11,737	\$ 1,476		\$ 71	\$ 1,405		\$ 1,405	\$ 15,455							
3 Bedroom	60% TCAC	6	1,067	6,402	\$ 1,771		\$ 71	\$ 1,700		\$ 1,700	\$ 10,200							
3 Bedroom	60% TCAC	4	1,047	4,188	\$ 1,771		\$ 71	\$ 1,700		\$ 1,700	\$ 6,800							
3 Bedroom	70% TCAC	4	1,047	4,188	\$ 2,066		\$ 71	\$ 1,995		\$ 1,995	\$ 7,980							
3 Bedroom	70% TCAC	4	1,125	4,500	\$ 2,066		\$ 71	\$ 1,995		\$ 1,995	\$ 7,980							
3 Bedroom	70% TCAC	8	1,157	9,256	\$ 2,066		\$ 71	\$ 1,995		\$ 1,995	\$ 15,960							
Subtotal		163	811	132,193						\$ 1,390	\$ 226,492			0			\$ -	
2 Bedroom	Employee	1	897	897	\$ 1,534		\$ 55	\$ 1,479		\$ 1,479	\$ 1,479							
Totals/Averages		164	812	133,090							\$ 1,390	\$ 227,971			0		\$ -	

Rent and Utility Allowances			Escalator:		0%	
Program		0 Bed	1 Bed	2 Bed	3 Bed	4 Bed
30%	TCAC	\$ 597	\$ 639	\$ 767	\$ 886	\$ 988
50%	TCAC	\$ 995	\$ 1,065	\$ 1,278	\$ 1,476	\$ 1,647
60%	TCAC	\$ 1,194	\$ 1,278	\$ 1,534	\$ 1,771	\$ 1,976
70%	TCAC	\$ 1,393	\$ 1,491	\$ 1,789	\$ 2,066	\$ 2,306

City of Santa Rosa UA Eff Date: 10/1/2020

Utility	Fuel Type	0 Bed	1 Bed	2 Bed	3 Bed	4 Bed
Heating	Electric	\$ -	\$ -	\$ -	\$ -	
Cooking	Electric	\$ 6	\$ 9	\$ 12		
Other Electric		\$ 19	\$ 28	\$ 37		
A/C						
Water Heating	Electric	\$ 14	\$ 18	\$ 22		
Water						
Sewer						
Trash						
Other (Specify)		\$ -				
Total		\$ -	\$ 39	\$ 55	\$ 71	\$ -

Project Unit Number & %	Units	Sq. Ft.
Market	0	0
Employee	163	132,193
Total units (excluding m	163	132,193
Total Low Income Units	163	132,193
Ratio of Low Income	100.00%	100.00%

Unit Mix / Affordability						Total Units	Aff. %	Total SqFt	Aff %	Total Bdrms	Avg. Inc.
0 Bed	1 Bed	2 Bed	3 Bed	4 Bed							
30% TCAC	0	6	6	5	0	17	10.4%	13,951	10.6%	33	
50% TCAC	0	16	16	11	0	43	26.4%	34,713	26.3%	81	
60% TCAC	0	16	16	10	0	42	25.8%	33,566	25.4%	78	
70% TCAC	0	26	19	16	0	61	37.4%	49,963	37.8%	112	
Aff. Sub-total	0	64	57	42	0	163	100.0%	132,193	100.0%	304	58.0%
Unit % By Bed	0.0%	39.3%	35.0%	25.8%	0.0%	100.0%	1 ADDITIONAL MANAGER UNIT(S) NEEDED				
Employee	0	0	1	0	0	1					
Total Units	0	64	58	42	0	164					

