

**DEVELOPMENT AND LOAN AGREEMENT  
(Richmar Station)**

**THIS DEVELOPMENT AND LOAN AGREEMENT** (“Agreement”) is dated as of the 11<sup>th</sup> day of August, 2015, by and between the City of San Marcos in its capacity as the successor housing agency to the former San Marcos Redevelopment Agency (“SHA”) and Richmar Station San Marcos, LP, a California limited partnership (“Developer”).

**RECITALS**

A. In furtherance of the objectives of the California Community Redevelopment Law, Developer desires to redevelop certain real property (“Site”) in the City of San Marcos Redevelopment Project area. The Site is comprised of the real property which is currently owned by the SHA and described on Exhibit A.

B. SHA and Developer desire by this Agreement for: (i) the SHA to agree to sell the Site to Developer; (ii) the Developer to agree to construct a “to be designed” mixed-use (commercial and residential) development on the Site that shall include, the “Affordable Units,” the “Commercial Component” (as such terms are defined below) and certain on and off-site improvements (collectively, the “Project”); and (iii) the Developer to grant an option to the SHA to acquire the Residential Component and the Commercial Component. All development of the Site shall be subject to the review and approval by the SHA. The SHA and Developer acknowledge that the Project might be part of a larger development that might be developed in part on the Site and in part on certain other adjacent and nearby parcels of real property that might be acquired by Developer.

C. Developer’s construction of the Project on the Site pursuant to the terms of this Agreement, is in the vital and best interest of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements under which the Redevelopment Project has been undertaken. The Project, including without limitation the Affordable Units, shall be smoke-free.

D. The qualifications and identity of Developer, and its principals, are of particular concern to the community and the SHA. Developer further recognizes that it is because of such qualifications and identity that the SHA is entering into the Agreement with Developer. No person including, without limitation, any voluntary or involuntary successor in interest of Developer, shall acquire any portion of the Site or any rights or powers under this Agreement except as expressly set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, SHA and Developer hereby agree as follows:

100. Definitions.

“Acquisition Closing” means the close of Escrow for the Developer’s acquisition of the Site from the SHA.

“Acquisition Closing Deadline” means August 31, 2015.

“Administrative General Partner” shall mean the entity or entities designated as the Administrative General Partner by the Developer (Richmar Station San Marcos, LP, a California limited partnership).

“Affordable Units” shall mean smoke-free rental dwelling units to be constructed on the Site by Developer whose rent and occupancy are restricted to low income households pursuant to the Declaration.

“Agreement” means this Development and Loan Agreement between SHA and Developer.

“Area Median Income” shall mean the area median income defined by the Department of Housing and Urban Development (HUD), as adjusted in order to comply with the California Community Redevelopment Law (Health & Safety Code Section 33000, et seq.) and published by the California Tax Credit Allocation Committee (TCAC), as the then current area median income for the San Diego-Carlsbad-San Marcos Metropolitan Statistical Area, established periodically by HUD and published in the Federal Register, as adjusted for family size. In the event HUD and/or TCAC ceases to publish an established area median income as aforesaid, SHA may, in its sole discretion, use any other reasonably comparable method of computing area median income.

“City” means the City of San Marcos, a California municipal corporation.

“CFD’s” means any and all community facility district fees applicable to the Site, including without limitation, CFD 98-01 Police only, CFD 98-02 Lighting, Landscaping, Traffic, CFD 2001-01 Fire/Paramedic and CFD 2011-01 Congestion Management.

“Commercial Component” means the retail component of the Site, to be designed by Developer and constructed on the Site, as part of the Improvements.

“Concept Drawings” means the plans and drawings to be submitted and approved by the SHA, as set forth in Section 302.1 hereof.

“Construction Closing” means the closing of Developer’s financing for construction of the Improvements.

“Construction Closing Deadline” means December 31, 2019, subject to extension in writing signed by the Developer and by the City Manager on behalf of the SHA.

“Construction Closing Minimum Requirements” means the requirements Developer must satisfy for the benefit of the SHA, as set forth in Section 307 hereof.

“Construction Deed of Trust” means a deed of trust recorded against the Site for the purpose of obtaining construction financing for construction of the Improvements.

“Construction Drawings” means the plans and drawings to be submitted and approved by the SHA, as set forth in Section 302.4 hereof.

“Declaration” shall mean a declaration of covenants, conditions and restrictions, in a form agreed to by the SHA and the Developer, to be executed by Developer and recorded against the Site at the Construction Closing, which shall restrict occupancy of the Affordable Units to Eligible Tenants and shall restrict rent to amounts which are affordable to Low Income Households. Provided all of the Construction Closing Minimum Requirements are satisfied by the Construction Closing Deadline, the Declaration may be subordinated to the Construction Deed of Trust and Permanent Deed of Trust, pursuant to a subordination agreement acceptable to the SHA in its reasonable discretion. The Declaration shall require Developer to pay the set-up fee and annual occupancy monitoring and inspection fee imposed by the SHA, which fee is in addition to any fees payable by the Developer to the SHA pursuant to that certain Supplemental Housing Support Agreement, dated as of December 9, 2014, between the Developer and the SHA. The Declaration shall provide that: (i) households which are displaced from their primary residence as a result of an action of City or SHA; (ii) honorably discharged veterans of the U.S. armed forces, especially combat disabled veterans; (iii) households with at least one member who resides within the City, as that person’s primary place of residence; and (iv) households with at least one member who works or has been hired to work within the City, as that person’s principal place of full-time employment or is expected to work within the City as a result of a bona fide offer of employment within the City, shall be given priority when potential tenants are selected for the Affordable Units, to the maximum extent allowed by law.

“Default” means the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 501 hereof.

“Demolition” shall mean the demolition of the existing structures on the Site.

“Developer” means Richmar Station San Marcos, LP, a California limited partnership. Where the term Developer is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

“Developer Deed of Trust” means the deed of trust securing the Developer Note (which shall be amended to secure the Declaration at the Construction Closing), in a form agreed to by the SHA and the Developer, to be executed by Developer and recorded as an encumbrance against the Site at the Acquisition Closing. Provided all of the Construction Closing Minimum Requirements are satisfied by the Construction Closing Deadline, the Developer Deed of Trust may be subordinated to the Construction Deed of Trust and Permanent Deed of Trust. Any such subordination shall be in a form acceptable to the SHA in its reasonable discretion.

“Developer Note” means a promissory note, in a form agreed to by the SHA and the Developer, in an original principal amount equal to the amount of the SHA Loan, to be executed by Developer at the Acquisition Closing.

“Developer Title Policy” means an American Land Title Association owner’s policy issued to the Developer, with endorsements satisfactory to Developer in the amount of the Purchase Price, insuring that title to the Site is vested in Developer subject only to exceptions to coverage that are acceptable to the Developer.

“Eligible Tenants” shall mean persons who meet the definition of Low Income Household and who otherwise meet the requirements of the Declaration.

“Environmental Indemnity” shall mean an unsecured environmental indemnity agreement, in a form agreed to by the SHA and the Developer, to be executed by Developer and SHA at the Acquisition Closing.

“Environmental Laws” means any federal, state or local law, statute, ordinance or regulation pertaining to environmental regulation, contamination or cleanup of any Hazardous Materials, including, without limitation, (i) the California Hazardous Waste Control Act (California Health and Safety Code §25100 *et seq.*), (ii) the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code §25300 *et seq.*), (iii) the Hazardous Materials Release Response Plans and Inventory (California Health and Safety Code §25500 *et seq.*), (iv) Underground Storage of Hazardous Substances (California Health and Safety Code, §25280 *et seq.*), (v) Article 9 or Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (vi) the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code, §25249 *et seq.*), (vii) the Porter-Cologne Water Quality Control Act (California Water Code, §13000 *et seq.*), (viii) the Federal Water Pollution Control Act (33 U.S.C. §1271 *et seq.*), (ix) the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*), (x) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 *et seq.*), (xi) the Safe Drinking Water Act (14 U.S.C. §300f *et seq.*), (xii) the Hazardous Materials Transportation Act (49 U.S.C. §5101 *et seq.*), (xiii) the Toxic Substances Control Act (15 U.S.C. §2601 *et seq.*), (xiv) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §136, *et seq.*), (xv) the Clean Air Act, 42 U.S.C. (§7401 *et seq.*) or (xvi) any state or federal lien or “superlien” law, any environmental cleanup statute or regulation, or any permit, approval, authorization, license, variance or permission required by any governmental authority having jurisdiction.

“Escrow” is defined in Section 201.2 hereof.

“Escrow Agent” means Chicago Title Insurance Company, or such other title insurance company as shall be mutually selected by the parties hereto.

“Escrow Instructions” shall mean the Escrow Instructions, in a form agreed to by the SHA and the Developer, to be executed by Developer and SHA as set forth in Section 201.2 hereof.

“Governmental Requirements” means all 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 of any other political subdivision, agency or instrumentality exercising jurisdiction over SHA, Developer or the Site.

“Grant Deed” means a duly executed and acknowledged grant deed, in a form mutually acceptable to the SHA and Developer in each of their sole discretions, conveying fee simple title to the Site from the SHA to the Developer.

“Gross Income” shall mean the gross income of the Developer from all components of the Site, including, without limitation, the Residential Component and the Commercial Component. Provided however that Gross Income shall not include (i) insurance proceeds or condemnation proceeds; (ii) security deposits or other tenant deposits; or (iii) interest earned on project reserves. Interest earned (if any) on project reserves shall accrue to the applicable project reserve account and shall only be used for the purpose for which the reserve was established.