Income Limits								2020	Sonoma
HH Size	1	2	3	4	5	6	7	8	
20% Income	\$ 15,920	\$ 18,180	\$ 20,460	\$ 22,720	\$ 24,540	\$ 26,360	\$ 28,180	\$ 30,000	
30% Income	\$ 23,880	\$ 27,270	\$ 30,690	\$ 34,080	\$ 36,810	\$ 39,540	\$ 42,270	\$ 45,000	
35% Income	\$ 27,860	\$ 31,815	\$ 35,805	\$ 39,760	\$ 42,945	\$ 46,130	\$ 49,315	\$ 52,500	
40% Income	\$ 31,840	\$ 36,360	\$ 40,920	\$ 45,440	\$ 49,080	\$ 52,720	\$ 56,360	\$ 60,000	
45% Income	\$ 35,820	\$ 40,905	\$ 46,035	\$ 51,120	\$ 55,215	\$ 59,310	\$ 63,405	\$ 67,500	
50% Income	\$ 39,800	\$ 45,450	\$ 51,150	\$ 56,800	\$ 61,350	\$ 65,900	\$ 70,450	\$ 75,000	
55% Income	\$ 43,780	\$ 49,995	\$ 56,265	\$ 62,480	\$ 67,485	\$ 72,490	\$ 77,495	\$ 82,500	
60% Income	\$ 47,760	\$ 54,540	\$ 61,380	\$ 68,160	\$ 73,620	\$ 79,080	\$ 84,540	\$ 90,000	
70% Income	\$ 55,720	\$ 63,630	\$ 71,610	\$ 79,520	\$ 85,890	\$ 92,260	\$ 98,630	\$ 105,000	
80% Income	\$ 63,680	\$ 72,720	\$ 81,840	\$ 90,880	\$ 98,160	\$ 105,440	\$ 112,720	\$ 120,000	
90% Income	\$ 71,640	\$ 81,810	\$ 92,070	\$ 102,240	\$ 110,430	\$ 118,620	\$ 126,810	\$ 135,000	
100% Income	\$ 79,600	\$ 90,900	\$ 102,300	\$ 113,600	\$ 122,700	\$ 131,800	\$ 140,900	\$ 150,000	
110% Income	\$ 87,560	\$ 99,990	\$ 112,530	\$ 124,960	\$ 134,970	\$ 144,980	\$ 154,990	\$ 165,000	
120% Income	\$ 95,520	\$ 109,080	\$ 122,760	\$ 136,320	\$ 147,240	\$ 158,160	\$ 169,080	\$ 180,000	

Uses of Funds - Basis Determination						College Creek
164 Units						
Property Acquisition:	Per Unit	Total Costs		Amortized and/or Expensed	Acquisition Basis	Const/Rehab Basis
Land:	\$ 27,000	\$ 4,428,000		\$ 4,428,000		
Total Acquisition:	\$ 27,000	\$ 4,428,000		\$ 4,428,000	\$ -	\$ -
Construction Costs:						
Off-site Improvements:		\$ 335,233		\$ -		\$ 335,233
On-site Improvements:		\$ 4,712,516		\$ 416,248		\$ 4,296,268
Common Area:		\$ 557,500		\$ -		\$ 557,500
Clubhouse:		\$ 911,125		\$ -		\$ 911,125
Residential:	\$ 155,603	\$ 25,518,825		\$ -		\$ 25,518,825
General Conditions:	\$ 85,000	\$ 1,700,000	5.31%	\$ 22,089		\$ 1,677,911
Overhead & Profit:		\$ 2,784,928	8.69%	\$ 36,186		\$ 2,748,742
Hard Cost Contingency:	7.5%	\$ 2,402,640		\$ -		\$ 2,402,640
Sub-Total Construction:		\$ 38,922,767				
Insurance / OCIP:	\$ 21.00	\$ 817,378		\$ -		\$ 817,378
Total Construction:	\$ 242,318	\$ 39,740,145		\$ 474,523		\$ 39,265,622
Financing Costs:						
Senior Loan:		\$ 343,250		\$ 311,468		\$ 31,782
Taxable Bridge Loan:		\$ 96,000		\$ 42,667		\$ 53,333
Interest During Construction:		\$ 1,889,492				\$ 1,889,492
Interest Prior to Conversion:		\$ 1,911,125		\$ 1,911,125		
Cost of Issuance:		\$ 167,531		\$ 167,531		\$ -
Total Financing Costs:		\$ 4,407,398		\$ 2,432,790		\$ 1,974,608
Other Transaction Costs:						
Market Study:		\$ 15,000		\$ -		\$ 15,000
Appraisal:		\$ 10,000		\$ -	\$ -	\$ 10,000
Development:		\$ 503,014		\$ -		\$ 503,014
Planning & Impact Fees:		\$ 5,467,844		\$ -		\$ 5,467,844
Building Permits:	\$ 1,902	\$ 312,000		\$ -		\$ 312,000
Architecture:		\$ 1,366,240		\$ -		\$ 1,366,240
Engineering:		\$ 443,162		\$ -		\$ 443,162
Developer Legal:		\$ 75,000		\$ 75,000	\$ -	\$ -
Title / Escrow / Organizational Costs:		\$ 37,500		\$ -		\$ 37,500
Property Taxes During Const:		\$ 16,400		\$ -		\$ 16,400
Audit / Accounting / Cost Cert:		\$ 25,000		\$ -		\$ 25,000
Office / Common Area / FF&E:		\$ 266,500		\$ -		\$ 266,500
Property Mgmt Start-up Costs:		\$ 25,000		\$ -		\$ 25,000
TCAC App/Allocation/Monitoring Fees:		\$ 91,251		\$ 91,251		\$ -
Operating Reserves:	3.00 mos.	\$ 599,189		\$ 599,189		\$ -
Construction Inspections:	\$ 1,800	\$ 36,000		\$ -		\$ 36,000
Promotion/Marketing:	305	\$ 50,000		\$ 50,000		\$ -
Soft Cost Contingency:		\$ 259,460	3.00%			\$ 259,460
Total Other Transaction Costs:		\$ 9,598,560		\$ 815,440	\$ -	\$ 8,783,120
Total Development Costs:		\$ 58,174,102		\$ 8,150,753	\$ -	\$ 50,023,350
Developer's Fee/Overhead:		\$ 7,503,502			\$ -	\$ 7,503,502
Total Development Costs:	\$ 400,473	\$ 65,677,605		\$ 8,150,753	\$ -	\$ 57,526,852
Tax Credit Equity Calculation						
Tax Credit Basis:		\$ 57,526,852			\$ -	\$ 57,526,852
Voluntarily Basis Reduction:		\$ -				\$ -
Total Requested adjusted Eligible Basis:		\$ 57,526,852				\$ 57,526,852
DDA/QCT:	100%	\$ 57,526,852			\$ -	\$ 57,526,852
Percent of Units Tax Credit Eligible:	100%	\$ 57,526,852		Max. Credit/Award	\$ -	\$ 57,526,852
Fed. Annual Credits:	4.00%	\$ 2,301,074		\$ 50,000,000	\$ -	\$ 2,301,074
Total Fed. Credits:	10	\$ 23,010,741				
LP Investor's Percentage Share:	100.00%	\$ 23,010,740			Max Eligible Basis:	\$ 118,045,019
Tax Credit Equity Contribution @:	\$ 0.8800	\$ 20,249,451				OK
State Tax Credits					2023 #	\$ 5,177,417
Yes	30.0%	\$ 17,258,055		TCAC Award	2024 #	\$ 5,177,417
Total State Credits:	49.05%	\$ 8,465,076		\$ 20,000,000	2025 #	\$ 5,177,417
Tax Credit Equity Contribution @:	\$ 0.75	\$ 6,348,807			2026 #	\$ 1,725,806
TOTAL TC EQUITY		\$ 26,598,258				
Developer Fee Calculation						
15% of Non-Adjusted Basis:		\$ 7,503,502			5%	15.0%
TCAC Max Developer Fee:		\$ 15,000,000	From TCAC reservation		\$ -	\$ 7,503,502
Max Fee for Basis Calculation:		\$ 7,503,502			0%	100%