“Hazardous Materials” means:

(a) Those substances included within the definitions of “hazardous substance,” “hazardous waste,” “hazardous material,” “toxic substance,” “solid waste,” “pollutant” or “contaminant” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*); the Clean Water Act (33 U.S.C. §2601 *et seq.*); the Toxic Substances Control Act (15 U.S.C. §9601 *et seq.*); the Hazardous Materials Transportation Act (49 U.S.C. §1801 *et seq.*); or under any other Environmental Laws;

(b) Those substances included within the definitions of “Extremely Hazardous Waste,” “Hazardous Waste,” or “Restricted Hazardous Waste,” under §§25115, 25117 or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to §§25140 or 44321 of the California Health and Safety Code;

(c) Those substances included within the definitions of “Hazardous Material”, “Hazardous Substance”, “Hazardous Waste”, “Toxic Air Contaminant”, or “Medical Waste” under §§25281, 25316, 25501, 25501.1, 25023.2 or 39655 of the California Health and Safety Code;

(d) Those substances included within the definitions of “Oil” or a “Hazardous Substance” listed or identified pursuant to §311 of the Federal Water Pollution Control Act, 33 U.S.C. §1321, as well as any other hydrocarbonic substance or by-product;

(e) Those substances included within the definitions of “Hazardous Waste,” “Extremely Hazardous Waste,” or an “Acutely Hazardous Waste” pursuant to Chapter 11 of Title 22 of the California Code of Regulations;

(f) Those substances listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to §25249.9(a) of the California Health and Safety Code;

(g) Those substances or defined as a “Hazardous Waste,” “Extremely Hazardous Waste,” or an “Acutely Hazardous Waste” pursuant to Chapter 11 of Title 22 of the California Code of Regulations;

(h) Any material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the Site to be put to any lawful purpose;

(i) Any material whose presence would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank;

(j) Pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 *et seq.*;

(k) Asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*;

(l) Any radioactive material including, without limitation, any “source material,” “special nuclear material,” “by-product material,” “low-level wastes,” “high-level radioactive waste,” “spent nuclear fuel” or “transuranic waste,” and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. §§2011 *et seq.*, the Nuclear Waste Policy Act, 42 U.S.C. §§10101 *et seq.*, or pursuant to the California Radiation Control Law, California Health and Safety Code §§25800 *et seq.*;

(m) Any material regulated under the Occupational Safety and Health Act, 29 U.S.C. §§651 *et seq.*, or the California Occupational Safety and Health Act, California Labor Code §§6300 *et seq.*;

(n) Any material regulated under the Clean Air Act, 42 U.S.C. §§7401 *et seq.* or pursuant to Division 26 of the California Health and Safety Code;

(o) Those substances listed in the United States Department of Transportation Table (49 CFR Part 172.101), or by the Environmental Protection SHA, or any successor agency, as hazardous substances (40 CFR Part 302);

(p) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state or local laws or regulations; and

(q) Any material, waste or substance that is:

- (i) a petroleum or refined petroleum product;
- (ii) asbestos;
- (iii) polychlorinated biphenyl;
- (iv) designated as a hazardous substance pursuant to 33 U.S.C. §1321 or listed pursuant to 33 U.S.C. §1317;
- (v) a flammable explosive; or
- (vi) a radioactive material.

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

“Improvements” means the new improvements to be constructed by Developer upon the Site, which shall include the smoke-free Affordable Units, Commercial Component and certain on and off-site improvements. Developer shall obtain all approvals and permits required for completion of the Improvements, all subject to the review and approval of the SHA in its sole discretion. The Improvements shall be designed, constructed and operated in a manner that meets the Leadership in Energy and Environmental Design Silver Level standard of the U.S. Green Building Council.

“Landscape and Grading Plans” means the plans and drawings to be submitted and approved by SHA, as set forth in Section 302.3 hereof.

“Low Income Household” means persons and families whose income does not exceed sixty percent (60%) of the then current Area Median Income.

“Managing General Partner” shall mean the entity or entities designated as the Managing General Partner by the Developer (Richmar Station San Marcos, LP, a California limited partnership).

“Memorandum of Option” means a memorandum of option, in a form agreed to by the SHA and the Developer, to be executed by Developer and the SHA and recorded as an encumbrance against the Site at the Construction Closing.

“New Project Proforma” means the proforma to be submitted by Developer to the SHA as provided in Section 302.5 of this Agreement. Developer represents and warrants to the SHA that the amounts that will be shown on the New Project Proforma will be accurate and will be the amounts for which Developer will be able to and shall design and construct the Improvements in a workmanlike and defect-free manner in accordance with the Scope of Development.

“Notice” shall mean a notice in the form prescribed by Section 601 hereof.

“Notice of Affordability Restrictions on Transfer of Property” means a notice of affordability restrictions on transfer of property, in a form agreed to by the SHA and the Developer, to be executed by Developer and the SHA and recorded as an encumbrance against the Site at the Construction Closing.

“Operating Expenses” shall mean actual, reasonable and customary costs, fees and expenses directly attributable to the operation, maintenance, taxes and management of all residential and commercial components of the Site, to the extent approved by SHA in Developer’s annual operating budget, expressly including, but not limited to, the following: CFD’s, required debt service payments on any loan permitted to be secured by the Site that is senior to the Developer Deed of Trust, repayment of any deferred developer fee approved by the SHA, scheduled deposits to reserves, as approved by SHA, a reasonable property management fee in an amount not to exceed 6% of Gross Income in any one year, an asset management fee and a partnership management fee as approved by the SHA.

“Permanent Deed of Trust” means a deed of trust recorded against the Site for purposes of permanently financing for the Improvements.

“Predevelopment Loan” means the predevelopment loan from the SHA to the Developer in the amount of \$392,500.00, as set forth in more detail in that certain Exclusive Negotiating Agreement dated as of September 9, 2014, between the Developer and the SHA. At the Acquisition Closing, the Predevelopment Loan, including all interest accrued thereon shall be, become part of and added to the amount of the Developer Note.

“Project” has the meaning set forth in Recital B, above.



“Purchase Price” means the price to be paid by Developer to the SHA in consideration for the conveyance of fee title to the Site from the SHA to Developer, which is \$1,306,770.00. The Purchase Price shall be included as part of the original principal amount of the SHA Loan and payable as set forth in the Developer Note.

“Redevelopment Plan” means the Redevelopment Plan for the San Marcos Redevelopment Project incorporated herein by reference.

“Redevelopment Project” means the San Marcos Redevelopment Project, adopted by SHA pursuant to the Redevelopment Plan.

“Release of Construction Covenants” means the document which evidences Developer’s satisfactory completion of construction of the Improvements, as set forth in Section 312 hereof, in a form approved by the SHA in its sole discretion.

“Relocation and Demolition Tranche” means a portion of the SHA Loan equal to \$921,100.00, which is expected to be funded from the SHA’s Low and Moderate Income Housing Fund established pursuant to Section 33334.3 of the California Health and Safety Code.

“Residential Component” all portions of the Site other than the Commercial Component.

“Residual Receipts” shall mean Gross Income less Operating Expenses, calculated on a calendar year basis, as provided herein. All calculations of Residual Receipts shall be subject to verification and approval by the SHA.

“Schedule of Performance” means a schedule of performance to be submitted by the Developer to the SHA for approval by the City Manager, which shall set out the dates and/or time periods by which certain design and construction milestones must be satisfied.

“Scope of Development” means a scope of development approved by the SHA in its reasonable discretion pursuant to Section 301.2 which shall include, without limitation, a description of the scope, amount and quality of the Improvements.

“Security Agreement” shall mean a security agreement, in a form agreed to by the SHA and the Developer, to be executed by Developer and SHA at the Construction Closing.

“SHA” means the City of San Marcos in its capacity as the successor housing agency to the former San Marcos Redevelopment Agency, and any assignee of or successor to its rights, powers and responsibilities.

“SHA Loan” means the Two Million Six Hundred Twenty Thousand Three Hundred Seventy and No/100 Dollar (\$2,620,370.00) loan from the SHA to the Developer which is comprised of and includes the Predevelopment Loan (\$392,500.00), the Purchase Price (\$1,306,770.00) and the Relocation and Demolition Tranche (\$921,100.00). The SHA shall not have any obligation to increase the amount of the SHA Loan for any reason.

“SHA Title Policy” means an American Land Title Association lender’s policy issued to the SHA, with endorsements satisfactory to SHA in the amount of the SHA Loan, insuring that title to the Site is vested in Developer and that the Developer Deed of Trust is an encumbrance against the Site that is subject and subordinate only to exceptions to coverage that are acceptable to the SHA.

“Site” means the real property described on Exhibit A.

“Site Plan” has the meaning set forth in Section 301.1 hereof.

“Title Company” means Chicago Title Insurance Company, or such other title insurance company as shall be mutually selected by the parties hereto.

200. Acquisition of the Site by Developer; SHA Loan.

201. Acquisition and Demolition of the Site by Developer.

201.1 Acquisition Closing and Purchase Price. Subject to all of the terms and conditions of this Agreement, the SHA shall sell the Site to Developer, and Developer shall purchase the Site from the SHA for an amount equal to the Purchase Price (i.e., \$1,306,770.00) at the Acquisition Closing. The Purchase Price shall not be paid by the Developer to the SHA at the Acquisition Closing, but shall be included in the original principal amount of the SHA Loan and shall be payable as set forth in the Developer Note. The Site shall be conveyed to the Developer in an “as is” physical and environmental condition, with no warranty, express or implied, by the SHA as to the condition of any existing improvements, the soil, its geology, the presence of known or unknown faults or Hazardous Materials or toxic substances, and it shall be the sole responsibility of the Developer at its expense to investigate and determine the physical and environmental conditions. Prior to the Acquisition Closing, the Developer shall have the right to engage its own environmental consultant (the “Environmental Consultant”) and other consultants to make such investigations of the Site as the Developer deems necessary, including any soils, geotechnical and other testing of the Site, and the SHA shall promptly be provided a copy of all reports and test results provided to the Developer by the Environmental Consultant (collectively, the “Environmental Report”). It shall be the sole responsibility and obligation of the Developer to take such action as may be necessary to place the physical and environmental conditions of the Site in a condition entirely suitable for the purposes set forth in this Agreement.

201.2 Escrow. Promptly after the execution and delivery of this Agreement, the Developer and the SHA shall open an escrow (“Escrow”) with Escrow Agent to facilitate the Acquisition Closing and conveyance of the Site from the SHA to the Developer. The parties will execute the Escrow Instructions prior to the Acquisition Closing, which shall provide for the order of recordation, distribution of original documents and other provisions customarily contained in escrow instructions. Developer shall pay all fees, charges, and costs which arise from Escrow, including without limitation the premiums for the Developer Title Policy and the

SHA Title Policy, as well as all documentary transfer taxes, if any, due with respect to Developer's acquisition of the Site.

201.3 Closing Conditions for the Benefit of the SHA. The SHA's obligation to transfer the Site to the Developer is conditioned upon satisfaction (or waiver) of each and all of the conditions set forth in this Section 201.3 on or before the Acquisition Closing Deadline. Any such waiver shall be effective only if the same is (i) expressly waived in writing signed by the SHA or by email from the SHA, and (ii) delivered or emailed to the Developer and Escrow Agent. In the event that one or more of the conditions set forth in this Section 201.3 are not satisfied or expressly waived on or before the Acquisition Closing Deadline, the SHA (provided the SHA is not in default hereunder) may unilaterally terminate this Agreement by mailing or emailing notice of conditional termination to the Developer and Escrow Agent. After receipt of such notice of conditional termination, the Developer shall have three (3) business days to cure any non-satisfaction of a condition or other default specified in the notice of conditional termination. If such matter is unsatisfied or cured prior to the expiration of such three (3) day period, then the Acquisition Closing shall proceed and the SHA waives any right to damages or compensation with respect to the unsatisfied condition. If such matter remains unsatisfied or the default remains uncured after the expiration of such three (3) day period, then this Agreement shall terminate at the close of business on such third (3<sup>rd</sup>) day. Any such termination of this Agreement shall not release the Developer from liability under this Agreement.

(a) No Default. Developer is not in default in any of its obligations under the terms of this Agreement and all representations and warranties of the SHA contained herein shall be true and correct in all material respects.

(b) Insurance. Developer has provided proof of insurance as required by Section 308 hereof.

(c) Attorneys' Fees. The Developer has paid prior to or will pay concurrently with the Acquisition Closing and all attorneys' fees incurred by the SHA with respect to the same.

(d) Additional Documents. The deposit by the Developer into Escrow of all other documents and instruments reasonably required by the Escrow Agent.

(e) Title Policy. Title Company is prepared and irrevocably obligated to issue the SHA Title Policy.

201.4 Closing Conditions for the Benefit of the Developer. The Developer's obligation to close is conditioned upon satisfaction (or waiver) of each and all of the conditions set forth in this Section 201.4 on or before the Acquisition Closing Deadline. Any such waiver shall be effective only if the same is (i) expressly waived in writing signed by the Developer or by email from the Developer, and (ii) delivered or emailed to the SHA and Escrow Agent. In the event that one or more of the conditions set forth in this Section 201.4 are not satisfied or expressly waived on or before the Acquisition Closing Deadline, the Developer (provided the

Developer is not in default hereunder) may unilaterally terminate this Agreement by mailing or emailing notice of conditional termination to the SHA and Escrow Agent. After receipt of such notice of conditional termination, the SHA shall have three (3) business days to cure any non-satisfaction of a condition or other default specified in the notice of conditional termination. If such matter is unsatisfied or cured prior to the expiration of such three (3) day period, then the Acquisition Closing shall proceed and the Developer waives any right to damages or compensation with respect to the unsatisfied condition. If such matter remains unsatisfied or the default remains uncured after the expiration of such three (3) day period, then this Agreement shall terminate at the close of business on such third (3<sup>rd</sup>) day. Any such termination of this Agreement shall not release the SHA from liability under this Agreement.

(a) No Default. The SHA is not in default in any of its obligations under the terms of this Agreement and all representations and warranties of the SHA contained herein shall be true and correct in all material respects.

(b) Grant Deed. The SHA has deposited the duly executed and acknowledged Grant Deed into Escrow.

(c) Additional Documents. The deposit by the SHA into Escrow of all other documents and instruments reasonably required by the Escrow Agent.

(d) FIRPTA. The deposit by Developer into Escrow of Developer's affidavit that Developer is not a foreign person and is a "United States Person" as such term is defined in Section 7761(a)(30) of the Internal Revenue Code of 1986, in the form prescribed by federal regulations.

(e) FTB Form 590. The deposit by Developer into Escrow of a duly executed FTB Form 590 or other evidence that withholding of any portions of the Purchase Price is not required by the Revenue and Taxation Code of California.

(f) Title Policy. Title Company is prepared and irrevocably obligated to issue the Developer Title Policy.

201.5 Relocation and Demolition. Prior to Demolition the Developer shall operate and maintain the Site in a professional manner. Developer shall cause the relocation of all persons at the Site in accordance with all applicable laws not later than ninety (90) days after the Acquisition Closing. During the period prior to Demolition, all consideration received by Developer with respect to the Site, if any, less reasonable costs actually incurred with respect to the operation and maintenance of the Site, shall be utilized by Developer to pay predevelopment expenses, including, without limitation, costs incurred with respect to relocation of any persons at the Site. Developer shall cause Demolition of the Site to be completed not later than one hundred eighty (180) days after the Acquisition Closing. Provided, however, prior to any Demolition, Developer shall: (i) obtain all necessary demolition permits, (ii) relocate all persons pursuant to a SHA-approved relocation plan; and (iii) obtain the insurance required under Section 308 of this Agreement.

201.6 No Sale or Transfer of the Site. The qualifications and identity of Developer, and its principals, are of particular concern to the community and the SHA. Developer further recognizes that it is because of such qualifications and identity that the SHA is entering into the Agreement with Developer. The Developer shall not sell, transfer or otherwise convey all or any portion of the Site without the prior written approval of the SHA, which approval may be withheld in the sole discretion of the SHA. Any sale, transfer or conveyance of all or any portion of the Site without the prior written approval of the SHA shall be void.

202. SHA Loan. The proceeds of the SHA Loan shall be allocated solely and exclusively to eligible costs directly attributable to the Site, and upon SHA's written request delivered to Developer at any time no later than one (1) year after SHA's execution of the Release of Construction Covenants for the Site, Developer shall provide to SHA written proof that such is the case.

202.1 Disbursement of the Relocation and Demolition Tranche. The \$921,000.00 Relocation and Demolition Tranche, shall be disbursed by the SHA during the course of relocation of the existing business on the Site and Demolition to fund the same. Disbursement of the Relocation and Demolition Tranche to fund any Demolition costs are contingent upon satisfaction of the items described in Sections 202.1(a)-(d), below. Disbursement of the Relocation and Demolition Tranche is contingent upon the Developer's submission of satisfactory written draw requests to Senior Administrative Analyst, Harry Williams, Housing & Neighborhood Services. Such written draw requests shall be supported by such back up documentation as the SHA requires, including without limitation submission of conditional lien releases.

(a) The existing business on the Site has been relocated in accordance with all applicable laws.

(b) Demolition Contract. The contract for the Demolition, acceptable to the SHA, shall have been executed by the Developer and the contractor who has been selected to do the work.

(c) Demolition Permits and Fees. The Developer shall have pulled any and all permits which may be required by the City or any other governmental agency for the Demolition and shall have paid any and all applicable fees imposed by the City or any other governmental agency having jurisdiction with respect to the same.

(d) Attorneys' Fees. The Developer has paid all attorneys' fees incurred by the SHA with respect to the Site.

## 202.2 Promissory Note.

(a) The SHA Loan shall be evidenced by the Developer Note executed by the Developer, in favor of the SHA, in the amount not to exceed Two Million Six Hundred Twenty Thousand Three Hundred Seventy and No/100 Dollar (\$2,620,370.00). The Predevelopment Loan will be cancelled by the SHA upon delivery of the executed Developer Note. The SHA Loan and the Developer Note shall be nonrecourse during the period from the Acquisition Closing to the Construction Closing. The SHA Loan and the Developer Note shall be recourse during the period from the Construction Closing until the timely completion of construction of the Improvements and issuance of a certificate of occupancy for all units at the Site. Upon completion of construction of the Improvements and issuance of a certificate of occupancy for all units at the Site, the SHA Loan shall become a nonrecourse obligation of Developer, except that Developer shall indemnify, defend, protect and hold SHA harmless from and against any and all loss, damage, liability, action, cause of action, cost or expense (including, without limitation, reasonable attorneys' fees and expenses) incurred by SHA as a result of any (i) fraud or material misrepresentation under or in connection with the SHA Loan or any document executed by Developer with respect to the SHA Loan; (ii) intentional bad faith waste of the Site; (iii) losses resulting from Maker's failure to maintain insurance as required by any document executed by Developer with respect to the SHA Loan; and (iv) misapplication of any rents, security deposits, insurance proceeds, condemnation awards or any other proceeds derived from the collateral security in a manner prohibited by any document executed by Developer with respect to the SHA Loan.

(b) The SHA Loan shall bear simple interest at three percent (3%) per annum commencing on the date of the Construction Closing. However, in the event of a Default, the Developer Note shall bear interest at the rate of ten percent (10%) per annum from the date of disbursement and all of the principal and accrued interest on the Developer Note shall be immediately due and payable by Developer to the SHA. Beginning on the May 1, immediately following the calendar year in which the Affordable Units are completed (as evidenced by a certificate of occupancy), and annually on May 1 of each year thereafter during the term of the Developer Note, Developer shall deliver financial statements to the SHA. Beginning on the May 1, immediately following the calendar year in which the Affordable Units are completed (as evidenced by a certificate of occupancy), and annually on May 1 of each year thereafter during the term of the Developer Note, Developer shall pay fifty percent (50%) of such Residual Receipts to the SHA in the manner provided in the Developer Note and retain fifty percent (50%) of such Residual Receipts. The principal and interest of the Developer Note may be prepaid in whole or in part at any time and from time to time, without notice or penalty. Any prepayment shall be allocated first to unpaid interest and then to principal.

(c) The parties acknowledge that the Developer Note and Developer Deed of Trust do not constitute a purchase money mortgage for purposes of Code of Civil Procedure Section 580b.

(d) Should Developer agree to or actually sell, convey, transfer, further encumber or dispose of the Site or any interest in it, except for any Permitted Transfer as defined in Section 603.2, below (or obtain any other secured debt with respect to the Site or Developer's activities at the Site, regardless of whether the source, including without limitation, any funds for special needs populations), without first obtaining the written consent of the holder of the Developer Note (the SHA), then all obligations secured by the Developer Note may be declared due and payable at the option of SHA. The consent of the executive director of the SHA (without the requirement for further formal SHA approval) shall be required for Developer to obtain any other subordinate mortgage loan financing on the Site, provided that all security for any such other subordinate loan financing shall be subordinate to the SHA Declaration and SHA Deed of Trust. The consent to one transaction of this type will not constitute a waiver of the right to require consent to future or successive transactions. The Declaration shall remain in place whether or not SHA approves or disapproves a successor-in-interest, commencing on completion of construction of the Improvements and continuing for a term of fifty five (55) years.

202.3 Security. Developer shall execute, acknowledge and deliver the Developer Deed of Trust and shall cause the Developer Deed of Trust to be recorded at the Acquisition Closing, as security for the Developer Note, SHA Loan and this Agreement. A copy of this Agreement shall not be attached to and recorded as part of such Developer Deed of Trust but any breach of or misrepresentation under this Agreement shall, upon the expiration of any applicable cure period(s), constitute an event of default under such Developer Deed of Trust.

202.4 Subsequent Financing. No further secured loan, deed of trust, or encumbrance, except for the Construction Deed of Trust and Permanent Deed of Trust shall be placed by Developer upon any portion of the Site or Improvements, whether by refinancing or otherwise, without first obtaining the express written consent of SHA, except for any Permitted Transfer as defined in Section 603.2, below. Further, during any SHA approved refinancing or subsequent encumbrance, the SHA shall be provided American Land Title Association ("ALTA") title insurance or endorsements acceptable to it, at the cost and expense of Developer. Said written consent shall be at SHA's sole discretion, failure to obtain such consent shall be a default hereunder and such unconsented to financing or refinancing shall be void. Except for refinancing allowed by this Section 202.4, if Developer refinances the Site, the SHA shall receive one hundred percent (100%) of the of the net amount of the refinancing, unless otherwise agreed by the SHA in its sole discretion. Notwithstanding the foregoing, the SHA shall have no right to receive amounts from any SHA-approved financing obtained by Developer in order to satisfy the Construction Closing Minimum Requirements or from any refinancing of the same. After timely completion of construction of the Improvements, (as evidenced by a certificate of occupancy for all of the Affordable Units), if Developer refinances the Site, the SHA shall receive fifty percent (50%) of the amount of the net proceeds of such refinancing, unless otherwise agreed by the SHA in its sole discretion, provided that the SHA shall not be entitled to receive any amounts in excess of the amount owed under the Developer Note.