Operations Proforma & Loan Sizing

164 Units

College Creek

INCOME		Per Unit	Annual				
Gross Rental Income:	\$	1,390	\$	2,735,652			
Total Rent Subsidy Overhang:	\$	-	\$	-			
Laundry Income:	\$	-	\$	-	Income Details		
Other Income (Vending, Cable Ags):	\$	2.00	\$	3,936	% of Late Fees / Month:	% of App Fees / Month:	% of Turnover:
Late Fees:			\$	7,872	10.0%	10.0%	20%
Application Fees:			\$	7,872	Per Late Fee:	Per App Fee:	\$ per Turn:
Turnover:			\$	6,560	\$40	\$40	\$200
Total Income			\$	2,761,892	\$0	\$0	
Less Vacancy and Collection Loss			\$	(138,095)	5.00%		
Net Rental Income			\$	2,623,797			
EXPENSES							
Gross Operating Expenses:			\$	-			
Utilities:	\$	1,381	\$	226,484			
Advertising:	\$	23	\$	3,772	Payroll Detail	Number	Total
Payroll:	\$	2,039	\$	334,430	Community Manager:	1	\$ 79,872
Maintenance and Repairs:	\$	251	\$	41,164	Asst Community Mgr:	0	\$ -
Turnover:	\$	78	\$	12,792	Leasing Agent:	0	\$ -
Grounds and Pool:	\$	230	\$	37,720	Maintenance Tech	1	\$ 58,573
Security:	\$	44	\$	7,216	Maintenance Tech	0	\$ -
Management Fees:	\$	640	\$	104,952	Porter	0	\$ -
Admin:	\$	289	\$	47,396	Compliance	1	\$ 9,568
Tax Prep/Audit:	\$	-	\$	-		3	\$ 148,013
Tenant Relations:	\$	24	\$	3,936			
Business License & Permits:	\$	25	\$	4,100	Employee Units Included in Payroll		
Insurance:	\$	372	\$	61,008	Yes		
Social Services:	\$	133	\$	21,800	Mgmt Fee Total	5.0%	
Property Taxes:	\$	60	\$	9,840	Below the Line	1.0%	
Other Financial Expenses:	\$	-	\$	-	Above the Line	4.0%	
Replacement Reserves	\$	300	\$	49,200	Ad Valorem Rate:	CFD/Assess Per Unit:	
Other	\$	-	\$	-	1.1495%	\$60	
Total Expenses	\$	5,889	\$	965,810	TCAC OPEX Minimum	Reduction	Adjusted OPEX Min.
Net Operating Income			\$	1,657,987	\$4,800	0%	\$ 4,800
					OPEX net Prop Taxes and Reserves		\$ 5,529

CONSTRUCTION PERIOD		Senior Loan:	Rent Subsidy Loan:	Taxable Loan:	Other Loan-Hard:	B Bond Loan (TE):
		\$ 33,100,000	\$ -	\$ 12,800,000	\$ -	\$ -
		72.11%	0.00%	27.89%	0.00%	0.00%
Index Interest Rate:		1.000%		1.000%		8.500%
Spread:		2.250%		2.750%		
Guarantee and Servicing (if separate):		0.000%				
Bond Issuer Fee:		0.050%				
Trustee Fee:		0.000%				
Total Annual Ongoing Fees		2.300%	0.000%	2.750%	0.000%	0.000%
Estimated Pay Rate:		3.300%	0.000%	3.750%	0.000%	8.500%
Underwriting Spread:		1.000%		1.000%	0.000%	0.000%
All-In Rate:		4.300%	0.000%	4.750%	0.000%	8.500%

PERMANENT DEBT		Senior Loan:	Rent Subsidy Loan:	Taxable Loan:	Other Loan-Hard:	B Bond Loan (TE):
		\$ 27,500,000	\$ -	\$ -	\$ -	\$ -
		100.00%	0.00%	0.00%	0.00%	0.00%
Index Interest Rate:		1.250%				8.500%
Spread:		2.500%				
Guarantee and Servicing (if separate):		0.000%				
Bond Issuer Fee:		0.050%				
Trustee Fee		0.000%	0.000%			
Total Annual Ongoing Fees		2.550%	0.000%	0.000%	0.000%	0.000%
Projected Note Rate:		3.800%	0.000%	0.000%	0.000%	8.500%
Underwriting Spread:		0.500%				0.000%
All-In Rate:		4.300%	0.000%	0.000%	0.000%	8.500%