203. Default. Notwithstanding anything contained herein to the contrary, in the event of any default in the performance of any of the terms, covenants and conditions contained in: (i) this Agreement, the Developer Note or Developer Deed of Trust; (ii) any document or instrument executed by the Developer in conjunction with this Agreement; (iii) any prior or junior note secured by an encumbrance on the Site or any portion of it; (iv) any note or deed of trust given in conjunction herewith; (v) in the event of the filing of a bankruptcy proceeding by Developer; or (vi) in the event of the filing of a bankruptcy against Developer which is not dismissed within ninety (90) days of filing, then (a) all sums owing by Developer to the SHA shall at the option of SHA immediately become due and payable; (b) SHA shall have no obligation to disburse any further funds to Developer or any other person; and (c) SHA shall be released from any and all obligations to Developer under the terms of this Agreement. These remedies shall be in addition to any and all other rights and remedies available to SHA, either at law or in equity. Further, default interest shall accrue on the principal balance of the Developer Note from the date of the Developer Note at the rate of ten percent (10%) simple interest per annum or the maximum rate than allowed by law, whichever is less.

204. Representations and Warranties.

204.1 SHA Representations and Warranties. SHA represents and warrants to Developer that SHA is a public body, corporate and politic, existing pursuant to the California Community Redevelopment Law (California Health and Safety Code Section 33000), which has been authorized to transact business pursuant to action of the City. SHA has full right, power and lawful authority to grant, sell and convey the Site as provided herein and the execution, performance and delivery of this Agreement by SHA has been fully authorized by all requisite actions on the part of SHA.

204.2 Developer's Representations and Warranties. Developer represents and warrants to SHA as follows:

(a) Authority. Developer is a California limited partnership. The persons executing this Agreement, and all other documents executed by Developer in conjunction herewith, on behalf of Developer have all necessary authority to do so and this Agreement is a binding obligation of Developer. Execution of this Agreement shall not result with the passage of time or the giving of notice or both in breach of or in acceleration of performance under any contract or document to which Developer may be a party. Copies of a certificate of good standing, issued by the California Secretary of State shall have been delivered to SHA prior to the Construction Closing. These copies will be true, complete and fully-executed copies of the originals, as amended to the date of the Construction Closing. Developer has the full right, power and lawful authority to purchase and accept the conveyance of the Site and to undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by Developer has been fully authorized by resolution of and all requisite actions on the part of Developer.



(b) No Conflict. Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

(c) No Bankruptcy. Developer is not the subject of a bankruptcy proceeding.

(d) Use of Funds. Developer agrees to use the SHA Loan funds solely for the purposes of acquiring the Site, relocating the existing tenants, Demolition, constructing the Improvements and paying for predevelopment expenses related thereto. Funds advanced by SHA pursuant to the SHA Loan are advanced wholly or in part for the benefit of the Site.

(e) Acknowledgement of Agreement. The principal and interest due and payable under the SHA Loan are subject to the terms and conditions of this Agreement, any other security documents or instruments provided for herein.

(f) Rent and Occupancy Restrictions. Developer shall at all times after the Construction Closing during the 55-year term comply with the requirements of the Declaration.

205. Developer Precautions After Acquisition Closing. Upon the Acquisition Closing, Developer shall take all necessary precautions to prevent the release in, on or under the Site of any Hazardous Materials. 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 commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

206. Required Disclosures. After the Acquisition Closing, Developer shall notify SHA, and provide to SHA a copy or copies, of all environmental permits, disclosures, applications, entitlements or inquiries relating to the Site, including 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. After the Acquisition Closing, Developer shall report to SHA, as soon as possible after each incident, any unusual or potentially important incidents with respect to the environmental condition of the Site. After the Acquisition Closing, in the event of a release of any Hazardous Materials into the environment from, under or relating to the Site, Developer shall, as soon as possible after the release, furnish to SHA a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request, Developer shall furnish to SHA 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.

207. Developer Indemnity. After the Acquisition Closing, the Developer shall indemnify, defend and hold SHA and/or City harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon any of the following: (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Site, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site. This indemnity shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. This indemnity does not include any condition arising solely as a result of the negligence or willful misconduct of the SHA or its employees, agents, representatives, successors or assigns; provided, however that nothing in this Section 207 shall release the Developer from liability for any losses, liabilities, damages, injuries, costs, expenses, or claims proximately caused by the Developer.

300. Development of the Site. Developer shall satisfy all of the Construction Closing Minimum Requirements as set forth in Section 307 on or before the Construction Closing Deadline (December 31, 2019), failure to do so shall be a material, non-curable default by Developer. Within five (5) business days of such default, Developer shall deliver to the SHA a fully-executed grant deed conveying the Site to the SHA. Failure of Developer to do so shall entitle the SHA to foreclose on the Developer Deed of Trust. Developer hereby acknowledges and agrees that Developer's failure to satisfy all of the Construction Closing Minimum Requirements on or before the Construction Closing Deadline, materially impairs the SHA's security for the SHA Loan, will be a non-curable breach and the SHA shall have the right to accelerate the loan and foreclose on the Site as provided herein. In such event, Developer shall not have the right to cure the breach and reinstate the SHA Loan or the Developer Deed of Trust. Developer hereby knowingly waives and relinquishes any and all legal and/or contractual rights Borrower may have to cure or otherwise reinstate the Developer Deed of Trust and the SHA Loan, in the event Developer fails to satisfy all of the Construction Closing Minimum Requirements on or before the Construction Closing Deadline.

301. Site Plan and Scope of Development.

301.1 Site Plan. Prior to the Construction Closing, the Developer shall prepare and submit to the SHA for the SHA's review and approval, in the SHA's sole discretion, a site plan ("Site Plan") which shows the location of all improvements to be constructed on the Site, including without limitation the Commercial Component. The SHA shall have thirty (30) days after receipt of a Site Plan to approve the Site Plan or give Developer notice of any objections to the Site Plan. If the SHA gives Developer notice of any objections to the Site Plan, the Developer shall cause the Site Plan to be revised accordingly and submit the revised Site Plan to

the SHA for review and approval as set forth in this Section 301.1. Approval of progressively more detailed drawings and specifications will be granted by the SHA if developed as a logical evolution of drawings or specifications theretofore approved.

301.2 Scope of Development. Not less than ninety (90) days prior to the Construction Closing, Developer shall prepare and submit to the SHA for the SHA's review and approval, in SHA's sole discretion, a Scope of Development which shall describe the scope, amount and quality of development of the Improvements to be constructed by Developer pursuant to the terms and conditions of this Agreement, including without limitation the Commercial Component. SHA shall have thirty (30) days after receipt of a Scope of Development to approve the Scope of Development or give Developer notice of any objections to the Scope of Development. If SHA gives Developer notice of any objections to the Scope of Development, Developer shall cause the Scope of Development to be revised accordingly and submit the revised Scope of Development to the SHA for review and approval as set forth in this Section 301.2. Approval of progressively more detailed drawings and specifications will be granted by the SHA if developed as a logical evolution of drawings or specifications theretofore approved. Developer shall develop the Improvements in accordance with the Scope of Development and the plans, drawings and documents submitted by Developer and approved by SHA as set forth herein. Developer shall incorporate universal design standards into the Improvements to the maximum extent feasible. Developer shall design and construct the Improvements to meet, and shall operate the Site in a manner that meets the Leadership in Energy and Environmental Design Silver Level certification standard of the U.S. Green Building Council and shall obtain certification of the same within the normal and customary time for similarly situated development projects. Furthermore, Developer shall employ a solar photovoltaic cell ("PV") system in the Site and said PV system will provide a significant portion of the electrical power needs of the common areas, as determined by the SHA in its reasonable discretion. Careful consideration shall be given to the maximum extent feasible for features which include, but are not limited to (i) water conserving features; (ii) appropriate landscaping; (iii) high efficiency/low flow fixtures and appliances; (iv) indoor and outdoor lighting designed to reduce energy use; (v) recycling, including recycling of construction waste; and (vi) use of San Marcos local labor, contractors, vendors, suppliers and materials.

### 302. Design Review.

302.1 Concept Drawings. Within thirty (30) days of SHA approval of the Site Plan and Scope of Development, the Developer shall prepare and submit conceptual drawings for the Improvements, including a site plan, floor plans, exterior elevations, materials, color board, and elevations of all four sides of Improvements (collectively, the "Concept Drawings"). The SHA shall have thirty (30) days after receipt of the Concept Drawings to approve the Concept Drawings or give Developer notice of any objections to the Concept Drawings. If the SHA gives the Developer notice of any objections to the Concept Drawings, the Developer shall cause the Concept Drawings to be revised accordingly and submit the revised Concept Drawings to the SHA for review and approval as set forth in this Section 302.1. Approval of progressively more detailed drawings and specifications will be granted by the SHA if developed as a logical evolution of drawings or specifications theretofore approved.

302.2 Schedule of Performance. Within thirty (30) days of SHA approval of the Site Plan and Scope of Development, Developer shall prepare and submit to the SHA for the SHA's review and approval, in the SHA's sole discretion, a revised Schedule of Performance setting out the dates and/or time periods by which construction of the Improvements must be accomplished. The SHA shall have thirty (30) days after receipt of the revised Schedule of Performance to approve the revised Schedule of Performance or give Developer notice of any objections to the revised Schedule of Performance. If the SHA gives Developer notice of any objections to the revised Schedule of Performance, Developer shall cause the Schedule of Performance to be revised accordingly and submit the further revised Schedule of Performance to the SHA for review and approval as set forth in this Section 302.2.

302.3 Landscape and Grading Plans. Within thirty (30) days of SHA approval of the Site Plan and Scope of Development, Developer shall prepare and submit to the SHA preliminary and final landscaping and preliminary and finish grading plans for the Site (collectively, the "Landscape and Grading Plans"). The SHA shall have thirty (30) days after receipt of the Landscape and Grading Plans to approve the Landscape and Grading Plans or give the Developer notice of any objections to the Landscape and Grading Plans. If the SHA gives the Developer notice of any objections to the Landscape and Grading Plans, the Developer shall cause the Landscape and Grading Plans to be revised accordingly and submit the revised Landscape and Grading Plans to the SHA for review and approval as set forth in this Section 302.3. Approval of progressively more detailed drawings and specifications will be granted by the SHA if developed as a logical evolution of drawings or specifications theretofore approved.

302.4 Construction Drawings. Within thirty (30) days of SHA approval of the Site Plan and Scope of Development, Developer shall prepare and submit to the SHA 50% and final construction drawings and related documents (collectively called the "Construction Drawings") to the SHA for review (including but not limited to architectural review). The SHA shall have thirty (30) days after receipt of the Construction Drawings to approve the Construction Drawings or give the Developer notice of any objections to the Construction Drawings. If the SHA gives the Developer notice of any objections to the Construction Drawings, the Developer shall cause the Construction Drawings to be revised accordingly and submit the revised Construction Drawings to the SHA for review and approval as set forth in this Section 302.4. Approval of progressively more detailed drawings and specifications will be granted by the SHA if developed as a logical evolution of drawings or specifications theretofore approved. Final construction drawings are hereby defined as those in sufficient detail to obtain a building permit.

302.5 New Project Proforma. No less than thirty (30) days prior to the Construction Closing, the Developer shall prepare and submit to the SHA for the SHA's review and approval, in the SHA's sole discretion, the New Project Proforma. The SHA shall have thirty (30) days after receipt of the New Project Proforma to approve the New Project Proforma or give the Developer notice of any objections to the New Project Proforma. If the SHA gives the Developer notice of any objections to the New Project Proforma, the Developer shall cause the New Project Proforma to be revised accordingly and submit the revised New Project Proforma to the SHA for review and approval as set forth in this Section 302.5.

303. SHA Review and Approval. The SHA shall have the right to review and approve or disapprove in its sole discretion all aspects of the Site Plan, Scope of Development, Concept Drawings, Landscape and Grading Plans and Construction Drawings. Developer acknowledges and agrees that the SHA is entitled to approve or disapprove the Site Plan, Scope of Development, Concept Drawings, Landscape and Grading Plans or Construction Drawings in order to satisfy the SHA's obligation to promote the sound development and redevelopment of land within the Site, to promote a high level of design which will impact the surrounding development, and to provide an environment for the social, economic and psychological growth and well-being of the citizens of the City and the Site. Provided, however, the SHA shall approve progressively more detailed drawings and specifications if developed as a logical evolution of drawings or specifications theretofore approved. The SHA and Developer agree to work together in good faith to resolve any disagreements and disputes regarding the Site Plan, Scope of Development, Concept Drawings, Landscape and Grading Plans or Construction Drawings. Developer shall not be entitled to any monetary damages or compensation as a result of SHA's disapproval or failure to approve or disapprove the Site Plan, Scope of Development, Concept Drawings, Landscape and Grading Plans or Construction Drawings.

303.1 Revisions. If Developer desires to propose any material revisions to the SHA-approved Site Plan, Scope of Development, Concept Drawings, Landscape and Grading Plans, Construction Drawings or Project Proforma after approval, it shall submit such proposed changes to the SHA, and shall also proceed in accordance with any and all State and local laws and regulations regarding such revisions. The City Manager is authorized to approve changes to the SHA-approved Site Plan, Scope of Development, Concept Drawings, Landscape and Grading Plans, Construction Drawings and Project Proforma. Provided, however, the SHA shall have not obligation to approve any change from the basic use of the Site for anything other than a mixed-use, family, affordable housing project.

303.2 Defects in Plans. The SHA shall not be responsible or liable in any way, either to Developer or to any third parties, for any defects in the Site Plan, Scope of Development, Concept Drawings, Landscape and Grading Plans, Construction Drawings or Project Proforma, or for any structural or other defects in any work done according to the approved Site Plan, Scope of Development, Concept Drawings, Landscape and Grading Plans, Construction Drawings or Project Proforma. Developer shall hold harmless and indemnify the SHA, the City and their officers, employees, agents and representatives from and against any and all claims, demands and suits for damages to property or injuries to persons arising out of or in any way relating to the Site, including without limitation any defects in the Site Plan, Scope of Development, Concept Drawings, Landscape and Grading Plans, Construction Drawings or Project Proforma, violation of any laws, and for defects in any work done according to the approved Site Plan, Scope of Development, Concept Drawings, Landscape and Grading Plans, Construction Drawings or Project Proforma or for defects in work performed by the Developer or any contractor or subcontractor of the Developer.

304. Land Use Approvals. Before commencement of construction of the Improvements or other works of improvement upon the Site, Developer shall, at Developer's sole expense, secure or cause to be secured any and all land use and other entitlements, permits and approvals which may be required for the Improvements by the City or any other governmental agency affected by such construction or work. The SHA shall not be responsible in any way for, the processing of Developer's building permits or other permit applications with the City. The execution of this Agreement does not constitute the granting of or a commitment to obtain any required land use permits, entitlements or approvals.

305. Deadline for Completion of Improvements. All of the Improvements shall be completed in accordance with the Schedule of Performance. Failure to complete all of the Improvements in accordance with the Schedule of Performance, shall, inter alia, be a default under the Developer Note entitling the SHA to exercise all of its rights and remedies, including without limitation foreclosure of the Developer Deed of Trust.

306. Cost of Construction. All costs whatsoever shall be borne by Developer, including without limitation the cost of planning, designing, developing and constructing of all of the Improvements, as well as site preparation and grading.

307. Construction Closing Minimum Requirements. Developer shall satisfy each and all of the conditions set forth in (a) through (i), inclusive, described below ("Construction Closing Minimum Requirements"), which are solely for the benefit of the SHA, and which shall be fulfilled or waived on or before the Construction Closing Deadline (December 31, 2019):

(a) Declaration. The Developer and the SHA shall have agreed to the forms of the Declaration, Memorandum of Option and Notice of Affordability Restrictions on Transfer of Property.

(b) Scope of Development. Developer shall have obtained approval by the SHA of the Scope of Development and Site Plan as set forth in Section 301 hereof.

(c) Design Approvals. Developer shall have obtained approval by the SHA of the Concept Drawings, Schedule of Performance, Landscape and Grading Plans, Construction Drawings and New Project Proforma as set forth in Section 302 hereof.

(d) Insurance. Developer shall have provided proof of insurance as required by Section 308 hereof.

(e) Other Financing. Developer shall have obtained binding commitments from all financing sources to be used for financing the construction of the Improvements which are sufficient to complete construction of the Improvements. All of such financing, including all documentation of the same, shall be subject to the review and approval of the in its reasonable discretion. The SHA shall have the right and power to review and approve any and all agreements entered into by and between Developer and any tax credit investor(s)/tax credit limited partner, including, but not limited to: (i) the

limited partnership agreement and any amendments thereto; (ii) the Equity Commitment Letter and any amendments thereto; (iii) the Final Cost Certification and any amendments thereto; (iv) the Placed In Service Application and any amendments thereto; and (v) any other documents associated with the tax credit investment.

(f) Map. Developer shall have obtained and filed all maps necessary to construct the Improvements, including, without limitation, establishing the Commercial Component as a parcel separate and apart from the remainder of the Site.

(g) Performance and Payment Bond. Provided Developer obtains tax credit financing for the Site and the SHA approves such financing as set forth in Section 307(e), above, Developer shall not be required to post the performance and payment bond described in this Section 307(g). Provided Developer does not obtain tax credit financing for the Site, as set forth in the immediately foregoing sentence, Developer shall have posted security in the form of a performance and payment bond in an amount and in a form acceptable to the SHA in its reasonable discretion, to assure the design and construction of the Improvements in accordance with the Construction Drawings approved by the SHA pursuant to Section 302.4 above. The performance and payment bond shall insure that construction of the Improvements is timely accomplished, free and clear of mechanic's liens, stop notices and other encumbrances, concerning the provision of material, labor and supplies. Upon a failure of Developer to timely perform its requirements under the terms of this Agreement, the SHA may resort to the security to ensure performance of this Agreement, by either requiring the bonding company, or its designees, to comply with the terms of this Agreement, or at the election of the SHA, by requiring the bonding company to pay all costs necessary for the SHA, to take over and complete construction of the Improvements at the cost and expense of the bonding company.

(h) Construction Contract. The construction contract for the Improvements, acceptable to the SHA, shall have been executed by the Developer and the general contractor who has been selected to do the work.

(i) Entitlements. Developer shall have secured any and all land use and other entitlements, permits and approvals which may be required for the Improvements by the City or any other governmental agency affected by such construction or work and Developer shall have paid any and all applicable fees (including, without limitation, communities facility district fees and public facilities fees imposed by the City or any other governmental agency having jurisdiction with respect to the same). Neither the SHA, nor the City, shall be responsible in any way for, the processing of Developer's building permits or other permit applications with the City. The execution of this Agreement does not constitute the granting of or a commitment to obtain any required land use permits, entitlements or approvals.

In the event that one or more of the above conditions are not satisfied on or before the Construction Closing Deadline then (i) the SHA can waive satisfaction of such condition or

conditions in writing (delivered to Developer) on or prior to the Construction Closing Deadline, and the Construction Closing shall proceed, or (ii) the SHA can immediately terminate this Agreement in writing (delivered to Developer), and pursue all of its rights and remedies against the Developer as set forth herein, or as otherwise available at law or in equity, including without limitation those remedies set forth in Section 203, above.

308. Insurance Requirements. Developer shall take out and maintain during the term of the Declaration, and shall cause its contractor and subcontractors to take out and maintain until the issuance of the Release of Construction Covenants pursuant to Section 312 of this Agreement, a comprehensive general liability policy in the amount of not less than \$4,000,000 combined single limit policy for the contractor and not less than \$2,000,000 combined single limit policy for subcontractors, and a comprehensive automobile liability policy in the amount of \$2,000,000 combined single limit, or such other policy limits as SHA may approve at its discretion, including contractual liability, as shall protect the Developer, City and SHA from claims for such damages. Such policy or policies shall be written on an occurrence form. Developer shall also furnish or cause to be furnished to SHA evidence satisfactory to SHA that Developer, and any contractor with whom it has contracted for the performance of work on the Site or otherwise pursuant to this Agreement, carries workers' compensation insurance as required by law. Developer shall furnish a notarized certificate of insurance countersigned by an authorized agent of the insurance carrier on a form approved by SHA setting forth the general provisions of the insurance coverage. This countersigned certificate shall name the City and SHA and their respective officers, agents, and employees as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing such additional insured status. The certificate and endorsement by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify City and SHA of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by Developer shall be primary insurance and not be contributing with any insurance maintained by SHA or City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of the City and SHA. The required certificate shall be furnished by Developer at the time set forth therefor in the Schedule of Performance.