LOAN SIZING		Senior Loan:	Rent Subsidy Loan:	Taxable Loan:	Other Loan-Hard:	B Bond Loan (TE):
Underwriting Interest Rate:		4.300%	0.000%	0.000%	0.000%	8.500%
NOI Available for DSC Test:	\$	1,441,728	\$ 10,781	\$ 10,781	\$ 10,781	
Maximum Mortgage per LTC Constraint:	\$	52,540,000				
Maximum Mortgage per LTV Constraint:	\$	29,472,000	\$ -	\$ -	\$ -	
Maximum Mortgage per DSC Test:	\$	27,505,000	\$ -	\$ -	\$ -	
Max Loan per LTV/DSC/LTC Constraints:	\$	27,505,000	\$ -	\$ -	\$ -	

30-Year Cash Flow - College Creek

			Year:	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038
				1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Income			3																
Affordable Rental Income:			2.0%	\$ 2,903,096	\$ 2,961,158	\$ 3,020,381	\$ 3,080,788	\$ 3,142,404	\$ 3,205,252	\$ 3,269,357	\$ 3,334,745	\$ 3,401,439	\$ 3,469,468	\$ 3,538,858	\$ 3,609,635	\$ 3,681,827	\$ 3,755,464	\$ 3,830,573	\$ 3,907,185
Other Income:			2.0%	\$ 27,846	\$ 28,403	\$ 28,971	\$ 29,551	\$ 30,142	\$ 30,744	\$ 31,359	\$ 31,986	\$ 32,626	\$ 33,279	\$ 33,944	\$ 34,623	\$ 35,316	\$ 36,022	\$ 36,742	\$ 37,477
Gross Potential Income:				\$ 2,930,942	\$ 2,989,561	\$ 3,049,352	\$ 3,110,339	\$ 3,172,546	\$ 3,235,997	\$ 3,300,717	\$ 3,366,731	\$ 3,434,066	\$ 3,502,747	\$ 3,572,802	\$ 3,644,258	\$ 3,717,143	\$ 3,791,486	\$ 3,867,316	\$ 3,944,662
Vacancy/Collection Loss:	5.00%			\$ 146,547	\$ 149,478	\$ 152,468	\$ 155,517	\$ 158,627	\$ 161,800	\$ 165,036	\$ 168,337	\$ 171,703	\$ 175,137	\$ 178,640	\$ 182,213	\$ 185,857	\$ 189,574	\$ 193,366	\$ 197,233
Net Rental Income:				\$ 2,784,395	\$ 2,840,083	\$ 2,896,884	\$ 2,954,822	\$ 3,013,918	\$ 3,074,197	\$ 3,135,681	\$ 3,198,394	\$ 3,262,362	\$ 3,327,610	\$ 3,394,162	\$ 3,462,045	\$ 3,531,286	\$ 3,601,912	\$ 3,673,950	\$ 3,747,429
Operating Expenses			3																
Operating Expenses:	\$	5,897	3.0%	\$ 967,031	\$ 996,042	\$ 1,025,923	\$ 1,056,701	\$ 1,088,402	\$ 1,121,054	\$ 1,154,686	\$ 1,189,326	\$ 1,225,006	\$ 1,261,756	\$ 1,299,609	\$ 1,338,597	\$ 1,378,755	\$ 1,420,118	\$ 1,462,721	\$ 1,506,603
Resident Services:			3.0%	\$ 21,800	\$ 22,454	\$ 23,128	\$ 23,821	\$ 24,536	\$ 25,272	\$ 26,030	\$ 26,811	\$ 27,616	\$ 28,444	\$ 29,297	\$ 30,176	\$ 31,082	\$ 32,014	\$ 32,974	\$ 33,964
Property Taxes/Assessments:	\$	64	2.0%	\$ 10,442	\$ 10,651	\$ 10,864	\$ 11,081	\$ 11,303	\$ 11,529	\$ 11,760	\$ 11,995	\$ 12,235	\$ 12,479	\$ 12,729	\$ 12,984	\$ 13,243	\$ 13,508	\$ 13,778	\$ 14,054
Capital Replacement Reserves:	\$	300	3.0%	\$ 49,200	\$ 50,676	\$ 52,196	\$ 53,762	\$ 55,375	\$ 57,036	\$ 58,747	\$ 60,510	\$ 62,325	\$ 64,195	\$ 66,121	\$ 68,104	\$ 70,147	\$ 72,252	\$ 74,419	\$ 76,652
Total Operating Expenses:				\$ 1,048,473	\$ 1,079,823	\$ 1,112,111	\$ 1,145,366	\$ 1,179,616	\$ 1,214,892	\$ 1,251,223	\$ 1,288,642	\$ 1,327,181	\$ 1,366,874	\$ 1,407,756	\$ 1,449,861	\$ 1,493,227	\$ 1,537,892	\$ 1,583,893	\$ 1,631,272
Net Operating Income:				\$ 1,735,922	\$ 1,760,260	\$ 1,784,773	\$ 1,809,456	\$ 1,834,302	\$ 1,859,305	\$ 1,884,458	\$ 1,909,752	\$ 1,935,181	\$ 1,960,735	\$ 1,986,406	\$ 2,012,184	\$ 2,038,059	\$ 2,064,020	\$ 2,090,056	\$ 2,116,156
Amortizing Loan Payments																			
Senior Loan:				\$ 1,430,947	\$ 1,430,947	\$ 1,430,947	\$ 1,430,947	\$ 1,430,947	\$ 1,430,947	\$ 1,430,947	\$ 1,430,947	\$ 1,430,947	\$ 1,430,947	\$ 1,430,947	\$ 1,430,947	\$ 1,430,947	\$ 1,430,947	\$ 1,430,947	\$ 1,430,947
Net Cash After Amortizing Loan Payments:				\$ 304,975	\$ 329,313	\$ 353,826	\$ 378,509	\$ 403,356	\$ 428,359	\$ 453,511	\$ 478,806	\$ 504,234	\$ 529,788	\$ 555,459	\$ 581,237	\$ 607,112	\$ 633,073	\$ 659,110	\$ 685,210
		DCR		1.21	1.23	1.25	1.26	1.28	1.30	1.32	1.33	1.35	1.37	1.39	1.41	1.42	1.44	1.46	1.48
		25% Debt Service Test		21.3%	23.0%	24.7%	26.5%	28.2%	29.9%	31.7%	33.5%	35.2%	37.0%	38.8%	40.6%	42.4%	44.2%	46.1%	
Priority Distributions																			
Issuer Administration Fee:	\$	16,550		\$ 16,550	\$ 16,550	\$ 16,550	\$ 16,550	\$ 16,550	\$ 16,550	\$ 16,550	\$ 16,550	\$ 16,550	\$ 16,550	\$ 16,550	\$ 16,550	\$ 16,550	\$ 16,550	\$ 16,550	\$ 16,550
Asset Management Fee (TC Investor):	\$	7,500	3.0%	\$ 7,500	\$ 7,725	\$ 7,957	\$ 8,195	\$ 8,441	\$ 8,695	\$ 8,955	\$ 9,224	\$ 9,501	\$ 9,786	\$ 10,079	\$ 10,382	\$ 10,693	\$ 11,014	\$ 11,344	\$ 11,685
Subordinated Property Management Fee:		1.0%		\$ 27,844	\$ 28,401	\$ 28,969	\$ 29,548	\$ 30,139	\$ 30,742	\$ 31,357	\$ 31,984	\$ 32,624	\$ 33,276	\$ 33,942	\$ 34,620	\$ 35,313	\$ 36,019	\$ 36,739	\$ 37,474
Managing General Partner Fee:	\$	4,500	0.0%	\$ 4,500	\$ 4,500	\$ 4,500	\$ 4,500	\$ 4,500	\$ 4,500	\$ 4,500	\$ 4,500	\$ 4,500	\$ 4,500	\$ 4,500	\$ 4,500	\$ 4,500	\$ 4,500	\$ 4,500	\$ 4,500
Net Cash After Priority Distributions:				\$ 248,581	\$ 272,137	\$ 295,851	\$ 319,716	\$ 343,725	\$ 367,872	\$ 392,149	\$ 416,548	\$ 441,060	\$ 465,676	\$ 490,388	\$ 515,185	\$ 540,056	\$ 564,990	\$ 589,976	\$ 615,001
Residual Loan Payments																			
Developer's Fee Note:	\$	5,500,848		\$ 248,581	\$ 272,137	\$ 295,851	\$ 319,716	\$ 343,725	\$ 367,872	\$ 392,149	\$ 416,548	\$ 441,060	\$ 465,676	\$ 490,388	\$ 515,185	\$ 540,056	\$ 564,990	\$ 327,260	\$ -
Subsidy Loans:	\$	4,428,000		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 131,358	\$ 307,500
Net Cash After Residual Loan Payments:				\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 131,358	\$ 307,500
Net Cash Split to Developer (USA):		90.0%		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 118,222	\$ 276,750
Balance to Partnership based on Percentage Interest:				\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 13,136	\$ 30,750

<u>Developer's Fee Note:</u>		<u>Repay:</u>	Yes																														
Beginning Balance:		\$	5,500,848	\$	5,307,276	\$	5,088,211	\$	4,843,242	\$	4,571,959	\$	4,273,953	\$	3,948,821	\$	3,596,160	\$	3,215,574	\$	2,806,670	\$	2,369,060	\$	1,902,363	\$	1,406,202	\$	880,208	\$	324,020	\$	-
Interest in Period:	Compounding	\$	55,008	\$	53,073	\$	50,882	\$	48,432	\$	45,720	\$	42,740	\$	39,488	\$	35,962	\$	32,156	\$	28,067	\$	23,691	\$	19,024	\$	14,062	\$	8,802	\$	3,240	\$	-
Payment:		\$	248,581	\$	272,137	\$	295,851	\$	319,716	\$	343,725	\$	367,872	\$	392,149	\$	416,548	\$	441,060	\$	465,676	\$	490,388	\$	515,185	\$	540,056	\$	564,990	\$	327,260	\$	-
Ending Balance:		\$	5,307,276	\$	5,088,211	\$	4,843,242	\$	4,571,959	\$	4,273,953	\$	3,948,821	\$	3,596,160	\$	3,215,574	\$	2,806,670	\$	2,369,060	\$	1,902,363	\$	1,406,202	\$	880,208	\$	324,020	\$	-	\$	-
Net Cash After Developer Fee Payments:		\$	-	\$	-	\$	-	\$	-	\$	-	\$	-	\$	-	\$	-	\$	-	\$	-	\$	-	\$	-	\$	-	\$	-	\$	262,716	\$	615,001

Subsidy Loans:		Repay: Yes																		
Beginning Principal Balance:		\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	
Interest in Period:	Simple	\$ 132,840	\$ 132,840	\$ 132,840	\$ 132,840	\$ 132,840	\$ 132,840	\$ 132,840	\$ 132,840	\$ 132,840	\$ 132,840	\$ 132,840	\$ 132,840	\$ 132,840	\$ 132,840	\$ 132,840	\$ 132,840	\$ 132,840	\$ 132,840	
Payment:		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Accrued Interest:		\$ 132,840	\$ 265,680	\$ 398,520	\$ 531,360	\$ 664,200	\$ 797,040	\$ 929,880	\$ 1,062,720	\$ 1,195,560	\$ 1,328,400	\$ 1,461,240	\$ 1,594,080	\$ 1,726,920	\$ 1,859,760	\$ 1,992,600	\$ 2,125,440	\$ 2,258,280	\$ 2,391,120	
Ending Principal Balance:		\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	\$ 4,428,000	
Net Cash After Loan Payments:		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
																		\$ 131,358	\$ 307,500	

[illegible]

Investment Analysis

Property Sale Analysis

[illegible]