309. Developer's Indemnity. Developer shall be responsible for all injuries to persons and/or all damages to real or personal property of SHA, the City, or others, caused by or resulting from the sale, rental, ownership or operation of the Site, the negligence and/or material breach of this Agreement, of itself, its employees, subcontractors and/or its agents during the construction of or arising out of the construction of the Improvements. Developer shall defend and hold harmless and indemnify SHA, the City, and all of their officers and employees from and against all claims, liens, claims of lien, losses, damages, judgments, costs, and expenses, whether direct or indirect, arising in any way from (i) the sale, rental, ownership or operation of the Site, including without limitation the Improvements; (ii) Developer's negligence; (iii) material breach of this Agreement, by Developer, its employees, subcontractors and/or its agents; and/or (iv) arising out of the construction of the Improvements, except those arising from the sole



negligence or willful misconduct of the SHA or the City, or any of their officers, employees or agents.

310. Rights of Access. The SHA and its representatives shall have the right of reasonable access to the Site, without charges or fees, for the purposes of inspection of the work being performed in constructing the Improvements and monitoring compliance with this Agreement.

311. Compliance With Laws. Developer represents and warrants that during the term of this Agreement that it will comply with all State and Federal prevailing wage requirements to the extent the same are applicable to the work. Developer shall carry out the design and construction of the Improvements in conformity with all applicable laws, including all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Title 24 of the California Code of Regulations, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* Developer hereby agrees to carry out development, construction (as defined by applicable law) and operation of the Improvements on the Site, including, without limitation, any and all public works (as defined by applicable law), in conformity with all applicable local, state and federal laws, including, without limitation, all applicable federal and state labor laws (including, without limitation, any requirement to pay state prevailing wages). Developer hereby expressly acknowledges and agrees that neither City nor SHA has ever previously affirmatively represented to the Developer or its contractor(s) for the Improvements in writing or otherwise, in a call for bids or otherwise, that the work to be covered by the bid or contract is or is not a “public work,” as defined in Section 1720 of the Labor Code. Developer hereby agrees that Developer shall have the obligation to provide any and all disclosures, representations, statements, rebidding, and/or identifications which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Developer hereby agrees that Developer shall have the obligation to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. The Developer hereby agrees that the Developer shall have the obligation, at the Developer’s sole cost, risk and expense, to obligate any party as may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Developer shall indemnify, protect, defend and hold harmless the SHA, City and their respective officers, employees, contractors and agents, with counsel reasonably acceptable to SHA and City, from and against any and all loss, liability, damage, claim, cost, expense, and/or “increased costs” (including labor costs, penalties, reasonable attorneys’ fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction (as defined by applicable law) and/or operation of the Improvements, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (i) the noncompliance by Developer of any applicable local, state and/or federal law,

including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages); (ii) the implementation of Sections 1726 and 1781 of the Labor Code, as the same may be enacted, adopted or amended from time to time, or any other similar law; (iii) failure by Developer to provide any required disclosure, representation, statement, rebidding and/or identification which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law; (iv) failure by Developer to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law; and/or (v) failure by the Developer to obligate any party as may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. It is agreed by the parties that, in connection with the development, construction (as defined by applicable law) and operation of the Improvements, including, without limitation, any public work (as defined by applicable law), Developer shall bear all risks of payment or non-payment of state prevailing wages and/or the implementation of Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, and/or any other provision of law. "Increased costs" as used in this Section 311 shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after recordation of the Release of Construction Covenants.

311.1 Nondiscrimination in Employment. Developer certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, *et seq.*, the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and all other anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Developer shall allow representatives of SHA access to its employment records related to this Agreement during regular business hours to verify compliance with these provisions when so requested by SHA.

311.2 Taxes and Assessments. Developer shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Site. Developer shall remove or have removed any levy or attachment on any of the Site or any part thereof, or assure the satisfaction thereof within a reasonable time. If the terms and conditions of this Agreement are deemed to create a possessory interest in Developer such as to subject Developer to a Possessory Interest Tax pursuant to Revenue and Tax Code Section 107.6, then Developer shall be solely responsible for

satisfying that obligation, and Developer shall not look to SHA or the City for reimbursement or set off.

311.3 Liens and Stop Notices. Developer shall not allow to be placed on the Site or any part thereof any lien or stop notice. If a claim of a lien or stop notice is given or recorded affecting the Improvements, Developer shall, within thirty (30) days of such recording or service or within ten (10) days of SHA's demand, whichever last occurs:

- (a) pay and discharge the same;
- (b) effect the release thereof by recording and delivering to SHA a surety bond in sufficient form and amount as approved by SHA in its sole discretion; or
- (c) provide SHA with other assurance which SHA deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of SHA from the effect of such lien or bonded stop notice.

312. Release of Construction Covenants. Promptly after completion of the Improvements in conformity with this Agreement, SHA shall furnish Developer with the Release of Construction Covenants, for the entire Site upon written request therefor by the Developer. The SHA shall not unreasonably withhold, delay or condition any such Release of Construction Covenants. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the Improvements and the Release of Construction Covenants shall so state. Any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement except for those continuing covenants as set forth in Sections 401 through 406 of this Agreement. If SHA refuses or fails to furnish the Release of Construction Covenants, after written request from Developer, SHA shall, within thirty (30) days of written request therefor, provide Developer with a written statement of the reasons SHA refused or failed to furnish the Release of Construction Covenants or partial reconveyance. The statement shall also delineate the actions Developer must take to obtain the Release of Construction Covenants or partial reconveyance. The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Improvements, or any part thereof. The Release of Construction Covenants is not a notice of completion as referred to in Section 3093 of the California Civil Code.

313. Financing of the Improvements.

313.1 No Encumbrances Except Mortgages or Deeds of Trust. Except as otherwise provided herein, mortgages and deeds of trust may be permitted only with SHA's prior written approval, and only for the purpose of securing loans of funds to be used for financing the acquisition of the Site, construction of the Improvements (including architecture, engineering, legal, and related direct costs as well as indirect costs) on or in connection with the Site, and any other purposes necessary and appropriate in connection with development under this Agreement. Developer shall notify SHA in advance of any mortgage or deed of trust, if Developer proposes to enter into the same before completion of the construction of the Improvements. Except as otherwise provided herein, Developer shall not enter into any such mortgage or deed of trust for financing without the prior written approval of SHA, which approval SHA agrees to give if any such mortgage or deed of trust for financing is given to a responsible financing lending institution or person or entity, as determined by SHA in its reasonable discretion. If SHA shall disapprove any such evidence of financing, SHA shall do so by Notice to Developer stating the reasons for such disapproval and Developer may elect either to obtain and submit to SHA new evidence of financing or to terminate this Agreement. SHA agrees that the Developer Deed of Trust shall be subordinated to the Construction Deed of Trust and Permanent Deed of Trust, such subordination shall be in a form acceptable to the SHA in its reasonable discretion. Furthermore, the SHA shall subordinate the Declaration, Notice of Affordability Restrictions and Memorandum of Option, to the Construction Deed of Trust and Permanent Deed of Trust, to the extent necessary to obtain construction and permanent financing for the Improvements. Any such subordination shall be in a form acceptable to the SHA in its reasonable discretion.

313.2 Right of SHA to Cure Mortgage or Deed of Trust Default. In the event of a mortgage or deed of trust default or breach by Developer prior to the issuance of a Release of Construction Covenants pursuant to Section 312 of this Agreement, Developer shall immediately deliver to SHA a copy of any mortgage holder's notice of default. SHA shall have the right but not the obligation to cure the default. In such event, SHA shall be entitled to reimbursement from Developer of all costs and expenses incurred by SHA in curing such default, including without limitation attorneys' fees.

314. Occupancy Monitoring and Inspection Fees. Each year during the term of the Declaration, the Developer shall pay to the SHA an affordable housing occupancy monitoring and inspection fee in the amount of \$220 per affordable unit in the first year after the Improvements are placed in service, and increased by 2% each year thereafter. The affordable housing occupancy monitoring and inspection fee is in addition to any fees payable by the Developer to the SHA pursuant to that certain Supplemental Housing Support Agreement, dated as of December 9, 2014, between the Developer and the SHA.

315. SHA Option to Acquire the Residential Component.

315.1 Grant of the Residential Option. Effective upon the Construction Closing, Developer grants to the SHA the exclusive option to purchase the Residential Component (“Residential Option”), on the terms and conditions set forth in this Section 315. The Residential Option shall commence upon the earlier of: (i) cancellation, redemption or termination, for any reason, of the low income housing tax credits allocated to the Developer from the California Tax Credit Allocation Committee; or (ii) on the first day of the taxable year in which the “compliance period” (within the meaning of section 42(i)(1) of the Internal Revenue Code) terminates for the structure containing the Affordable Units (“Residential Option Commencement Date”), and shall expire one (1) year after the Residential Option Commencement Date (“Residential Option Term”).

315.2 Consideration for the Residential Option. The execution of this Agreement and the making of the SHA Loan by the SHA to the Developer shall be the consideration for entering into the Residential Option. The Developer hereby acknowledges that the SHA would not enter into this Agreement or agree to or make the SHA Loan without the Developer granting the Residential Option to the SHA.

315.3 Project Related Tax Liability of the Limited Partner. On the Residential Option Commencement Date the Developer shall provide written notice to the SHA, which notice shall state the total amount of the tax liability of the general partner and the limited partner of the Developer (“Limited Partner Project Related Tax Liability”) that would be incurred upon exercise by the SHA of the Residential Option and shall further provide to the SHA such back-up documentation necessary, as determined by the SHA in its sole discretion, to show the calculation and verification of the same.

315.4 Exercise of the Residential Option. During the Residential Option Term, the SHA may exercise its Residential Option by delivering written notice of the same to the Developer.

315.5 Purchase Price. If the SHA exercises the Residential Option, the total consideration payable by the SHA to the Developer for the Residential Component, shall be the greater of: (i) the Fair Market Value (as defined in Section 315.6, below) of the Site and all of the Improvements other than the Commercial Component; or (ii) the sum of: (w) the Limited Partner Project Related Tax Liability; plus (x) the then principal of and all accrued interest on the SHA Loan, plus (y) principal of and all accrued interest on the loan secured by the Permanent Deed of Trust plus (z) the principal of and all accrued interest on any other secured loans encumbering the Site (other than the Commercial Component) which were expressly approved by the SHA. In the event the SHA exercises the Residential Option, all of the then principal and interest of the SHA Loan shall be forgiven and such amount shall be credited against the purchase price payable by the SHA, as determined pursuant to the immediately preceding sentence.

315.6 Fair Market Value Defined. Fair Market Value of the Site and all of the Improvements other than the Commercial Component is the amount which a buyer would pay for

the same in an arm's-length transaction as determined by an appraiser selected by the SHA (with the Developer's written consent, which shall not be unreasonably, conditioned, delayed or withheld) that holds a MAI designation from the Appraisal Institute that has experience in the geographic area in which the Site is located. The appraisal shall take into account the following factors and restrictions, but only to the extent that such factors and/or restrictions are true or in effect (as the case may be) as of the date on which such Fair Market Value is being determined: (i) the requirement that the dwelling units at the Site remain dedicated for the use of low income persons; (ii) any restrictions under any loan agreements or regulatory agreements pertaining to the Site and all of the Improvements; (iii) the requirements of 26 U.S.C. §42; and (iv) the terms of any assumable financing.

315.7 Escrow. Within ten (10) days following the SHA's exercise of the Residential Option pursuant to Section 315.4 of this Agreement, the Developer and SHA shall open an escrow at a reputable escrow company in San Diego County, California. The parties shall sign the escrow instructions prepared by the escrow holder within ten (10) days of receipt thereof, so long as the instructions (i) state that it is the sole purpose of the escrow holder to comply with and carry out the terms and conditions of this Section 315 of this Agreement, and (ii) contain such other general provisions as are then customarily found in such escrow holder's escrow instructions. Either party failing to sign the escrow holder's escrow instructions as provided above shall be deemed to be in breach of this Agreement. The escrow shall provide for a closing on or before ninety (90) days after it is opened. The escrow holder's escrow instructions signed by the parties shall state the date escrow was opened.

315.8 Memorandum of Option. The Developer shall execute, acknowledge, deliver and cause the Memorandum of Option to be recorded at the Construction Closing.

316. SHA Option to Acquire the Commercial Component.

316.1 Grant of Commercial Option. Except as to a transfer to a related entity of the Developer or to a related entity of either the Managing General Partner or the Administrative General Partner, effective upon the Construction Closing, Developer grants to the SHA the exclusive option to purchase the Commercial Component ("Commercial Option"), for a total purchase price equal to the fair market value of the Commercial Component. The term of the Commercial Option shall commence upon completion of construction of the Commercial Component and shall expire three (3) years thereafter ("Commercial Option Term").

316.2 Consideration for the Commercial Option. The execution of this Agreement and the making of the SHA Loan by the SHA to the Developer shall be the consideration for entering into the Commercial Option. The Developer hereby acknowledges that the SHA would not enter into this Agreement or agree to or make the SHA Loan without the Developer granting the Commercial Option to the SHA.

316.3 Exercise of the Commercial Option. During the Commercial Option Term, the SHA may exercise its Commercial Option by delivering written notice of the same to the Developer.

316.4 Fair Market Value Defined. Fair Market Value of the Commercial Component is the amount which a buyer would pay for the same in an arm's-length transaction as determined by an appraiser selected by the SHA (with the Developer's written consent, which shall not be unreasonably, conditioned, delayed or withheld) that holds a MAI designation from the Appraisal Institute that has experience in the geographic area in which the Site is located.

316.5 Escrow. Within ten (10) days following the SHA's exercise of the Commercial Option pursuant to Section 316.3 of this Agreement, the Developer and SHA shall open an escrow at a reputable escrow company in San Diego County, California. The parties shall sign the escrow instructions prepared by the escrow holder within ten (10) days of receipt thereof, so long as the instructions (i) state that it is the sole purpose of the escrow holder to comply with and carry out the terms and conditions of this Section 316 of this Agreement, and (ii) contain such other general provisions as are then customarily found in such escrow holder's escrow instructions. Either party failing to sign the escrow holder's escrow instructions as provided above shall be deemed to be in breach of this Agreement. The escrow shall provide for a closing on or before ninety (90) days after it is opened. The escrow holder's escrow instructions signed by the parties shall state the date escrow was opened.

316.6 Memorandum of Option. The Developer shall execute, acknowledge, deliver and cause the Memorandum of Option to be recorded at the Construction Closing.

400. Covenants and Restrictions.

401. Use in Accordance with Redevelopment Plan. Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to the Site or any part thereof, that upon the Acquisition Closing and during construction and thereafter, Developer shall devote the Site to the uses specified in the Redevelopment Plan, Declaration and this Agreement for the periods of time specified herein. All uses conducted on the Site, including, without limitation, all activities undertaken by Developer pursuant to this Agreement, shall conform to the Redevelopment Plan and all applicable provisions of the San Marcos Municipal Code. The foregoing covenants shall run with the land.

402. Affordable Units.

402.1 Developer Covenants Concerning Affordable Units. Developer acknowledges that the SHA is funding the SHA Loan from the SHA's Low and Moderate Income Housing Fund established pursuant to Section 33334.3 of the California Health and Safety Code. Developer agrees that all of the SHA Loan shall be used for purposes that are eligible under the applicable provisions of the California Health and Safety Code. No part of the SHA Loan shall be used to finance the construction of the Commercial Component. Also, Developer shall construct Affordable Units at the Site as required by the SHA. The number of Affordable Units, the bedroom composition and affordability levels shall be as set forth in the Declaration. At the Construction Closing, the Developer shall execute the Declaration and cause it to be recorded against the Site. The Declaration will prohibit smoking at the Site and will set

forth the applicable rent and occupancy restriction in more detail. Developer further covenants and agrees that the Affordable Units will be rented only to Low Income Households, at rents affordable to the same. The parties acknowledge that the rents contained herein and in the Declaration are the rents specified in the Leitch stipulated judgment, a copy of which has been provided by the SHA to Developer.

402.2 Timing. Completion of construction of all of the Improvements, including all of the Affordable Units, shall occur on or before the deadline set forth in the Schedule of Performance.

402.3 Declaration. The obligation of SHA to make and fund the SHA Loan hereunder is subject to the execution and recordation of the Declaration. Developer hereby covenants and agrees to pay the property tax applicable to the Property during the term of the Declaration.

403. Maintenance Covenants. Developer shall maintain the Site and all Improvements, in compliance with the terms of the Redevelopment Plan, all applicable provisions of the San Marcos Municipal Code and all housing quality standards contained within 24 CFR §92.251 (regardless of whether such section would apply to the Site without the foregoing provision). Developer hereby consents to periodic inspection by the SHA's designated inspectors and/or designees during regular business hours, including the Code Enforcement Agents of the City, to assure compliance with said zoning, building codes, regulations, and housing quality standards.

404. Obligation to Refrain from Discrimination.

404.1 State and Federal Requirements. Developer shall, at all times during the term of this Agreement, comply with all of the affirmative marketing procedures adopted by the SHA. Developer shall maintain records to verify compliance with the applicable affirmative marketing procedures and compliance. Such records are subject to inspection by the SHA during regular business hours upon five (5) days written notice. 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 account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall Developer or any person claiming under or through it establish or permit any such practice or practices of discrimination 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, with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site or the rental, lease, sale of the Site. The foregoing covenants shall run with the Site.

404.2 Additional Requirements. Developer hereby agrees to comply with the Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal and State laws and regulations.



404.3 Fair Housing Laws. All activities carried out by Developer and/or agents of Developer shall be in accordance with the requirements of the Federal Fair Housing Act. The Fair Housing Amendments Act of 1988 became effective on March 12, 1989. The Fair Housing Amendments Act of 1988 and Title VIII of the Civil Rights Act of 1968, taken together, constitute the Fair Housing Act. The Fair Housing Act provides protection against the following discriminatory housing practices if they are based on race, sex, religion, color, handicap, familial status, or national origin: denying or refusing to rent housing, denying or refusing to sell housing, treating differently applicants for housing, treating residents differently in connection with terms and conditions, advertising a discriminatory housing preference or limitation, providing false information about the availability of housing, harassing, coercing or intimidating people from enjoying or exercising their rights under the Fair Housing Act, blockbusting for profit, persuading owner to sell or rent housing by telling them that people of a particular race, religion, etc., are moving into the neighborhood, imposing different terms for loans for purchasing, constructing, improving, repairing, or maintaining a home, or loans secured by housing; denying use or participation in real estate services, e.g., brokers' organizations, multiple listing services, etc., The Fair Housing Act gives HUD the authority to hold administrative hearings unless one of the parties elects to have the case heard in U.S. District Court and to issue subpoenas. Both civil and criminal penalties are provided. The Fair Housing Act also provides protection for people with disabilities and proscribes those conditions under which senior citizen housing is exempt from the prohibitions based on familial status. The following State of California Laws also govern housing discrimination and shall be complied with by Developer: Fair Employment and Housing Act, Unruh Civil Rights Act of 1959, Ralph Civil Rights Act of 1976, and Civil Code Section 54.1.

405. Nondiscrimination Covenants. 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 the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income or disability of any person in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall Developer or any person claiming under or through it establish or permit any such practice or practices of discrimination 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, with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) Deeds. In deeds "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, sexual orientation, disability, medical condition, familial status, source of income, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any

person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

(b) Leases. In leases “The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, 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 race, color, religion, sex, sexual orientation, disability, medical condition, familial status, source of income, marital status, national origin or ancestry in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall lessee itself, or any person claiming under or through it, establish or permit 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 land herein leased.”

(c) Contracts. In contracts for the rental, lease or sale of the Site or any dwelling unit “There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, sexual orientation, disability, medical condition, familial status, source of income, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.”

406. Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction. SHA 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 right 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, without regard to whether SHA has been, remains or is an owner of any land or interest therein in the Site. SHA shall have the right, if this Agreement or its covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

500. Defaults and Remedies.

501. Default Generally. Subject to the extensions of time set forth in Section 602 of this Agreement, failure by either party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a “Default” under this Agreement. A party claiming a Default

shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party within thirty (30) days from receipt of such notice immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with diligence.

502. Institution of Legal Actions. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the County of San Diego, State of California, in an appropriate court in that county, or in the District of the United States District Court in which such county is located.

503. Termination by SHA. In the event that SHA is not in Default under this Agreement and Developer is in Default of this Agreement and Developer fails to cure such Default within the time set forth in Section 501 hereof, including without limitation if Developer assigns or attempts to assign this Agreement or any rights therein or to convey or transfer all or any portion of the Site in violation of this Agreement, one or more of the closing conditions set forth in Section 201.3 is not fulfilled by the Developer or waived by the SHA on or before the Acquisition Closing Deadline, Developer fails to satisfy the Construction Closing Minimum Requirements or Developer fails to complete any items set forth in the Schedule of Performance prior to the time set forth therein (as such times may be extended with SHA approval); then: (i) this Agreement and any rights of Developer or any assignee or transferee with respect to or arising out of the Agreement or the Site, shall, at the option of SHA, be terminated by SHA by written notice thereof to Developer in addition to all other rights and remedies available to SHA; and (ii) the SHA shall have the right, at its election, to enter and take possession of the Site, with all improvements thereon, and vest title to the Site in the SHA by foreclosing on the Developer Deed of Trust. From the date of the written notice of termination of this Agreement by SHA to Developer and thereafter this Agreement shall be terminated and there shall be no further rights or obligations between the parties, except that the parties may pursue any other remedies they may have hereunder.

504. Entry and Vesting of Title in SHA Prior to Completion of Construction.

504.1 Right of Entry. In addition to all other rights and remedies the SHA may have at law or in equity, the SHA has the right, at its election, to enter and take possession of the Site, with all improvements thereon, and vest title to the Site in the SHA by foreclosing on the Developer Deed of Trust, if after the Construction Closing, Developer:

- (a) fails to start the construction of the Improvements as required by this Agreement for a period of thirty (30) days after written notice thereof from SHA (unless otherwise extended with SHA approval); or

(b) abandons or substantially suspends construction of the Improvements required by this Agreement for a period of thirty (30) days after written notice thereof from SHA (unless otherwise extended with SHA approval); or

(c) transfers or suffers any involuntary transfer of the Site or any part thereof in violation of contrary to the provisions of Section 603 or any other section of this Agreement.

504.2 Limitations on Right of Entry. Such right to enter and vest shall be subject to and be limited by and shall not defeat, render invalid or limit any mortgage or deed of trust permitted by this Agreement that is senior to the Developer Deed of Trust.

504.3 Right of Entry Referenced in Developer Deed of Trust. The Developer Deed of Trust shall contain appropriate reference and provision to give effect to SHA's rights as set forth in this Section 504, to enter and take possession of the Site, with all improvements thereon, and to vest in SHA the Site.

504.4 Resale By SHA After Vesting. Upon the vesting in SHA of title to the Site as provided in this Section 504, SHA shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Site as soon and in such manner as SHA shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan, as it exists or may be amended, to a qualified and responsible party or parties (as determined by SHA) who will assume the obligation of making or completing the Improvements, or such improvements in their stead as shall be satisfactory to SHA and in accordance with the uses specified for the Site or part thereof in the Redevelopment Plan.

504.5 Application of Sale Proceeds. Upon such sale of the Site by SHA, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Site which is permitted by this Agreement, shall be applied:

(a) First, to reimburse SHA, on its own behalf or on behalf of the City, all costs and expenses incurred by SHA or the City, including, but not limited to: any expenditures by SHA or the City in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by SHA or the City from the Site or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Site or part thereof which Developer has not paid (or, in the event that Site is exempt from taxation or assessment of such charges during the period of ownership thereof by SHA, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site or part thereof at the time of revesting of title thereto in SHA, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the

improvements or any part thereof on the Site, or part thereof; and any amounts otherwise owing SHA, and in the event thereafter available; and

(b) Second, to reimburse Developer, its successor or transferee, up to the amount equal to the sum of (i) the costs incurred for the acquisition and development of the Site and for the improvements existing on the Site at the time of the entry and possession, less (ii) any gains or income withdrawn or made by Developer from the Site or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by SHA as its property. The rights established in this Section 504 are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. The rights are to be interpreted in light of the fact that SHA will have conveyed the Site to Developer for redevelopment purposes, particularly for development of the Site and not for speculation.

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

506. 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.

507. 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 shall govern the interpretation and enforcement of this Agreement.

600. General Provisions.

601. Notices, Demands and Communications Between the Parties. Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To SHA: City of San Marcos  
Attn. City Manager  
1 Civic Center Drive  
San Marcos, CA 92069

Copy To: Christensen & Spath LLP  
Attn. Walter F. Spath III, Esq.  
550 West C Street, Suite 1660  
San Diego, CA 92101

To Developer: Richmar Station San Marcos, LP  
c/o Hitzke Development Corporation  
251 Autumn Drive  
San Marcos, CA 92780  
Attn: Ginger Hitzke, President

Copy to: The Southern California Housing Development Corporation of Orange  
9421 Haven Avenue  
Rancho Cucamonga, CA 91730  
Attention: Chief Executive Officer

Any written notice, demand or communication shall be deemed received immediately if delivered by hand and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail.

602. 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; acts or omissions of the other party; or any other causes beyond the control and without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the 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 five (5) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City Manager (on behalf of the SHA) and Developer.

603. Transfers of Interest in Site or Agreement.

603.1 Prohibition. The qualifications and identity of Developer are of particular concern to the City. It is because of those qualifications and identity that the SHA has entered into this Agreement with Developer. For the period commencing upon the date of this

Agreement and during the fifty five (55) year terms of the Declarations, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement, nor shall Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Site or the Improvements thereon without prior written approval of the SHA, except as expressly set forth herein. Any proposed total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Site or the Improvements, other than those permitted in Section 603.2, will entitle the SHA to its right of reentry and revesting as set forth in Section 504 hereof. For the reasons cited above, Developer represents and agrees for itself, each member and any successor in interest of itself and each member that prior to issuance by the SHA of the Release of Construction Covenants for each phase and without the prior written approval of the SHA, there shall be no significant change in the ownership of Developer or in the relative proportions thereof, or with respect to the identity of the parties in control of Developer or the degree thereof, by any method or means. Developer shall promptly notify the SHA of any and all changes whatsoever in the identity of the parties in control of Developer or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information. Any significant change (voluntary or involuntary) in partners, management or control, of Developer or its associates (other than such changes occasioned by the death or incapacity of any individual) shall be a Default.

603.2 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, SHA approval of an assignment of this Agreement or conveyance of the Site or Improvements, or any part thereof, will be granted in connection with any of the following, subject to SHA and Developer executing appropriate documents of transfer which contain any exceptions or reservation of rights permitted under this Agreement:

- (a) the leasing of one or more Affordable Units to an occupant in compliance with the Declaration;
- (b) transfer of up to a Ninety-Nine and Ninety Nine Hundredths Percent (99.99%) limited interest in the Developer to a tax credit investor partner in connection with a tax credit syndication;
- (c) transfer by the tax credit investor partner of its interest in the Developer to an entity in which the tax credit investor partner or its affiliate manages and controls, directly or indirectly, the management decisions of such entity in connection with the tax credit syndication;
- (d) Developer granting an option to purchase the Site after the expiration of the 15-year tax credit compliance period to an entity in which Developer or its affiliate manages and controls, directly or indirectly, the management decisions of such entity, provided that any such option shall be subject and subordinate to the SHA's Residential Option and Commercial Option;

(e) the conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Improvements (as defined herein);

(f) any requested assignment for financing purposes (subject to such financing being reasonably approved by SHA), including the grant of a deed of trust to secure the funds necessary for construction of the Improvements; or

(g) any deed of trust or related document recorded against the Site in connection with financing approved by the SHA.

603.3 Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon Developer and its permitted successors and assigns. Whenever the term “Developer” is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

603.4 Assignment by SHA. SHA may assign or transfer this Agreement in its entirety, or any of its rights or obligations hereunder.

604. Non-Liability of Officials and Employees of SHA. No member, official or employee of the SHA or City shall be personally liable to Developer, or any successor in interest, in the event of any Default or breach of this Agreement or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Agreement.

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

606. SHA Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by the SHA, the City Manager or his or her designee is authorized to act on behalf of SHA, unless specifically provided otherwise.

607. Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

608. Integration. This Agreement contains the entire understanding between the parties relating to the subject matter of this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral and written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely



upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

609. No Real Estate Brokerage Commissions. SHA and Developer each represent and warrant to the other that no broker or finder is entitled to any commission or finder's fee in connection with Developer's acquisition of the Site from SHA. SHA and Developer each agrees to defend and hold harmless the other from any claim by any broker, agent or finder with respect to Site.

610. Attorneys' Fees. The parties agree that the prevailing party in litigation for the breach and/or interpretation and/or enforcement of the terms of this Agreement shall be entitled to their expert witness fees, if any, as part of their costs of suit, and reasonable attorneys' fees as may be awarded by the court, pursuant to California Code of Civil Procedure ("CCP") Section 1033.5 and any other applicable provisions of California law, including, without limitation, the provisions of CCP Section 998. In addition, in the event Developer requests any future amendments to this Agreement or any further agreements, documents or instruments are to be executed by the SHA or the City, the Developer shall pay any and all attorneys' fees incurred by the SHA with respect to the same.

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

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

613. No Waiver. A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

614. Modifications. Any amendment, alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed by the Developer and the SHA (any amendment, alteration, change or modification of this Agreement on behalf of the SHA, including without limitation changes to the economic terms of this Agreement and its attachments, shall be made by the City Manager in his sole discretion).

615. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held

invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

616. Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term “holiday” shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

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

618. Time of Essence. Time is expressly made of the essence with respect to the performance by the SHA and Developer of each and every obligation and condition of this Agreement.

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

620. Conflicts of Interest. No member, official or employee of the SHA shall have any personal interest, direct or indirect, in this Agreement, nor shall any such 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.

621. Exhibits and Recitals Incorporated. All exhibits referred to in this Agreement are hereby incorporated in this Agreement by this reference, regardless of whether or not the exhibits are actually attached to this Agreement. The recitals to this Agreement are hereby incorporated in this Agreement by this reference.

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

623. No Novation. This Agreement is not a novation of, and does not amend or modify in any way, the Supplemental Housing Support Agreement, dated as of December 9, 2014, between the Developer and the SHA.

624. Authority to Sign. All individuals signing this Agreement for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the SHA that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

625. Liability of the Managing General Partner and Administrative General Partner. Notwithstanding any other provision of this Agreement or any related or ancillary agreement between the parties, except in the case of acts of gross negligence or willful misconduct of the Managing General Partner or the Administrative General Partner, the liability of the Managing General Partner and/or the Administrative General Partner to the Partnership, the Limited Partners or any other Partner or Person under this Agreement or any ancillary document shall be limited to the respective interest of the Managing General Partner or the Administrative in the Partnership and shall not extend to or be enforceable against any other assets of the Managing General Partner or the Administrative General Partner, nor their respective officers, directors, employees or representatives.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date first written above.

**SHA:**

City of San Marcos in its capacity as the successor housing agency to the former San Marcos Redevelopment Agency

By: \_\_\_\_\_  
Jack Griffin, City Manager

**APPROVED AS TO FORM:**

Christensen & Spath LLP

By: \_\_\_\_\_  
Walter F. Spath III  
Special Counsel to the SHA

**[SIGNATURES CONTINUED ON FOLLOWING PAGE]**

**DEVELOPER:**

Richmar Station San Marcos, LP, a California limited partnership

By: The Southern California Housing Development Corporation of Orange,  
a California nonprofit public benefit corporation

Its: Managing General Partner

By:\_\_\_\_\_

Print Name:\_\_\_\_\_

Its:\_\_\_\_\_

By: Hitzke Development Corporation, a California corporation

Its: Administrative General Partner

By:\_\_\_\_\_

Ginger Hitzke, President

## **Exhibit A**

### **Site Legal Description**

All that certain real property located in the City of San Marcos, County of San Diego, State of California, more particularly described as follows: